Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

First Division

CHINA BANKING CORPORATION, Petitioner,	**CTA Case: AC # 12** For: Refund
-versus-	Members: ACOSTA, Chairman BAUTISTA, and CASANOVA, *JJ.*
CITY TREASURER OF KALOOKAN, Respondent.	Promulgated: AUG 3 1 2005

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DECISION

CASANOVA, J.:

This is a Petition for Review filed by petitioner China Banking Corporation on May 12, 2005 under Section 7 (a)(3) of Republic Act No. 9282, praying that the instant Petition be given due course and that the Orders of the Regional Trial Court (RTC), Branch 125 of Kalookan City in Civil Case No. C-21049 entitled "China Banking Corporation vs. City Treasurer of Caloocan", to wit:

1. Order dated February 8, 2005 granting the Motion to Dismiss filed by the City Treasurer on the ground that the case states no cause of action due to Plaintiff's (Petitioner herein) failure to exhaust the administrative remedies available under the Local Government Code (LGC); and

2. Order dated March 29, 2005 denying China Banking Corporation's Motion for Reconsideration,

be reversed and set aside, and that this Honorable Court render judgment approving or allowing Petitioner's claim for refund and/or issue a tax credit in the amount of Six Hundred Ninety Two Thousand One Hundred Seventeen Pesos and 59/100 (P692,117.59), allegedly representing Real Property Taxes it paid under protest to Respondent City Treasurer of Caloocan.

Petitioner is a universal banking corporation organized and existing under the laws of the Philippines, with principal office at No. 8745 Paseo de Roxas cor. Villar Sts. Makati City, while respondent is the duly appointed and qualified treasurer of Kalookan City, impleaded in his/her capacity with address at the City Hall of Kalookan or c/o Atty. Teresita R. Capacillo/Atty. Eillen P. Suandin, respondent's counsel in Civil Case C-21049, with address at 3/F City Hall, Caloocan (main).

A controversy between the parties involving payment by petitioner to respondent under protest the amount of P692,117.59 allegedly pursuant to Sections 254 and 258 of the Local Government Code (LGC). Despite the protest, respondent refused to refund the above-mentioned amount. Petitioner filed a Civil Case No. C-21049 against the respondent with RTC Branch 125, Kalookan City for refund of sum of money.

The City Treasurer filed a Motion to Dismiss dated January 24, 2005 stating that petitioner failed to exhaust administrative remedies under the LGC, particularly Sec. 252, in relation to Sec. 226. Respondent posits that petitioner cannot bypass the authority of the concerned Local Board of Assessment Appeals (LBAA) and directly seek redress from the courts on the pretext of raising a supposedly pure question of law.

Petitioner filed its Opposition thereto on February 7, 2005. In its Order dated February 8, 2005, the RTC GRANTED the Motion to Dismiss on the ground that petitioner failed to exhaust administrative remedy, stating that petitioner's action is still premature as the case is not yet ripe for judicial determination and therefore, it has no cause of action to seek in court.

Hence, the instant Petition for Review.

Petitioner raised the issue of "Whether or not it is entitled for refund."

After a careful and thorough perusal of the records of the case, the Court finds that the DISMISSAL by the RTC Branch 125, Kalookan City of the petitioner's Complaint for Sum of Money was proper.

Section 252 of the Local Government Code states that, "(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

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(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code, which also talks about the Local Board of Assessment Appeals (LBAA). It requires, "Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal."

Should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. The protest contemplated under Section 252 of the LGC is needed where there is a question as to the reasonableness of the amount assessed. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal

Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the notice of assessment, as provided for in Section 226 of the LGC. And if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolution of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayment of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof. *(Olivares vs. Marquez, G.R. No. 155591, September 22, 2004)*

The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action *(International Flavor and Fragrances vs. Argos, 364 SCRA 792, 797)*. A perusal of the Complaint before the Regional Trial Court, Branch 125 of Caloocan City (RTC) shows that what is being assailed is the correctness of the assessment with respect to the imposition of real property tax on their machines other than their ATMs. Counsel for the petitioner also alleges, in his Opposition to the Motion to Dismiss, that the information relayed by the petitioner to him did not include its receipt of assessment by the City Assessor. Such fact gives way to the inference that no such assessment was received by the petitioner, or even that no such assessment was sent to the petitioner. These arguments involve questions of fact. Hence the petition should have been brought, at the very instance, to the LBAA. The arguments raised by the petitioner presume the existence of a fact which it must first prove by competent and sufficient evidence before the administrative body concerned.

Under the doctrine of primacy of administrative remedies, an error in the assessment must administratively pursued to the exclusion of ordinary courts whose decision would be void for lack of jurisdiction. *(Meralco vs. Barlis, G.R. No. 11421, May 18, 2001)* Thus, the court a quo was correct when it dismissed the civil case for refund of money filed by the petitioner against the respondent. The petitioner's action in the RTC is still premature as the case is not yet ripe for judicial determination and therefore, it has no cause of action to seek in court.

WHEREFORE, premises considered, the instant petition is hereby DENIED DUE COURSE, and accordingly, DISMISSED for utter lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice