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The Court resolves to deny the petition after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which are the bases of its decision and resolution. Both trial courts and the appellate court are consistent in its findings of fact that there is no perfected insurance contract, because of the absence of one of the elements, that is, payment of premium. As a consequence, Philam cannot collect ₱363,215.21 unpaid premiums of void insurance policies.

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated July 29, 2011 and Resolution dated March 14, 2012 in CA-G.R. SP No. 110980 are **AFFIRMED**.

SO ORDERED.

Carpio, SAJ (*Chairperson*), *Caguioa*, and *Hernando*,* *JJ.*, concur.

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 210191. March 4, 2019]

NATIONAL POWER CORPORATION, *petitioner, vs.* **THE PROVINCE OF PANGASINAN AND THE PROVINCIAL ASSESSOR OF PANGASINAN,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 7160, AS AMENDED; LOCAL GOVERNMENT CODE; REAL PROPERTY TAX; THE UNPAID

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* Additional Member per S.O. No. 2630 dated December 18, 2018.

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REAL PROPERTY TAX ATTACHES TO THE PROPERTY BUT IS DIRECTLY CHARGEABLE AGAINST A TAXABLE PERSON WHO HAS ACTUAL AND BENEFICIAL USE AND POSSESSION OF THE PROPERTY REGARDLESS OF WHETHER OR NOT THE PERSON IS THE OWNER.— NPC argues that the CTA erred in denying its claim for exemption on the ground that it is not the owner of the subject facilities. NPC insists that, as project owner, it has legal interest over the power plant and as such, it has the legal personality to question the assessment and claim for exemption therefor. NPC argues that legal interest over the properties subject of real property tax is not limited to ownership considering that for such tax purposes, real properties are classified, valued, and assessed on the basis of their actual use, highlighting the phrase "regardless of where located, whoever owns it, and whoever uses it" in Section 217 of R.A. No. 7160. Indeed, real property tax liability rests on the owner of the property or on the person with the beneficial use thereof such as taxes on government property leased to private persons or when tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner. NPC was, therefore, correct in arguing that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability. In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

2. ID.; ID.; ID.; EXEMPTIONS FROM REAL PROPERTY TAX; IN A BUILD-OPERATE-TRANSFER (BOT) AGREEMENT BETWEEN A PRIVATE ENTITY AND THE GOVERNMENT (OR GOVERNMENT-OWNED AND CONTROLLED ENTITY); THE LATTER DOES NOT HAVE ANYTHING TO DO WITH THE USE AND OPERATION OF THE SUBJECT PROJECT UNTIL ITS TRANSFER HENCE THE GOVERNMENT (OR GOVERNMENT-OWNED AND CONTROLLED ENTITY) HAS

NO LEGAL PERSONALITY TO QUESTION ON THE ASSESSMENT OR CLAIM FOR EXEMPTION AND PRIVILEGES WITH REGARD TO THE TAX LIABILITY ATTACHED TO THE SUBJECT PROPERTY; CASE AT BAR.— In a BOT arrangement, the private entity constructs and buys the necessary assets to put up the project and thereafter, operates and manages it during an agreed period that would allow it to recover its basic costs and earn profits until the project's transfer to the government or government-owned and controlled entity. In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account. On the other hand, service contracting is nothing more than an undertaking to perform a certain task for which the contractor is paid after its completion. Thus, until the transfer of the project to NPC, it does not have anything to do with the use and operation of the power plant. The direct, actual, exclusive, and beneficial owner and user of the power station, machineries, and equipment certainly pertains to Mirant. NPC, therefore, has no legal personality to question on the assessment or claim for exemption and privileges with regard to the tax liability attached to the subject properties. That NPC assumed the tax liabilities in the agreement is of no moment. Such undertaking does not justify the exemption or entitlement to privileges. The privilege granted to NPC cannot be extended to Mirant. To rule otherwise would be to allow the circumvention of our law on exemptions and grant of privileges.

3. **ID.; ID.; ID.; ID.; REQUIREMENTS IN ORDER TO SUCCESSFULLY CLAIM EXEMPTIONS AND PRIVILEGES UNDER R.A. NO. 7160, ENUMERATED AND EXPLAINED; NOT ESTABLISHED IN CASE AT BAR.—** To successfully claim exemption under Section 234(c) of R.A. No. 7160, the claimant must prove that (a) the machinery and equipment are actually, directly and exclusively used by local water districts and government-owned and controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of Water and/or the generation and transmission of electric power. x x x For the same reason that NPC has no legal personality to question the assessment and claim for exemptions and privileges, there is likewise no basis for NPC

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to claim and be granted the depreciation allowance under Section 225 of R.A. No. 7160. Similarly, having no such legal personality, NPC cannot claim the exemption under Section 234(e) of the same Act. While it may be true that ownership of the machinery and equipment used for pollution control and environmental protection, is not relevant to the determination of entitlement to exemption, NPC still has no basis to assert such privilege. The LBAA did not err in ruling that it is Mirant, not NPC, which should claim for such tax exemption, if at all. At any rate, a claim for exemption under Section 234(e) of R.A. No. 7160, should be supported by evidence that the property sought to be exempt is actually, directly, and exclusively used for pollution control and environmental protection during the period covered by the assessment. Verily, the determination of the actual, direct, and exclusive use of the properties subject of the claim for exemption requires the examination of evidence and assessment of the probative value of such evidence, if any - a factual determination therefore, which this Court cannot go into, not only because such endeavor is not allowed under a petition for review on *certiorari* under Rule 45, but more importantly because of the lack of such necessary evidence for this Court to be able to make an accurate, valid, and judicious conclusion.

4. **ID.; ID.; ID.; THE RIGHT OF LOCAL GOVERNMENT UNITS TO COLLECT TAXES DUE MUST ALWAYS BE UPHELD TO AVOID SEVERE TAX EROSION; SUSTAINED.—** The power to tax is the most potent instrument to raise the 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. Thus, the right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Provincial Legal Office of Pangasinan for respondents.

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D E C I S I O N

REYES, JR. J., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, questioning the Decision[2] dated November 11, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 937, which affirmed the uniform rulings of the Local Board of Assessment Appeals (LBAA) in LBAA Case Nos. P-03-001 and P-06-001 and Central Board of Assessment Appeals (CBAA) in CBAA Case Nos. L-52 and L-81.

Factual Antecedents

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation, created and existing under Republic Act (R.A.) No. 6395, as amended. NPC is mandated to undertake the production of electricity from nuclear, geothermal, other sources, and the transmission of electric power nationwide.[3]

Pursuant to its mandate, on May 20, 1994, NPC entered into an Energy Conversion Agreement[4] (ECA) with CEPA Pangasinan Electric Limited (CEPA), a private corporation, for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant, whereby CEPA agreed to supply a coal-fired thermal power station to NPC on a Build-Operate-Transfer (BOT) basis to generate electricity, which electricity will in turn be sold exclusively to NPC. CEPA

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[1] *Rollo*, pp. 27-71.

[2] Penned by Court of Tax Appeals Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario, concurring and dissenting, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring; *id*. at 10-22.

[3] *Id*. at 11.

[4] *Id*. at 235-265.

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subsequently became Mirant Sual Corporation (Mirant) and now also known as Team Energy Power Holdings Corporation (Team Energy). For purposes of this case, we shall use "Mirant" to refer to CEPA, Mirant, or Team Energy as the company was called "Mirant" when this case started with the LBAA.[5]

Among the obligations undertaken by the NPC under the ECA was the assumption of all real property taxes. Paragraph 11.1, Article 11 of the ECA, *viz.*:

> 11.1 *Tax Responsibilities*. NPC shall be responsible for the payment of x x x (ii) all real estate taxes and assessments, rates and other charges in respect of the Site, the Ash Disposal Sites, the Pipelines, the buildings and improvements thereon, the Infrastructure and the Power Station.[6]

On December 3, 1994, a Memorandum of Agreement[7] (MOA) was entered into by Pangasinan Electric Corporation (PEC) (Mirant's predecessor-in-interest) with NPC, the Province of Pangasinan, the Municipality of Sual, and the Barangay of Pangascasan.[8]

Pertinent provisions of the MOA state:

> A. RESPONSIBILITIES OF NPC, DENR, PEC, PROVINCE/MUNICIPALITY/BARANGAY
>
> NPC
>
> x x x x x x x x x
>
> 6. Conform with the Local Government Code's regulations on the payment of the following taxes:
>
> - Realty tax to be paid upon the project site acquisition by NPC.
>
> x x x x x x x x x

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[5] *Id*. at 30.

[6] *Id*. at 334 of the Agreement.

[7] *Id*. at 196-203.

[8] *Id*. at 196.

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PEC started operating the power plant sometime in 1998.[9]

NPC religiously paid real property taxes from 1998 up to the first quarter of 2003 for the land, buildings, machinery, and equipment pertaining to the power plant. Notably, said machinery and equipment were declared in the name of Mirant under Tax Declaration No. 3694. On the second quarter of 2003, NPC stopped paying said taxes, purportedly pursuant to the provisions of R.A. No. 7160, which grants certain exemptions from iteal property tax liabilities.[10]

This prompted the Office of the Municipal Treasurer of Sual, Pangasinan to issue a Notice of Assessment dated September 10, 2003 for the payment of real property taxes thereon.[11]

Invoking its entitlement to an exemption under the provisions of R.A. No. 7160, NPC filed a petition for exemption with the LBAA, docketed as LBAA Case No. P-03-001, praying for an order to be issued: (a) recalling the Notice of Assessment dated September 10, 2003; (b) declaring the machinery and equipment of the power to be exempt from real property tax, arguing that the same are actually, directly, and exclusively used for power generation, and as such are exempted from said taxes under Section 234(c)[12] of R.A. No. 7160; and (c) if not exempt, declaring that the subject properties be classified

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[9] *Id.* at 334.

[10] *Id.* at 335.

[11] *Id.* at 335.

[12] Sec. 234. *Exemptions from Real Property Tax.*– The following are exempted from payment of the real property tax:

x x x x x x x x x

(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;

x x x x x x x x x

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as special under Section 216[13] of the same Act and as such be given a lower assessment level.[14]

LBAA Ruling

In its Resolution[15] dated April 15, 2004, the LBAA dismissed NPC's petition for exemption for lack of merit. The LBAA ruled that NPC and/or Mirant's failure to file any claim for exemption within the 30 days from the date of the declaration of the real property under Section 206[16] of R.A. No. 7160, coupled with the fact that NPC used to pay the real property taxes thereon from 1998 up to the first quarter of 2003, estopped NPC from claiming an exemption. More importantly, the LBAA found Mirant to be the actual, direct, exclusive, and beneficial owner and user of the power, buildings, machinery, and equipment, not NPC. Hence, the subject real properties do not come under the coverage of Section 234(c) of R.A. No. 7160 nor to the special assessment providing for a lower assessment level of ten percent (10%) under Section 216 of the same Act.

Accordingly, the subject real properties are not exempted from payment of real property tax and, likewise, cannot be

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[13] Sec. 216. *Special Classes of Real Property*. – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

[14] LOCAL GOVERNMENT CODE of 1991, approved on October 10, 1991.

[15] *Rollo*, pp. 333-349.

[16] Sec. 206. *Proof of Exemption of Real Property from Taxation*.– Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

classified as a special class with an assessment level often percent (10%) but should be assigned with the assessment level of eighty percent (80%).

Aggrieved, NPC filed an appeal to the CBAA, docketed as CBAA Case No. L-52.[17]

In the meantime, the Municipal Treasurer of Sual issued a letter with the Updated Notice of Assessment and Tax Bill. Thus, NPC filed another petition before the LBAA, docketed as LBAA Case No. P-06-001, which was likewise dismissed by the LBAA in its Order dated July 18, 2007.[18]

NPC also appealed the said Order to the CBAA, docketed as CBAA Case No. L-81.[19]

CBAA Ruling

On April 2, 2009, the CBAA issued an Order consolidating the two appeals.[20]

After evaluation of the arguments of both parties, the CBAA rendered the assailed Decision[21] dated April 12, 2012, dismissing the appeals for lack of merit. In the main, the CBAA ruled that NPC has no personality to claim real property tax exemption for the subject machinery and equipment considering that said machinery and equipment are actually, directly, and exclusively used by Mirant, not NPC. In fact, Mirant is the owner of said facilities until they were turned over to NPC.

The same reasoning was used in ruling that the subject machinery and equipment cannot be classified as a special class of real property for purposes of being subject to a lower assessment level often percent (10%) under Section 216 of

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[17] *Rollo*, p. 13.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 13-14.

[21] *Id.* at 172-192.

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the same Act. The subject facilities are owned by Mirant, a private entity, hence, not covered by the special privilege under the said provision.

Likewise, the CBAA ruled that NPC has no legal personality to claim for exemption under Section 234(e)[22] of R.A. No. 7160, as well as the depreciation allowance under Section 225 thereof, as the subject facilities are not owned by NPC but by Mirant.

NPC's motion for reconsideration of the said Decision was also denied by the CBAA in its Order[23] dated July 31, 2012.

CTA Ruling

The CTA scrutinized the agreement between NPC and Mirant under the BOT system and found that the ownership of the subject machinery and equipment is clearly vested with Mirant until the transfer of the project to NPC. Since the ownership and actual use of the subject facilities are with Mirant, a non-exempt entity, the CTA sustained the LBAA and CBAA ruling that NPC may not rightfully claim that it has the requisite legal interest to question the assessment and assert tax exemptions under Sections 234(c) and (e) of R.A. No. 7160, as well as the privilege under Section 225 thereof.

Neither was there basis, according to the CTA, for NPC to claim that respondents are estopped from questioning NPC's legal interest as respondents already acknowledged the same in their MOA. The CTA found that apart from the enumeration of the parties' respective obligations under the MOA, there was nothing therein that says respondents acknowledged NPC as the owner and user of the power plant and the equipment therein.

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[22] Sec. 234. *Exemptions from Real Property Tax*. – The following are exempted from payment of the real property tax:

x x x x x x x x x

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

[23] *Rollo*, pp. 194-195.

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Further, the stipulated undertaking of NPC to pay the real property taxes does not justify the exemption as it has already been previously ruled by the Supreme Court that such undertaking is essentially wrong as to rule otherwise would be tantamount to allowing an exempt entity to use its privilege to favor a non-exempt entity and debase our tax system, citing this Court's ruling in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*.[24]

Finding that NPC is not the actual owner nor the beneficial owner or possessor of the subject machinery and equipment, the CTA came to the same conclusion as the LBAA and the CBAA, that NPC has no legal personality to claim for exemptions and privileges under Sections 234(c) and (e), as well as Section 225[25] of R.A. No. 7160.

Thus, the CTA sustained the findings and conclusions of the LBAA and the CBAA and dismissed the appeal for lack of merit.

Hence, this petition.

Issue

The issues raised by NPC in this petition - whether the subject machinery and equipment are exempted from real property tax under Section 234(c) or Section 234(e) of R.A. 7160; whether the same can be considered as a special class of real property under Section 216 of the same Act for a lower assessment of real property tax; or whether NPC is entitled to the depreciation allowance under Section 225 thereof - all boil down to the pivotal issue of whether NPC has legal personality and interest to claim for such exemptions and privileges.

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[24] 624 Phil. 738 (2010).

[25] Sec. 225. *Depreciation Allowance for Machinery*. — For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use: Provided, however, That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.

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Our Ruling

This case is definitely not of first impression. In NPC's previous cases with this Court, *i.e., FELS Energy, Inc. v. The Province of Batangas*,[26] *National Power Corporation v. Central Board of Assessment Appeals*[27] and *National Power Corporation v. Province of Quezon*,[28] the implications of a contract and/or a BOT agreement between a government-owned and controlled corporation that enjoy tax exemption, and a private corporation with regard to real property tax liabilities, have already been exhaustively explained and discussed by this Court. Specifically, the Court has concluded that the tax exemptions and privileges claimed by NPC cannot be recognized since it is not the actual, direct, and exclusive user of the facilities, machinery and equipment subject of the cases.

The Court emphasized therein its guiding principle in resolving the said cases, *i.e.*, taxation is the rule and exemption is the exception.

Guided by Our pronouncements in the said strikingly similar cases, we find this petition bereft of merit.

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NPC argues that the CTA erred in denying its claim for exemption on the ground that it is not the owner of the subject facilities. NPC insists that, as project owner, it has legal interest over the power plant and as such, it has the legal personality to question the assessment and claim for exemption therefor. NPC argues that legal interest over the properties subject of real property tax is not limited to ownership considering that for such tax purposes, real properties are classified, valued, and assessed on the basis of their actual use, highlighting the phrase "regardless of where located, whoever owns it, and whoever uses it" in Section 217 of R.A. No. 7160.

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[26] 545 Phil. 92 (2007).

[27] 597 Phil. 413 (2009).

[28] *Supra* note 24.

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Indeed, real property tax liability rests on the owner of the property or on the person with the beneficial use thereof such as taxes on government property leased to private persons or when tax assessment is made on the basis of the actual use of the property.[29] In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.[30] NPC was, therefore, correct in arguing that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability.[31]

In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

Records clearly show that NPC is yet to be the owner of the subject facilities. Provisions of the ECA unequivocally support this conclusion, *viz.*:

2.10 ***Ownership of Power Station.*** From the date hereof until the Transfer Date, [Mirant] shall directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site and the Ash Disposal Sites or used in connection with the Power Station which have been supplied by it or at its cost. [Mirant] shall operate and maintain the Power Station for the purpose of converting Fuel of NPC into electricity.

2.11 ***Transfer.*** On the Transfer Date, the Power Station shall be transferred by [Mirant] to NPC without the payment of any compensation and otherwise in accordance with the provisions of Article 8.[32]

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[29] *National Power Corporation v. Province of Quezon*, *supra* note 24.

[30] *Id.*

[31] *Id.*

[32] *Rollo*, p. 240.

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Further, as correctly observed by the LBAA, there is nothing in the ECA which expressly grants the NPC the right or authority to use directly or indirectly the power plant and the facilities therein during the cooperation period. Article 5 of the ECA specifically provides that Mirant has the responsibility to manage, operate, and maintain the power plant until the Transfer Date. Such acts of management, operation, maintenance, and repair are inherent in and are necessary and incidental to Mirant's ownership and actual use of the power plant and the facilities therein.

Clearly, as it is, during the subject taxable period, Mirant is still the owner and actual user of the subject facilities.

NPC, however, insists on its ownership and beneficial use of the power plant. NPC posits that Mirant was a mere service contractor that NPC employed to construct and operate the power plant to implement NPC's mandate to generate electricity. This assertion has already been squarely addressed and confuted by this Court in the case of *National Power Corporation v. Central Board of Assessment Appeals (CBAA)*,[33] which we reiterate and adopt in this case, thus:

> As in the fact of ownership, NAPOCOR's assertion is belied by the documented arrangements between the contracting parties, viewed particularly from the prism of the BOT law.
>
> The underlying concept behind a BOT agreement is defined and described in the BOT law as follows:
>
> > *Build-operate-and-transfer.* – A contractual arrange-ment whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance

[33] 597 Phil. 413 (2009).

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> expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years x x x.

Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated. At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start up requires.

A reading of the provisions of the parties' BOT Agreement shows that it fully conforms to this concept. By its express terms, BPPC has complete ownership – both legal and beneficial of the project – including the machineries and equipment used, subject only to the transfer of these properties without cost to NAPOCOR after the lapse of the period agreed upon. As agreed upon, BPPC provided the funds for the construction of the power plant, including the machineries and equipment needed for power generation; thereafter, it actually operated and still operates the power plant, uses its machineries and equipment, and receives payment for these activities and the electricity generated under a defined compensation scheme. Notably, BPPC – as owner-user – is responsible for any defect in the machineries and equipment. (Citation omitted)

x x x x x x x x x

Consistent with the BOT concept and as implemented, BPPC – the owner-manager-operator of the project – is the actual user of its machineries and equipment. BPPC's ownership and use of the machineries and equipment are actual, direct, and immediate, while NAPOCOR's is contingent and, at this stage of the BOT Agreement, not sufficient to support its claim for tax exemption. Thus, the CTA committed no reversible error in denying NAPOCOR's claim for tax exemption.[34] (Citation omitted)

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[34] *Id*. at 430-433.

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Similar to the above-cited case, the agreement between NPC and Mirant is consistent with the BOT concept. Mirant undertakes to build and operate a power plant, which undertaking expressly includes the responsibility to supply the consumables and spare parts, and maintain the power plant until the transfer thereof to NPC. To be sure, this arrangement goes beyond a mere service contractor agreement. In a BOT arrangement, the private entity constructs and buys the necessary assets to put up the project and thereafter, operates and manages it during an agreed period that would allow it to recover its basic costs and earn profits until the project's transfer to the government or government-owned and controlled entity. In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account.[35] On the other hand, service contracting is nothing more than an undertaking to perform a certain task for which the contractor is paid after its completion.

Thus, until the transfer of the project to NPC, it does not have anything to do with the use and operation of the power plant. The direct, actual, exclusive, and beneficial owner and user of the power station, machineries, and equipment certainly pertains to Mirant. NPC, therefore, has no legal personality to question on the assessment or claim for exemption and privileges with regard to the tax liability attached to the subject properties.

That NPC assumed the tax liabilities in the agreement is of no moment. Such undertaking does not justify the exemption or entitlement to privileges. The privilege granted to NPC cannot be extended to Mirant. To rule otherwise would be to allow the circumvention of our law on exemptions and grant of privileges.

The provisions invoked by NPC for entitlement to exemption and privilege are clear and unambiguous. To successfully claim exemption under Section 234(c) of R.A. No. 7160, the claimant must prove that (a) the machinery and equipment are actually, directly and exclusively used by local water districts and

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government-owned and controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of Water and/or the generation and transmission of electric power.[36]

Likewise, to successfully claim for differential treatment or a lower assessment level under Section 216, in relation to Section 218 of the same Act, the claimant must prove that the subject lands, buildings, and other improvements are (a) actually, directly, and exclusively used for hospitals, cultural, or scientific purposes; or (b) owned and used by local water districts and government-owned and controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power.[37]

It is important to emphasize that the government-owned and controlled corporation claiming exemption and entitlement to the privilege must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. As can be gleaned from the above disquisition, NPC miserably failed to satisfy said requirements. Although the subject machinery and equipment are devoted to generation of electricity, the ownership, use, operation, and maintenance thereof pertain to Mirant.

Neither will NPC find justification in its claim that it is NPC, not Mirant, which utilizes the generated electricity for transmission or distribution to the customers. The clear wordings of the above-cited provisions state that it is the machinery and equipment which are exempted from the payment of real property tax, *not* the water or electricity that such facilities generate for distribution.[38]

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[35] *Id*. at 432-433.

[36] *National Power Corporation v. Province of Quezon*, *supra* note 24, at 743.

[37] *National Power Corporation v. Central Board and Assessment Appeals (CBAA)*, *supra* note 27, at 434.

[38] *National Power Corporation v. Province of Quezon*, *supra* note 24.

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For the same reason that NPC has no legal personality to question the assessment and claim for exemptions and privileges, there is likewise no basis for NPC to claim and be granted the depreciation allowance under Section 225 of R.A. No. 7160.

Similarly, having no such legal personality, NPC cannot claim the exemption under Section 234(e) of the same Act. While it may be true that ownership of the machinery and equipment used for pollution control and environmental protection, is not relevant to the determination of entitlement to exemption, NPC still has no basis to assert such privilege. The LBAA did not err in ruling that it is Mirant, not NPC, which should claim for such tax exemption, if at all. At any rate, a claim for exemption under Section 234(e) of R.A. No. 7160, should be supported by evidence that the property sought to be exempt is actually, directly, and exclusively used for pollution control and environmental protection during the period covered by the assessment.[39] Verily, the determination of the actual, direct, and exclusive use of the properties subject of the claim for exemption requires the examination of evidence and assessment of the probative value of such evidence, if any – a factual determination therefore, which this Court cannot go into, not only because such endeavor is not allowed under a petition for review on *certiorari* under Rule 45,[40] but more importantly because of the lack of such necessary evidence for this Court to be able to make an accurate, valid, and judicious conclusion.

In all, the LBAA and the CBAA, as affirmed by the CTA, correctly denied NPC's claim for exemptions and entitlement to privileges under R.A. No. 7160.

In conclusion, we reiterate this Court's observation in NPC's previous cases with this Court above-cited. It must be pointed out that protracted and circuitous litigation has seriously resulted in the local governments' deprivation of revenues. The power

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[39] *Provincial Assessor of Marinduque v. Hon. Court of Appeals*, 605 Phil. 357, 371-372 (2009).

[40] *Carbonell v. Carbonell-Mendes*, 762 Phil. 529 (2015).

Supreme Court E-Library

to tax is the most potent instrument to raise the 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. Thus, the right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[41]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated November 11, 2013 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 937 is hereby **AFFIRMED**.

SO ORDERED.

Carpio, SAJ (*Chairperson*), *Caguioa*, and *Hernando*, *JJ.*, concur.

Perlas-Bernabe, J., on wellness leave.

FIRST DIVISION

[G.R. No. 227187. March 4, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERIC L. SEVILLA,** *accused-appellant.*

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[41] *FELS Energy, Inc. v. The Province of Batangas*, *supra* note 26, at 114-115.

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.