

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NATIONAL CORPORATION,	POWER Petitioner,	CTA AC CASE NO. 108 Members: BAUTISTA, <i>Chairperson</i> ; FABON-VICTORINO, and RINGPIS LIBAN, <u>JJ.</u>
-versus-		
PROVINCE OF QUIRINO and FE. B. MANGACCAT,	Respondents.	Promulgated:

FEB 24 2015

x- - - - - 3:25 p.m. - - - - -x

AMENDED DECISION

FABON-VICTORINO, J.:

Before the Court is petitioner's Motion for Reconsideration posted on July 8, 2014, with respondent's Comment posted on August 5, 2014.

Petitioner seeks the reconsideration of the Decision promulgated on June 18, 2014¹, the dispositive portion of which reads:

WHEREFORE, the instant Petition for Review dated June 17, 2013 filed by petitioner National Power Corporation is hereby DENIED, for lack of merit.

The Decision dated May 2, 2013 of the Regional Trial Court of Cabarroguis, Quirino-Branch 32 in Civil Case No. 686-2008 entitled

¹ Docket, pp. 182-197.

"National Power Corporation vs. Province of Quirino and Fe B. Mangacat", is hereby AFFIRMED.

SO ORDERED.

The relief sought by petitioner is anchored on the sole ground that:

THE HONORABLE COURT OF TAX APPEALS ERRED IN HOLDING THE PETITIONER LIABLE FOR FRANCHISE TAX ALTHOUGH IT IS NO LONGER DOING BUSINESS AND IS NOT REQUIRED TO SECURE A FRANCHISE.

In support of its position, petitioner cites the recent ruling of the Supreme Court in the case of *National Power Corporation vs. Provincial Government of Bataan, et. al.*², where it was held that NAPOCOR ceased to operate as business by operation of law from the time R.A. No. 9136, otherwise known as the EPIRA, took effect. Thus, it is no longer liable to pay local franchise tax. When R.A. No. 9136 took effect, its electrical transmission function was transferred to TRANSCO. Consequently, it became only a generation company which is not required to secure a franchise.

Petitioner further contends that the Court's ruling in the case of *NAPOCOR vs. The Province of Nueva Vizcaya and Perfecto Martinez, Jr.*³ is no longer applicable since the principle applied therein is the Supreme Court's ruling in the *Cabanatuan* case⁴ which involves a franchise tax due prior to the effectivity of R.A. 9136.

Respondents however counter that while the Supreme Court recently held in the case of *National Power Corporation vs. Provincial Government of Bataan, et. al*, that

² G.R. No. 180654, April 21, 2014.

³ CTA AC No. 94, June 3, 2013.

⁴ *National Power Corporation vs. City of Cabanatuan*, G.R. No. 149110, April 9, 2003.

NAPOCOR ceased to operate as a business by operation of R.A. 9136, the ruling was not anchored on NAPOCOR's exemption from payment of franchise tax but on the failure of the Provincial Government of Bataan to implead Power Sector Assets and Liabilities Management Corporation (PSALM) as an indispensable party. Further, while the ruling in said case laid to rest the fact that the properties and liabilities of NAPOCOR were transferred to TRANSCO and that PSALM, by operation of EPIRA LAW owns TRANSCO, still petitioner was not really divested of its franchise because under Section 70 of the EPIRA Law, petitioner can still sell in bulk the power it generates under its "missionary electrification function". Under the said section, petitioner remains as a GOCC with full mandate to perform the commercial activities attendant to the implementation of its Missionary Electrification Functions. Therefore, petitioner still enjoys the privilege of implementing its "missionary electrification functions".

Respondents further alleges that while the law is silent as to whether or not a franchise has yet to be issued to carry out the mandates of Section 70 of the EPIRA Law, it is clear from the language of said law that Section 70 thereof is in itself a legislative franchise given that the commercial business activities related to the implementation of the Missionary Electrification Function was not passed upon in the ruling of the Supreme Court in the *NAPOCOR vs. Province of Bataan case*.

Finally, respondents stress that considering their claim is based on the sale made by petitioner to QUIRELCO of the power petitioner generates under its missionary electrification function, as evidenced by the billings petitioner issued, the privileged transactions, however it is called, is still a franchise. Hence, there is no compelling reason for the Court to reconsider its Decision.

Petitioner's motion has merit.

The ruling in the recent case of *National Power Corporation vs. Provincial Government of Bataan, Sangguniang Panlalawigan of Bataan, Pastor B. Vichuaco (in his official capacity as Provincial Treasurer of Bataan)* and

*The Register of Deed of the Province of Bataan*⁵ is instructive under the obtaining circumstances. The Supreme Court in cited case held that the EPIRA Law created the TRANSCO and transferred to it the NPC's electrical transmission function and therefore, NPC, ceased to operate its transmission business by operation of law. The relevant portion of the Decision is hereby quoted, thus:

"The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA. Thus, Section 8 of the EPIRA provides:

SEC. 8. Creation of the National Transmission Company. There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: Provided, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a

⁵ *Supra*, note 2.

position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this act or the start of open access, whichever comes earlier:
X X X.

X X X X

The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001. The NPC, therefore, ceased to operate that business in Bataan by operation of law. Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC.

XXX

XXX

XXX

The legislative emasculation of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:

SEC. 49. Creation of Power Sector Assets and Liabilities Management Corporation. - There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM




Corp. within one hundred eighty (180) days from the approval of this Act.

Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's "generation assets" which would include the Bataan Thermal Plant. Clearly, the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. It is, therefore, not the proper party subject to the local franchise tax for operating that business. Parenthetically, Section 49 also transferred "all existing xx x liabilities" of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp."
(Boldfacing supplied)

Evident from the pronouncement of the Highest Tribunal that with the advent of R.A. 9136 or the EPIRA Law, petitioner ceased to operate its electrical transmission business and that TRANSCO assumed all of petitioner's electrical transmission function, which also includes its nationwide franchise to operate its power transmission business. Further, all of petitioner's liabilities with respect to its transmission, subtransmission and generation functions were likewise transferred to PSALM Corp., the owner of TRANSCO.

In light of the foregoing tenet, the Court finds that petitioner can no longer be assessed of franchise taxes for the years 2002 to 2006 as it already ceased to operate its electrical transmission and distribution function upon the effectivity of the EPIRA Law on June 26, 2001.

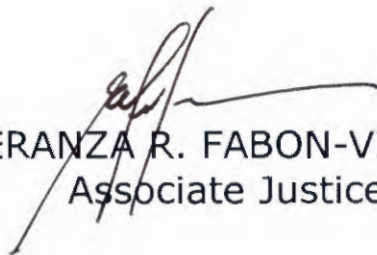
The Final Arbiter has spoken on the matter. This Court needs only to follow and apply the principle in like cases. It has also been ruled that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is



settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue."⁶


WHEREFORE, the Motion for Reconsideration filed by petitioner National Power Corporation on July 8, 2014, through registered mail, is hereby **GRANTED**. Accordingly, the assailed Decision of June 18, 2014 is hereby **CANCELLED** and **SET ASIDE**. The Decision dated May 2, 2013 of the Regional Trial Court of Cabarroguis, Quirino-Branch 32 in Civil Case No. 686-2008 entitled "*National Power Corporation vs. Province of Quirino and Fe B. Mangacat*", is hereby **REVERSED**.

SO ORDERED.

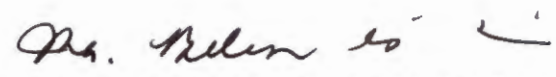


ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:



LOVELL R. BAUTISTA
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

⁶ *Commissioner of Internal Revenue vs. The Insular Life Assurance Co. Ltd.*, G.R. No. 197192, June 4, 2014.

ATTESTATION

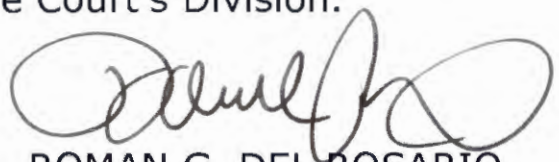
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ROMAN G. DEL ROSARIO
Presiding Justice