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THIRD DIVISION

[G.R. No. 120082. September 11, 1996]

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* HON. FERDINAND J. MARCOS, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 20, Cebu City, THE CITY OF CEBU, represented by its Mayor, HON. TOMAS R. OSMEÑA, and EUSTAQUIO B. CESA, *respondents*.

SYLLABUS

1. POLITICAL LAW; GOVERNMENT; POWER OF TAXATION; CONSTRUED.— As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it. Nevertheless, effective limitations thereon may be imposed by the people through their Constitution. Our Constitution, for instance, provides that the rule of taxation shall be uniform and equitable and Congress shall evolve a progressive system of taxation. So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy." Verily, taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in

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favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operation.

2. ID.; ID.; ID.; MAYBE EXERCISED BY THE LOCAL LEGISLATIVE BODIES.— The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. The LGC, enacted pursuant to Section 3, Article X of the Constitution, provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemptions from taxation. Section 133 of the LGC prescribes the common limitations on the taxing powers of local government units.

3. ID.; ID.; ID.; EXEMPTION FROM PAYMENT OF TAX MAYBE WITHDRAWN AT THE PLEASURE OF THE TAXING AUTHORITY; EXCEPTION.— There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is

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where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment claim of the Constitution.

4. ID.; LOCAL GOVERNMENT CODE; SEC. 234 PROVIDES FOR THE EXEMPTION FROM THE PAYMENT OF REAL PROPERTY TAX; BASIS THEREOF.— Section 234 of the LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions therefrom granted to natural and juridical persons, including government-owned and controlled corporations, except as provided therein. These exemptions are based on the ownership, character, and use of the property. Thus: (a) *Ownership Exemptions.* Exemptions from real property taxes on the basis of *ownership* are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, (vi) registered cooperatives. (b) *character exemptions.* Exempted from real property taxes on the basis of their character are: (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non-profit or religious cemeteries. (c) *Usage exemptions.* Exempted from real property taxes on the basis of the actual, direct and exclusive *use* to which they are devoted are: (i) all lands, buildings and improvements which are actually, directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (iii) all machinery and equipment used for pollution control and environmental protection. To help provide a healthy environment in the midst of the modernization of the country, all machinery and equipment for pollution control and environmental

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protection may not be taxed by local governments. 2. *Other Exemptions Withdrawn*. All other exemptions previously granted to natural or juridical persons including governent-owned or controlled corporations are withdrawn upon effectivity of the Code.

5. **ID.; REPUBLIC OF THE PHILIPPINES AS DISTINGUISED FROM NATIONAL GOVERNMENT.**— The terms "Republic of the Philippines" and "National Government" are not interchangeable. The former is broader and synonymous with "Government of the Republic of the Philippines" which the Administrative Code of 1987 defines as the "corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government." (Section 2[1], Introductory Provisions, Administrative Code of 1987.) These "autonomous regions, provincial, city, municipal or barangay subdivisions" are the political subdivisions. (Section 1, Article X, 1987 Constitution.) On the other hand, "National Government" refers "to the entire machinery of the central government, as distinguished from the different forms of local government." (Section 2[2], Introductory Provisions, Administrative Code of 1987.) The National Government then is composed of the three great departments: the executive, the legislative and the judicial.

6. **ID.; GOVERNMENT; AGENCY AS DISTINGUISHED FROM INSTRUMENTALITY.**— An "agency" of the Government refers to "any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein," while an "instrumentality" refers to "any

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agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually, through a charter. This term includes regulatory agencies, chartered institutions and government-owned and controlleld corporations."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

The Office of the City Attorney for City of Cebu.

DECISION

DAVIDE, JR., *J.*:

For review under Rule 45 of the Rules of Court on a pure question of law are the decision of 22 March 1995[1] of the Regional Trial Court (RTC) of Cebu City, Branch 20, dismissing the petition for declaratory relief in Civil Case No. CEB-16900, entitled "*Mactan Cebu International Airport Authority vs. City of Cebu*," and its order of 4 May 1995[2] denying the motion to reconsider the decision.

We resolved to give due course to this petition for it raises issues dwelling on the scope of the taxing power of local government units and the limits of tax exemption privileges of government-owned and controlled corporations.

The uncontradicted factual antecedents are summarized in the instant petition as follows:

Petitioner Mactan Cebu International Airport Authority (MCIAA) was created by virtue of Republic Act No. 6958,

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[1] *Rollo*, 27-29. Per Judge Ferdinand J. Marcos.

[2] *Id.*, 30-31.

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mandated to "principally undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City, x x x and such other airports as may be established in the Province of Cebu x x x" (Sec. 3, RA 6958). It is also mandated to:

a) encourage, promote and develop international and domestic air traffic in the Central Visayas and Mindanao regions as a means of making the regions centers of international trade and tourism, and accelerating the development of the means of transportation and communication in the country; and,

b) upgrade the services and facilities of the airports and to formulate internationally acceptable standards of airport accommodation and service.

Since the time of its creation, petitioner MCIAA enjoyed the privilege of exemption from payment of realty taxes in accordance with Section 14 of its Charter:

> Sec. 14. *Tax Exemptions*. — The Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities x x x.

On October 11, 1994, however, Mr. Eustaquio B. Cesa, Officer-in-Charge, Office of the Treasurer of the City of Cebu, demanded payment for realty taxes on several parcels of land belonging to the petitioner (Lot Nos. 913-G, 743, 88 SWO, 948-A, 989-A, 474, 109(931), I-M, 918, 919, 913-F, 941, 942, 947, 77 Psd., 746 and 991-A), located at Barrio Apas and Barrio Kasambagan, Lahug, Cebu City, in the total amount of P2,229,078.79.

Petitioner objected to such demand for payment as baseless and unjustified, claiming in its favor the aforecited Section 14 of RA 6958 which exempts it from payment of realty taxes. It was also asserted that it is an instrumentality of the government performing governmental functions, citing

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Section 133 of the Local Government Code of 1991 which puts limitations on the taxing powers of local government units:

> Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> a) x x x
>
> x x x x x x x x x
>
> o) Taxes, fees or charges of any kind on the National Government, *its agencies and instrumentalities, and local government units.* (italics supplied)

Respondent City refused to cancel and set aside petitioner's realty tax account, insisting that the MCIAA is a government-controlled corporation whose tax exemption privilege has been withdrawn by virtue of Sections 193 and 234 of the Local Government Code that took effect on January 1, 1992:

> Section 193. *Withdrawal of Tax Exemption Privilege.*— Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons whether natural or juridical, *including government-owned or controlled corporations*, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, *are hereby withdrawn upon the effectivity of this Code.* (italics supplied)
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> x x x x x x x x x
>
> Section 234. *Exemptions from Real Property Taxes.* — x x x
>
> (a) x x x
>
> x x x x x x x x x

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(e) x x x

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

As the City of Cebu was about to issue a warrant of levy against the properties of petitioner, the latter was compelled to pay its tax account "under protest" and thereafter filed a Petition for Declaratory Relief with the Regional Trial Court of Cebu, Branch 20, on December 29, 1994. MCIAA basically contended that the taxing powers of local government units do not extend to the levy of taxes or fees of any kind on an *instrumentality* of the national government. Petitioner insisted that while it is indeed a government-owned corporation, it nonetheless stands on the same footing as an agency or instrumentality of the national government by the very nature of its powers and functions.

Respondent City, however, asserted that MCIAA is not an instrumentality of the government but merely a government-owned corporation performing proprietary functions. As such, all exemptions previously granted to it were deemed withdrawn by operation of law, as provided under Sections 193 and 234 of the Local Government Code when it took effect on January 1, 1992.[3]

The petition for declaratory relief was docketed as Civil Case No. CEB-16900.

In its decision of 22 March 1995,[4] the trial court dismissed the petition in light of its findings, to wit:

A close reading of the New Local Government Code of 1991 or RA 7160 provides the express cancellation and

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[3] *Rollo*, 10-13.

[4] *Supra* note 1.

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withdrawal of exemption of taxes by government-owned and controlled corporation per Sections after the effectivity of said Code on January 1, 1992, to wit: [proceeds to quote Sections 193 and 234]

Petitioners claimed that its real properties assessed by respondent City Government of Cebu are exempted from paying realty taxes in view of the exemption granted under RA 6958 to pay the same (citing Section 14 of RA 6958).

However, RA 7160 expressly provides that "All general and special laws, acts, city charters, decress [sic], executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly." (/f/, Section 534, RA 7160).

With that repealing clause in RA 7160, it is safe to infer and state that the tax exemption provided for in RA 6958 creating petitioner had been expressly repealed by the provisions of the New Local Government Code of 1991.

So that petitioner in this case has to pay the assessed realty tax of its properties effective after January 1, 1992 until the present.

This Court's ruling finds expression to give impetus and meaning to the overall objectives of the New Local Government Code of 1991, RA 7160. "It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization

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shall proceed from the national government to the local government units. x x x"[5]

Its motion for reconsideration having been denied by the trial court in its 4 May 1995 order, the petitioner filed the instant petition based on the following assignment of errors:

I. RESPONDENT JUDGE ERRED IN FAILING TO RULE THAT THE PETITIONER IS VESTED WITH GOVERNMENT POWERS AND FUNCTIONS WHICH PLACE IT IN THE SAME CATEGORY AS AN INSTRUMENTALITY OR AGENCY OF THE GOVERNMENT.

II. RESPONDENT JUDGE ERRED IN RULING THAT PETITIONER IS LIABLE TO PAY REAL PROPERTY TAXES TO THE CITY OF CEBU.

Anent the first assigned error, the petitioner asserts that although it is a government-owned or controlled corporation, it is mandated to perform functions in the same category as an instrumentality of Government. An instrumentality of Government is one created to perform governmental functions primarily to promote certain aspects of the economic life of the people.[6] Considering its task "not merely to efficiently operate and manage the Mactan-Cebu International Airport, but more importantly, to carry out the Government policies of promoting and developing the Central Visayas and Mindanao regions as centers of international trade and tourism, and accelerating the development of the means of transportation and communication in the country,"[7] and that it is an attached agency of the Department of Transportation and Communication (DOTC),[8] the petitioner "may stand in

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[5] *Rollo*, 28-29.

[6] Citing Gonzales *vs.* Hechanova, 118 Phil. 1065 [1963].

[7] Citing Section 3, R.A. No. 6958.

[8] Citing Section 2, *Id.*

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[sic] the same footing as an agency or instrumentality of the national government." Hence, its tax exemption privilege under Section 14 of its Charter "cannot be considered withdrawn with the passage of the Local Government Code of 1991 (hereinafter *LGC*) because Section 133 thereof specifically states that the 'taxing powers of local government units shall not extend to the levy of taxes or fees or charges of any kind on the national government, its agencies and instrumentalities.'"

As to the second assigned error, the petitioner contends that being an instrumentality of the National Government, respondent City of Cebu has no power nor authority to impose realty taxes upon it in accordance with the aforesaid Section 133 of the LGC, as explained in *Basco vs. Philippine Amusement and Gaming Corporation*:[9]

Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stock are owned by the National Government. . . .

PAGCOR has a dual role, to operate and regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. *Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere Local government.*

The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (McCulloch *v.* Maryland, 4 Wheat 316, 4 L Ed. 579)

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[9] 197 SCRA 52 [1991].

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This doctrine emanates from the "supremacy" of the National Government over local governments.

"Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (Johnson *v.* Maryland, 254 USA 51) and it can be agreed that no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even to seriously burden it in the accomplishment of them." (Antieau, Modern Constitutional Law, Vol. 2, p. 140)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation" (U.S. *v.* Sanchez, 340 US 42). *The power to tax which was called by Justice Marshall as the "power to destroy" (Mc Culloch v. Maryland, supra) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it.* (italics supplied)

It then concludes that the respondent Judge "cannot therefore correctly say that the questioned provisions of the Code do not contain any distinction between a government corporation performing governmental functions as against one performing merely proprietary ones such that the exemption privilege withdrawn under the said Code would apply to *all* government corporations." For it is clear from Section 133, in relation to Section 234, of the LGC that the legislature meant to exclude *instrumentalities of the national government* from the taxing powers of the local government units.

In its comment, respondent City of Cebu alleges that as a local government unit and a political subdivision, it has the power to impose, levy, assess, and collect taxes within

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its jurisdiction. Such power is guaranteed by the Constitution[10] and enhanced further by the LGC. While it may be true that under its Charter the petitioner was exempt from the payment of realty taxes,[11] this exemption was withdrawn by Section 234 of the LGC. In response to the petitioner's claim that such exemption was not repealed because being an instrumentality of the National Government, Section 133 of the LGC prohibits local government units from imposing taxes, fees, or charges of any kind on it, respondent City of Cebu points out that the petitioner is likewise a government-owned corporation, and Section 234 thereof does not distinguish between government-owned or controlled corporations performing governmental and purely proprietary functions. Respondent City of Cebu urges this Court to apply by analogy its ruling that the Manila International Airport Authority is a government-owned corporation,[12] and to reject the application of *Basco* because it was "promulgated . . . before the enactment and the signing into law of R.A. No. 7160," and was not, therefore, decided "in the light of the spirit and intention of the framers of" the said law.

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it. Nevertheless, effective limitations thereon may be imposed by the people through their Constitutions.[13] Our Constitution, for instance, provides that the rule of taxation shall be uniform

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[10] Section 5, Article X, 1987 Constitution.

[11] Section 14, R.A. No. 6958.

[12] Manila International Airport Authority (MIAA) *vs.* Commission on Audit, 238 SCRA 714 [1994].

[13] COOLEY on Constitutional Law, 4th ed. [1931], 62.

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and equitable and Congress shall evolve a progressive system of taxation.[14] So potent indeed is the power that it was once opined that "the power to tax involves the power to destroy."[15] Verily, taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer.[16] But since taxes are what we pay for civilized society,[17] or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[18] A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[19] Elsewise stated, taxation is the rule, exemption therefrom is the exception.[20] However, if the

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[14] Section 28(1), Article VI, 1987 Constitution.

[15] Chief Justice Marshall in McCulloch *vs.* Maryland, 4 Wheat, 316, 4 L ed. 579, 607. Later Justice Holmes brushed this aside by declaring in Panhandle Oil Co. *vs.* Mississippi (277 U.S. 218) that "the power to tax is not the power to destroy while this Court sits." Justice Frankfurter in Graves *vs.* New York (306 U.S. 466) also remarked that Justice Marshall's statement was a "mere flourish of rhetoric" and a product of the "intellectual fashion of the times" to indulge in "a free case of absolutes." (See SINCO, Philippine Political Law [1954], 577-578).

[16] AGPALO, RUBEN E., Statutory Construction [1990 ed.], 216. See also SANDS, DALLAS C., Statutes and Statutory Construction, vol. 3 [1974] 179.

[17] Justice Holmes in his dissent in Compania General *vs.* Collector of Internal Revenue, 275 U.S. 87, 100 [1927].

[18] AGPALO, *op. cit.*, 217; SANDS, *op. cit.*, 207.

[19] SINCO, *op. cit.*, 587.

[20] SANDS, *op. cit.*, 207.

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grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations.[21]

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution.[22] Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

There can be no question that under Section 14 of R.A. No. 6958 the petitioner is exempt from the payment of realty taxes imposed by the National Government or any of its political subdivisions, agencies, and instrumentalities. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution.[23]

The LGC, enacted pursuant to Section 3, Article X of the Constitution, provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemptions from taxation.

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[21] Maceda *vs.* Macaraig, Jr. 197 SCRA 771, 799 [1991], citing 2 COOLEY on the Law on Taxation, 4th ed. [1927], 1414, and SANDS, *op. cit.*, 207.

[22] CRUZ, ISAGANI A., Constitutional Law [1991], 84.

[23] *Id.*, 91-92; SINCO, *op. cit.*, 587.

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Section 133 of the LGC prescribes the common limitations on the taxing powers of local government units as follows:

SEC. 133. *Common Limitations on the Taxing Power of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;
(b) Documentary stamp tax;
(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;
(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
(e) Taxes, fees and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees or charges in any form whatsoever upon such goods or merchandise;
(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;
(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;
(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;
(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on

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goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except, tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperatives Code of the 'Philippines' respectively; and

(o) *TAXES, FEES OR CHARGES OF ANY KIND ON THE NATIONAL GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES, AND LOCAL GOVERNMENT UNITS.* (italics supplied)

Needless to say, the last item (item o) is pertinent to this case. The "taxes, fees or charges" referred to are "of any kind"; hence, they include all of these, unless otherwise provided by the LGC. The term "taxes" is well understood so as to need no further elaboration, especially in light of the above enumeration. The term "fees" means charges fixed by law or ordinance for the regulation or inspection of business or activity,[24] while "charges" are pecuniary liabilities such as rents or fees against persons or property.[25]

[24] Section 131(1), Local Government Code of 1991.

[25] Section 131(g), *Id.*

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Among the "taxes" enumerated in the LGC is real property tax, which is governed by Section 232. It reads as follows:

SEC. 232. *Power to Levy Real Property Tax.* — A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvements not hereafter specifically exempted.

Section 234 of the LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions therefrom granted to natural and juridical persons, including government-owned and controlled corporations, except as provided therein. It provides:

SEC. 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof had been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

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(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

These exemptions are based on the ownership, character, and use of the property. Thus:

(a) *Ownership Exemptions*. Exemptions from real property taxes on the basis of *ownership* are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, and (vi) registered cooperatives.

(b) *Character Exemptions*. Exempted from real property taxes on the basis of their character are: (i)charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non-profit or religious cemeteries.

(c) *Usage exemptions*. Exempted from real property taxes on the basis of the actual, direct and exclusive *use* to which they are devoted are: (i) all lands, buildings and improvements which are actually directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (iii) all machinery and equipment used for pollution control and environmental protection.

To help provide a healthy environment in the midst of the modernization of the country, all machinery

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and equipment for pollution control and environmental protection may not be taxed by local governments.

2. *Other Exemptions Withdrawn.* All other exemptions previously granted to natural or juridical persons including government-owned or controlled corporations are withdrawn upon the effectivity of the Code.[26]

Section 193 of the LGC is the general provision on withdrawal of tax exemption privileges. It provides:

SEC. 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

On the other hand, the LGC authorizes local government units to grant tax exemption privileges. Thus, Section 192 thereof provides:

SEC. 192. *Authority to Grant Tax Exemption Privileges.*— Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.

The foregoing sections of the LGC speak of: (a) the limitations on the taxing powers of local government units and the exceptions to such limitations; and (b) the rule on tax exemptions and the exceptions thereto. The use of *exceptions* or *provisos* in these sections, as shown by the following clauses:

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[26] PIMENTEL, AQUILINO JR., The Local Government Code of 1991 — The Key to National Development [1933], 329.

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(1) "unless otherwise provided herein" in the opening paragraph of Section 133;

(2) "Unless otherwise provided in this Code" in Section 193;

(3) "not hereafter specifically exempted" in Section 232; and

(4) "Except as provided herein" in the last paragraph of Section 234

initially hampers a ready understanding of the sections. Note, too, that the aforementioned clause in Section 133 seems to be inaccurately worded. Instead of the clause "unless otherwise provided *herein*," with the "*herein*" to mean, of course, the section, it should have used the clause "unless otherwise provided in this Code." The former results in absurdity since the section itself enumerates what are beyond the taxing powers of local government units and, where exceptions were intended, the exceptions are explicitly indicated in the next. For instance, in item (a) which excepts income taxes "when levied on banks and other financial institutions"; item (d) which excepts "wharfage on wharves constructed and maintained by the local government unit concerned"; and item (1) which excepts taxes, fees and charges for the registration and issuance of licenses or permits for the driving of "tricycles." It may also be observed that within the body itself of the section, there are exceptions which can be found only in other parts of the LGC, but the section interchangeably uses therein the clause, "except as otherwise provided herein" as in items (c) and (i), or the clause "except as provided in this Code" in item (j). These clauses would be obviously unnecessary or mere surplusages if the opening clause of the section were "Unless otherwise provided in this Code" instead of "Unless otherwise provided herein." In any event, even if the latter is used, since under Section 232 local government units have the power to levy real property tax, except those exempted therefrom under

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Section 234, then Section 232 must be deemed to qualify Section 133.

Thus, reading together Sections 133, 232, and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133, the taxing powers of local government units cannot extend to the levy of, *inter alia*, "taxes, fees and charges of any kind on the National Government, its agencies and instrumentalities, and local government units"; however, pursuant to Section 232, provinces, cities, and municipalities in the Metropolitan Manila Area may impose the real property tax except on, *inter alia*, "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person," as provided in item (a) of the first paragraph of Section 234.

As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, *viz.*, they are *withdrawn* upon the effectivity of the LGC, *except* those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234 which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even as to real property owned by the Republic of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

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Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Sections 232 and 234.

In short, the petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of:

> (o) taxes, fees or charges of any kind on the National Government, its agencies or instrumentalities, and local government units.

It must show that the parcels of land in question, which are real property, are any one of those enumerated in Section 234, either by virtue of ownership, character, or use of the property. Most likely, it could only be the first, but not under any explicit provision of the said section, for none exists. In light of the petitioner's theory that it is an "instrumentality of the Government," it could only be within the first item of the first paragraph of the section by expanding the scope of the term "Republic of the Philippines" to embrace its "instrumentalities" and "agencies." For expediency, we quote:

> (a) real property owned by the Republic of the Philippines, or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

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This view does not persuade us. In the first place, the petitioner's claim that it is an instrumentality of the Government is based on Section 133(o), which expressly mentions the word "instrumentalities"; and, in the second place, it fails to consider the fact that the legislature used the phrase "National Government, its agencies and instrumentalities" in Section 133(o), but only the phrase "Republic of the Philippines or any of its political subdivisions" in Section 234(a).

The terms "Republic of the Philippines" and "National Government" are not interchangeable. The former is broader and synonymous with "Government of the Republic of the Philippines" which the Administrative Code of 1987 defines as the "corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made affective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government."[27] These "autonomous regions, provincial, city, municipal or barangay subdivisions" are the political subdivisions.[28]

On the other hand, "National Government" refers "to the entire machinery of the central government, as distinguished from the different forms of local governments."[29] The National Government then is composed of the three great departments: the executive, the legislative and the judicial.[30]

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[27] Section 2(1), Introductory Provisions, Administrative Code of 1987.

[28] Section 1, Article X, 1987 Constitution.

[29] Section 2(2), Introductory Provisions, Administrative Code of 1987.

[30] Bacani *vs.* National Coconut Corporation, 100 Phil. 468, 472 [1956].

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An "agency" of the Government refers to "any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein;"[31] while an "instrumentality" refers to "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned and controlled corporations."[32]

If Section 234(a) intended to extend the exception therein to the withdrawal of the exemption from payment of real property taxes under the last sentence of the said section to the agencies and instrumentalities of the National Government mentioned in Section 133(o), then it should have restated the wording of the latter. Yet, it did not. Moreover, that Congress did not wish to expand the scope of the exemption in Section 234(a) to include real property owned by other instrumentalities or agencies of the government including government-owned and controlled corporations is further borne out by the fact that the source of this exemption is Section 40(a) of P.D. No. 464, otherwise known as The Real Property Tax Code, which reads:

SEC. 40. *Exemptions from Real Property Tax.* — The exemption shall be as follows:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned or controlled corporation so exempt by its charter: *Provided*, however, That

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[31] Section 2(4), Introductory Provisions, Administrative Code of 1987.

[32] Section 2(10), *Id.*, *Id.*

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> this exemption shall not apply to real property of the above-mentioned entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person.

Note that as reproduced in Section 234(a), the phrase "and any government-owned or controlled corporation so exempt by its charter" was excluded. The justification for this restricted exemption in Section 234(a) seems obvious: to limit further tax exemption privileges, especially in light of the general provision on withdrawal of tax exemption privileges in Section 193 and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of Section 234. These policy considerations are consistent with the State policy to ensure autonomy to local governments[33] and the objective of the LGC that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[34] The power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. It may also be relevant to recall that the original reasons for the withdrawal of tax exemption privileges granted to government-owned and controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, and there was a need for these entities to share in the requirements of development, fiscal or otherwise, by paying the taxes and other charges due from them.[35]

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[33] Section 25, Article II, and Section 2, Article X, Constitution.

[34] Section 2(a), Local Government Code of 1991.

[35] P.D. No. 1931.

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The crucial issues then to be addressed are: (a) whether the parcels of land in question belong to the Republic of the Philippines whose beneficial use has been granted to the petitioner, and (b) whether the petitioner is a "taxable person."

Section 15 of the petitioner's Charter provides:

Sec. 15. *Transfer of Existing Facilities and Intangible Assets*. — All existing public airport facilities, runways, lands, buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodrome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu,"[36] which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).[37]

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and includes the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. This

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[36] Section 3, R.A. No. 6958.

[37] Section 18, *Id.*

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section involves a "transfer" of the "lands," among other things, to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, "the value of such real estate owned and/or administered by the airports."[38] Hence, the petitioner is now the owner of the land in question and the exception in Section 234(c) of the LGC is inapplicable.

Moreover, the petitioner cannot claim that it was never a "taxable person" under its Charter. It was *only exempted from the payment of real property taxes*. The grant of the privilege only in respect of this tax is conclusive proof of the legislative intent to make it a taxable person subject to all taxes, except real property tax.

Finally, even if the petitioner was originally not a taxable person for purposes of real property tax, in light of the foregoing disquisitions, it had already become, even if it be conceded to be an "agency" or "instrumentality" of the Government, a taxable person for such purpose in view of the withdrawal in the last paragraph of Section 234 of exemptions from the payment of real property taxes, which, as earlier adverted to, applies to the petitioner.

Accordingly, the position taken by the petitioner is untenable. Reliance on *Basco vs. Philippine Amusement and Gaming Corporation*[39] is unavailing since it was decided before the effectivity of the LGC. Besides, nothing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely

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[38] Section 9(b), *Id.*

[39] *Supra* note 9.

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to fulfill a constitutional mandate and national policy, no one can doubt its wisdom.

WHEREFORE, the instant petition is DENIED. The challenged decision and order of the Regional Trial Court of Cebu, Branch 20, in Civil Case No. CEB-16900 are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and *Panganiban, JJ.,* concur.

THIRD DIVISION

[G.R. No. 120654. September 11, 1996]

MARIA LOURDES PAREDES-GARCIA, *petitioner,* *vs.* COURT OF APPEALS and HON. ESCOLASTICO M. CRUZ, JR., *respondents.*

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; POWER TO PUNISH FOR CONTEMPT OF COURT; THIS POWER IS INHERENT IN ALL COURTS; SHOULD NOT BE RESORTED TO UNLESS NECESSARY IN THE INTEREST OF JUSTICE.**— The power to punish for contempt is inherent in all courts. It is indispensable to their right of self-preservation, to the execution of their powers, and to the maintenance of their authority, and consequently to the due administration of justice. It is an essential element, or