Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

DIGITEL MOBILE PHILIPPINES, INC., Petitioner,	**CTA AC No. 164**
-versus-	Members:
THE CITY GOVERNMENT, THE CITY TREASURER AND CITY ASSESSOR OF COTABATO CITY, Respondents.	**DEL ROSARIO, P.J., Chairperson UY, and MINDARO-GRULLA, *JJ.*** Promulgated: DEC 27 2017 ; 3:00 pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed on November 23, 2015 by Digitel Mobile Philippines, Inc., pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended,[2] in relation to Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[3] seeking to set aside the Orders dated June 26, 2014 and

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[1] Docket, pp. 8-33.

[2] REPUBLIC ACT NO. 1125,
AN ACT CREATING THE COURT OF TAX APPEALS, as amended
SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

[3] RULE 8
PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the

September 21, 2015 issued by Branch 13 of the Regional Trial Court (RTC) of Cotabato City which ordered petitioner to pay the assessed real property taxes.

Petitioner Digitel Mobile Philippines, Inc. is a corporation organized and existing under Philippine laws, with address at the Ground Floor, Universal Tower Building, 1487 Quezon Avenue., West Triangle, Quezon City.[4]

Petitioner is the grantee of a legislative franchise under Republic Act (RA) No. 9180, authorizing it to construct, install, establish, operate and maintain telecommunications systems throughout the Philippines.[5] It is also authorized by the National Telecommunications Communication (NTC) to operate and maintain a nationwide Cellular Mobile Telephone Service (CMTS) pursuant to the Order rendered in NTC Case No. 99-121.[6]

Respondent City Government of Cotabato is a local government unit with the legal capacity to sue and be sued; while the City Treasurer and the City Assessor are its duly appointed officials impleaded in their official capacities. Their official address is at the City Hall, Cotabato City.[7]

Petitioner is the registered owner of real properties, consisting of several machineries, equipment and buildings located in Cotabato City which are used for its telecommunication system business.[8]

On February 23, 2009, respondent City Treasurer, Cleotilde B. San Luis, assessed petitioner of its alleged real property taxes in the amount of ₱2,330,143.23 for its properties covering calendar years 2004-2009.[9]

Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

4 Par. 3, Petition for Review, Docket, p. 9.
5 RTC Records, pp. 11-15.
6 Order dated June 4, 2008, RTC Records, pp. 16-26.
7 Par. 4, Petition for Review, Docket, p. 9.
8 Annex "A", Docket, p. 34.
9 Annex "Q", Docket, p. 187.

In a letter[10] dated April 27, 2009, then Officer-in-Charge, Ondi B. Mamalimping, Al Haj, City Treasury Office issued a final assessment in the amount of ₱2,413,142.48, with a warning that if it remains unpaid within ten (10) days from receipt, they will be prompted to recommend legal action and closure/suspension proceedings of its operation.

In a letter[11] dated April 30, 2009, petitioner cited the case of *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan*[12], which declared that it is not liable to pay real property taxes on its real properties which are actually, directly, and exclusively used in its operations.

In subsequent letters[13] dated May 4, 2009 and May 22, 2009, respondent City continued to reiterate its demands against petitioner. Petitioner then sent letters dated October 21, 2009 and October 28, 2009[14], arguing that the assessments made were excessive and unreasonably high.

On January 11, 2010, petitioner filed a Petition for Prohibition and Mandamus (With Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Mandatory Injunction)[15] with the Regional Trial Court of Cotabato City, asking for the declaration of its exemption from real property tax insofar as its buildings, equipment, machineries and lands that are actually, directly and exclusively used in connection with its franchise and to prohibit respondents from performing any and all acts, individually or collectively, that would cause the closure or suspension of the operations of its properties located within their territorial jurisdiction.

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[10] Annex "R", Docket, p. 188.
[11] Annex "U", Docket, p. 191.
[12] G.R. No. 152534, February 23, 2007.
[13] Annexes "S" and "T", Docket, pp. 189-190.
[14] Annexes "V" and "W", Docket, pp. 192-193.
[15] Annex "C", Docket, pp. 42-51.

In the Order[16] dated January 12, 2010, the RTC issued a twenty (20)-day temporary restraining order (TRO), enjoining respondents from performing any and all acts, individually or collectively, that would cause the closure or suspension of operations of petitioner's properties.

Petitioner filed its Memorandum (In Support to Petitioner's Prayer for the Issuance of a Preliminary Injunction)[17] dated January 25, 2010. The Memorandum for the Respondents[18] dated January 25, 2010 was also filed. Thereafter, the RTC issued an Order[19] dated February 1, 2010, granting the writ of preliminary injunction.

Petitioner submitted the surety bond in the amount of ₱1,000,000.00 relative to the preliminary injunction issued.[20] Respondents then filed their Motion for Reconsideration[21] on February 11, 2010.

On June 26, 2014, the RTC issued the assailed Order[22], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, this court rules as follows:
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> (1) The Motion for reconsideration of the respondent dated February 11, 2011 is hereby granted and the February 01, 2011 Order is DISSOLVED and LIFTED.
> (2) The instant petition is hereby DISMISSED;
> (3) The petitioner Digitel Mobile is ordered to pay its real Property taxes as assessed

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[16] Annex "D", Docket, pp. 78-80.
[17] Annex "E", Docket, pp. 81-86.
[18] Annex "F", Docket, pp. 87-97.
[19] Annex "H", Docket, p. 112.
[20] Annex "I", Docket, pp. 113-114.
[21] Annex "J", Docket, pp. 127-133.
[22] Annex "A", Docket, pp. 34-39.

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by the respondent City Government of Cotabato.

SO ORDERED."

Petitioner filed a Motion for Reconsideration[23] dated August 22, 2014, which was denied by the RTC in an Order[24] dated September 21, 2015.

As a consequence, petitioner filed the present Petition for Review. Respondents then filed their Comment[25] through registered mail on February 12, 2016 and received by the Court on February 19, 2016.

Petitioner filed its Memorandum[26] on April 18, 2016; while the Memorandum for the Respondents[27] was filed through registered mail on April 19, 2016 and received by this Court on April 28, 2016. Hence, the case was declared submitted for decision.[28]

Petitioner submitted the following issues for this Court's resolution:

1. Whether or not the filing of the petition with the RTC under Rule 65 of Rules of Court is proper;

2. Whether or not the RTC committed serious procedural infirmities when it dismissed the petition in direct violation of petitioner's right to due process; and

3. Whether or not petitioner is exempted from real property tax for its properties that are actually, directly

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[23] Annex "M", Docket, pp. 159-170.
[24] Annex "B", Docket, pp. 40-41.
[25] Docket, pp. 242-250.
[26] Docket. pp. 256-279.
[27] Docket. pp. 280-288.
[28] Resolution dated January 11, 2017, Docket, p. 308.

> an exclusively used in connection with its legislative franchise.

The Court shall discuss first its jurisdiction to entertain the present Petition for Review.

It must be recalled that petitioner filed a Petition for Prohibition and Mandamus (With Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Mandatory Injunction) before the RTC of Cotabato City on the main ground that respondents' assessment is allegedly without any legal basis in view of its exemption from payment of taxes on its real properties which are actually and directly used in connection with its legislative franchise.

In the case of *Olivares, et al. vs. Marquez, et al.*[29], the Supreme Court held that:

> "The extraordinary remedies of *certiorari*, prohibition and *mandamus* may be resorted to only when there is no other plain, available, speedy and adequate remedy in the course of law. Where administrative remedies are available, petitions for the issuance of these peremptory writs do not lie in order to give the administrative body the opportunity to decide the matter by itself correctly and to prevent unnecessary and premature resort to courts.
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> xxx xxx xxx
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> Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal."

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[29] G.R. No. 155591, September 22, 2004.

Republic Act (RA) No. 7160, or the Local Government Code (LGC) of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who is not satisfied with the assessment or reasonableness of the real property tax sought to be collected.

Section 252 of the LGC provides:

> "SEC. 252. *Payment under Protest.* – (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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> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
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> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
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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."

Relevant thereto is Chapter 3, Title II, Book II of the LGC which provides for the appeal before the Local Board of Assessment Appeals (LBAA) and the Central Board of Assessment Appeals (CBAA), as follows:

> "CHAPTER 3 – ASSESSMENT APPEALS
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> SEC. 226. *Local Board of Assessment Appeals.* – 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.

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SEC. 229. *Action by the Local Board of Assessment Appeals*. – (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue *subpoena* and *subpoena duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory."

The language of the law is clear. No interpretation is needed. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[30]

Based on the foregoing provisions, should the taxpayer or real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC directs that the taxpayer should first pay the tax due before his protest can be entertained. 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 (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, who shall decide the protest within sixty (60) 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 sixty-day period provided for in Section 252 of the LGC, the taxpayer or real property owner has sixty (60) days from denial of the protest or the inaction within which to appeal to the Local Board of Assessment Appeals which shall, in turn, decide the appeal within 120 days from the date of receipt of such appeal, as provided in Section 226 of the LGC.

If the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same within thirty (30) days after receipt of the decision of the LBAA to the CBAA.

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[30] *Bolos vs. Bolos*, G.R. No. 186400, October 20, 2010.

To be clear, Section 252 of the LGC mandates that "no protest shall be entertained unless the taxpayer first pays the tax." It is settled that the requirement of "payment under protest" is a condition *sine qua non* before an appeal may be entertained.[31]

In the case of *National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals, et al.*[32], the CTA *En Banc* held that:

> "Sections 252 and 226 of the LGC of 1991 provide *successive* administrative remedies available to a taxpayer who assails the correctness of an assessment issued against such taxpayer. Hence, Section 226 of the LGC of 1991, which provides that any owner or person having legal interest in the property, who is aggrieved by or not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his/her/its property, may file an appeal to the LBAA within sixty (60) days from the date of receipt of the written notice of assessment (NOA), should be read in conjunction with Section 252 (d) of the same Code, which states that in the event that the protest is denied, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC.
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> The protest contemplated under Section 252 is required where reasonableness or correctness of the amount assessed is being impugned. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he/she/it is required to 'first pay the tax' under protest, otherwise, the city or municipal treasurer will not act on the said protest.
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> On the other hand, if the taxpayer or the owner or person having legal interest in the property, questions the very authority and power of the assessor to impose the assessment, or questions the authority and power of the treasurer to collect the tax, the matter becomes a legal question, which is properly cognizable by the proper trial court.

[31] *Manila Electric Company vs. The City Assessor, et al.*, G.R. No. 166102, August 5, 2015.
[32] CTA EB No. 1392 (CBAA Case No. M-35) (LBAA Case No. 01-2013), September 5, 2017.

In other words, there can be two situations when a taxpayer or the owner or person with legal interest over the property, may question the assessment, *i.e.*, 1) **question the reasonableness or correctness of the assessment** or 2) **question the legality or validity of the assessment**.

In the first scenario, *i.e.*, the taxpayer or the person with legal interest over the property questions the reasonableness, correctness, or excessiveness of the assessment, **the taxpayer must first pay under protest the assessed tax as mandated under Section 252(a) of the LGC of 1991**. In the event that the protest is denied or not acted upon within 60 days from filing, the taxpayer or the person with legal interest over the property may then file an appeal with the LBAA, which has 120 days from the date of receipt of such appeal, to render a decision. When the taxpayer or the person with legal interest over the property or the assessor, as the case may be, remains unsatisfied with the decision of the LBAA, the taxpayer may elevate the case to the CBAA within 30 days from receipt of the adverse decision. If still aggrieved, the taxpayer or person with legal interest over the property, may seek judicial intervention before the CTA En Banc in accordance with Sections 7(a)(5) and 11 of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 2(e), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

For the second scenario, the question deals with the legality or validity of the assessment, *i.e.*, the authority and power of the assessor to impose the assessment, and of the treasurer to collect the real property tax, which is a question of law. In such case, the taxpayer or person with legal interest over the property, may appeal directly to the proper Regional Trial Court (RTC). Any appeal from the RTC's decision is appealable before the Division of the CTA.

In the case at bar, it is evident that petitioner questioned before the LBAA of Agusan Del Sur the correctness of the assessment issued against it by the Provincial Assessment and Treasury Office in the total amount of ₱5,843,632.40, when it filed a petition against respondents

Municipal Assessor Ruiz and Acting Provincial Assessor Rufila, Jr. claiming exemption from payment of real property tax allegedly provided under its franchise and Section 234(c) of LGC of 1991.

However, as correctly observed by respondent LBAA, petitioner failed to first pay under protest the questioned assessment as required under Section 252(a) of the LGC of 1991. The payment of the tax under the questioned assessment is mandatory to vest LBAA with jurisdiction to entertain the petition. Thus, the Court agrees with respondent LBAA's Resolution of February 28, 2013, saying that it has no jurisdiction to entertain petitioner's appeal for failure to comply with the mandatory requirement under the LGC.

Consequently, the Court has no jurisdiction to entertain the present case for petitioner's failure to comply with the procedural requirement laid down under Section 252(a) of the LGC of 1991." (*Emphasis supplied*)

In this case, it is evident that petitioner questioned the correctness of the assessment issued against it by the respondent City Treasurer, Cleotilde B. San Luis, in the amount of ₱2,330,143.23, when it filed its petition against respondents before the RTC claiming exemption from payment of real property tax allegedly provided under its franchise.

A claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. In the case of *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*[33], the Supreme Court held that:

"xxx As settled in jurisprudence, **a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to**

[33] G.R. No. 209303, November 14, 2016.

assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. The same may be inferred in Section 206 of the LGC of 1991, to wit:

> 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, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
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> **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.**

Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the **property being taxed has not been dropped from**

the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon." (*Emphasis supplied*)

By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, Section 206 of the LGC implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.[34] Hence, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

To reiterate, a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC. Such argument which may involve a question of fact should be resolved at the first instance by the LBAA.[35]

Therefore, petitioner should have first complied with Section 252 of the LGC by paying under protest before the provincial, city treasurer or municipal treasurer. If the local treasurer denies the protest or fails to act upon it within the sixty-day period, petitioner may then appeal to the LBAA and if not satisfied, he may elevate the same to the CBAA.

Moreover, in the case of *Manila Electric Company vs. Barlis*[36], the Supreme Court held that:

"xxx The trial court has no jurisdiction to entertain a Petition for Prohibition **absent petitioner's payment**, under protest, of the tax assessed as required by Sec. 64 of the RPTC. Payment of the tax assessed under protest, is a

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[34] *National Power Corporation vs. Province of Quezon, et al.*, G.R. No. 171586, January 25, 2010.

[35] *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals represented by its Chairman Hon. Cesar S. Gutierrez, et al.*, G.R. No. 169234, October 2, 2013.

[36] G.R. No. 114231, May 18, 2001.

> condition *sine qua non* before the trial court could assume jurisdiction over the petition and failure to do so, the RTC has no jurisdiction to entertain it.
>
> The restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled." (*Emphasis supplied*)

Petitioner having failed to exhaust the administrative remedies available to it and comply with the procedural requirements laid down under Sections 252, 226 and 229 of the LGC, the assessment thus attained finality and collection would be in order. Consequently, the Court has no jurisdiction to entertain the present case.

With the foregoing disquisition, the Court deems it unnecessary to address the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division