Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

BAY RESOURCES DEVELOPMENT CORPORATION Petitioner,	**CTA EB Case No. 1036** (CBAA CASE NO. L-54) (LBAA Case No. 2003-06)
- versus -	Present:
LOCAL BOARD OF ASSESSMENT APPEALS OF PARAÑAQUE CITY, -and **CITY TREASURER OF PARAÑAQUE,** Respondents.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
	Promulgated: DEC 16 2014 3:55 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on July 5, 2013, by petitioner-Bay Resources Development Corporation (BRADCO), seeking the reversal of the June 22, 2012 Decision[2] (Assailed Decision) and February 26, 2013 Resolution[3] (Assailed Resolution) both of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-54, entitled *"Bay Resources and Development Corporation vs. Local Board of Assessment Appeals of Parañaque City and City Treasurer of Parañaque"*.

The factual antecedents of the case are as follows:

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[1] CTA En Banc Rollo, pp. 9-23.
[2] Annex "A" to the Petition for Review, Ibid, pp. 24-37.
[3] Annex "B" to the Petition for Review, Id., pp. 38-44.

Petitioner is a domestic corporation duly organized and existing under the Philippine law with principal office address at 3F Aseana Powerstation Building, Aseana Business Park, Parañaque City.[4]

Respondents, on the other hand, are government agencies tasked with the implementation of the Revenue Code of the City of Parañaque, as well as the assessment and collection of real property taxes within the city.[5]

Petitioner is the registered owner of two parcels of land located in the Aseana Business Park along Roxas Boulevard, Tambo, Parañaque City. One parcel of land has an area of 27,128 square meters (sq.m.), covered by Transfer Certificate of Title (TCT) No. 99883 and with Tax Declaration No. E-002-06123 while the other parcel has an area of 40,500 sq.m., covered by TCT No. 99884 and with Tax Declaration No. E-002-06124. They are both classified as commercial land for real property tax purposes. [6]

In the year 1995, the assessed value of the said properties per tax declaration was fixed at P9,000.00/sq. m. It was subsequently increased to P12,000/sq.m. in 1997. Thus, using the assessed value of P12,000/sq.m., petitioner paid[7] the realty tax in the amount of P3,662,280.00 to the City of Parañaque for the property covered by Tax Declaration No. E-002-06123 and P5,467,500.00 for the property covered by Tax Declaration No. E-002-06124 or a total of P9,129,780.00 for the 1st, 2nd, and 3rd quarters of year 2000.[8]

In the last quarter of year 2000, the City Treasurer of Parañaque reduced the assessed value of the said properties from P12,000/sq.m. to P6,000/sq.m. Hence, new tax declarations were issued to the subject properties: Tax Declaration No. E-015-06724[9] for the property covered by TCT No. 99883; and, Tax Declaration No. E-015-06725[10] for the property covered by TCT No. 99884. Since the new tax declarations allegedly indicate that the assessments therein begin in the year 2000, petitioner assumed that the real property tax due on Tax Declaration No. E-015-06724 for the 1st to 3rd quarters of 2000 should only be P488,304.00 and only P729,000.00 on Tax Declaration No. E-015-06725, resulting in a total overpayment of P7,912,476.00.[11]

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[4] Par. 2, The Parties, Petition for Review, Id, p. 9
[5] Par. 2, The Parties, Petition for Review, Id, p. 10.
[6] Par. 3, Statement of Facts and Material Dates, Petition for Review, En Banc Rollo, p. 10.
[7] Annex "E" to the Petition for Review, Ibid, pp. 53-54.
[8] Par. 4, Statement of Facts and Material Dates, Petition for Review, Id, p.10
[9] Annex "F" to the Petition for Review, Ibid, pp. 55-56.
[10] Annex "G" to the Petition for Review, Ibid, pp. 57-58.
[11] Pars. 5 and 6, Statement of Facts and Material Dates, Petition for Review, Id., pp. 10-11.

On December 13, 2001, petitioner filed a letter dated December 7, 2001[12] addressed to the Mayor of Parañaque City, Joey A. Marquez, for the attention of Mr. Liberato Carrabeo, ICO, City Treasurer, to formalize its request for refund of the alleged overpayment in real property taxes in the total amount of P56,422,384.00 (covering the overpayment of P48,509,908.00 for the years 1995 to 1999 as well as the overpayment of P7,912,476.00 for the 1st to 3rd quarters of year 2000.)[13]

Petitioner also filed on December 28, 2001, a Request for Refund/Credit of Real Property Taxes for year 2000 - 7,912,476.00 and payment under protest[14] dated December 27, 2001, addressed to the Mayor of Parañaque City, Joey A. Marquez, for the attention of Mr. Liberato Carrabeo, ICO, City Treasurer and Ms. Soledad S. Medina-Cue, City Assessor of Parañaque City, requesting that it may be allowed to offset the amount of P7,912,476.00 by way of tax refund/credit against the amount payable by it for the 4th installment of the real property taxes for year 2000 in the amount of P1,521,630.00.[15]

However, petitioner's claim for refund/credit of real property tax overpayments for the 1st to 3rd quarters of the year 2000 in the amount of P7,912,476.00 was denied by the City Treasurer in a letter dated January 25, 2002,[16] which was received by petitioner on February 8, 2002. Consequently, petitioner filed an appeal[17] with the Local Board of Assessment Appeals (LBAA) on February 26, 2002.[18]

Thinking that it has substantial amount of refund pending with the City Treasurer and the LBAA, petitioner also sought to offset the real property taxes payable for the 1st and 2nd quarters of 2003, totaling P3,043,260.00, in a letter[19] to the City Treasurer and City Assessor dated June 30, 2003. However, the said request was denied by the City Treasurer in a letter dated July 1, 2003, which was received by petitioner on July 7, 2003.[20]

On September 5, 2003 or before the expiration of the 60-day period provided for under Article 343 of the Implementing Rules of the Local Government Code (implementing Section 252 of the said Code), petitioner filed its appeal[21] before the LBAA, praying for the offsetting of

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[12] Annex "I" to the Petition for Review, Id, pp. 73.
[13] Par. 7, Statement of Facts and Material Dates, Petition for Review, Id., p. 11.
[14] Annex "H" to the Petition for Review, Id, pp. 59-61.
[15] Par. 7, Statement of Facts and Material Dates, Petition for Review, Id., p. 11.
[16] Annex "O" to the Petition for Review, Id, p. 92.
[17] Annex "P" to the Petition for Review, Id, pp. 93-97.
[18] Par. 8, Statement of Facts and Material Dates, Petition for Review, Id., p.11.
[19] Annex "Q" to the Petition for Review, Id., pp. 98-99.
[20] Par. 9, Statement of Facts and Material Dates, Petition for Review, Id., p. 12.
[21] Annex "R" to the Petition for Review, Id., pp. 100-107.

the real property taxes payable for the 1st and 2nd quarters of 2003 against its pending claim for refund/credit arising from overpayments for the years 1995 up to the 3rd quarter of year 2000.[22] However, the issue of offsetting has become moot and academic since petitioner has already paid the real property taxes for Tax Declaration No. E-002-06123 (covering the 4th quarter of 2001 to 4th quarter of 2007) on December 21, 2007, and for Tax Declaration No.E-002-06124 (covering the 4th quarter of 2001 to 4th quarter of 2010) on April 15, 2010.[23]

Acting thereon, the LBAA in a Resolution[24] dated February 26, 2004 denied the foregoing petitioner's appeal[25] in this wise:

> "Basically, this appeal is an appeal on the assessments and/or tax declarations prepared by the Assessor of Parañaque in 1996.
>
> *Section 226 of the R.A. 7160 provides: 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 the copies of the tax declarations and such affidavits or documents submitted in support of the appeal.*
>
> The appellant appears to have made no such an appeal within the sixty (60) day period as provided by the abovequoted provision of RA 7160.
>
> Wherefore, this appeal is hereby denied."

Hence, petitioner was prompted to elevate the instant case to the Central Board of Assessment Appeals (CBAA) on May 21, 2004.[26]

In an Order[27] dated October 17, 2011, the CBAA remanded the instant case to the LBAA for further proceedings on the ground that the

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[22] Par. 11, Petitioner's Memorandum, Id., p. 158.
[23] Par. 9, Statement of Facts and Material Dates, Petition for Review, Id., p. 12
[24] Annex "S" to the Petition for Review, Id., p. 108.
[25] Par. 10, Statement of Facts and Material Dates, Petition for Review, Id., p. 12.
[26] Annex "T" to the Petition for Review, Id., pp. 109-121.
[27] Annex "U" to the Petition for Review, Id., pp. 123-126.

"respective Memoranda of the parties cannot be relied upon to make a conclusive finding about the fact of prescription. Appellee Local Board, likewise, has nothing about it in its Resolution."

Dissatisfied with the CBAA's directive to remand the case, both parties filed their respective Motion for Reconsideration[28]. Then, in its subsequent Order[29] dated April 11, 2012, the CBAA recalled its October 17, 2011 Order and directed the LBAA for the City of Parañaque to send back to the CBAA the records of the case.[30]

On June 22, 2012, the CBAA issued a Decision[31] denying petitioner's appeal for lack of merit and the same was received by petitioner on August 6, 2012[32]. Pertinent portions of the said decision are hereby quoted for ready reference:

> "As stated earlier herein, the proximate cause which led Petitioner to ask the Respondent Treasurer for a refund or tax credit or set-off was Petitioner's perception that the market values and classifications of Petitioner's properties were incorrect. Although petitioner does not agree, Petitioner was actually questioning the validity of the assessments made by the city assessor.
>
> Therefore, to prove that it is entitled to a refund or credit or set-off for the taxes it has allegedly overpaid, Petitioner must first establish that its properties were incorrectly assessed indeed. To do this, Petitioner must question the assessments through an appeal to the Local Board pursuant to the provisions of Section 226 of Code. Also as stated earlier herein, Petitioner failed to do so.
>
> **WHEREFORE**, premises considered, the instant appeal is hereby DENIED for lack of merit.
>
> **SO ORDERED."**

Undaunted, petitioner filed its Motion for Reconsideration[33] on August 22, 2012. However, the same was denied by the CBAA in a

[28] CBAA Case No. L-54, Folder 1, pp. 83-87 & pp. 88-93.
[29] Annex "V" to the Petition for Review, Id., pp. 127-129.
[30] Par. 11, Statement of Facts and Material Dates, Petition for Review, Id., p. 12.
[31] Annex "A" to the Petition for Review, Id., pp. 24-37.
[32] Par. 12, Statement of Facts and Material Dates, Petition for Review, Id., p. 12.
[33] CBAA Case No. L-54, Folder 2, pp. 133-137.

Resolution[34] dated February 26, 2013, which was received by petitioner on June 7, 2013.[35]

Hence, this Petition.

Here, petitioner raised the following grounds for the resolution of this Court:

"STATEMENT OF ISSUES

I

The CBAA erred when it held that offsetting has prescribed pursuant to Section 226 of the Local Government Code (LGC).

II

The CBAA erred in denying the refund of real property tax overpayments for the years 1995 to 3rd quarter of 2000 and the offsetting of the real property tax payable for the 1st and 2nd quarters of 2003 against the amount claimed for refund."

Petitioner claims that in justifying its claim for refund, it is inevitable on its part to refer to the propriety of the assessment of its properties but the same does not necessarily transform into an action on the assessment of its properties under Section 226. Accordingly, what should have been applied is the provision of Article 343, implementing Section 252 of the LGC, since its action arose from the city treasurer's denial of its claim for refund and not from the action of the city, provincial or municipal assessor under Section 226 of the LGC.

Petitioner also points out that at the time it paid the subject realty taxes, no improvements were made on its properties, nonetheless, the City Treasurer proceeded to classify the said properties as commercial lots and imposed a higher real property tax thereon. Petitioner further claims that its neighboring lots (allegedly similar to its lots) were treated as residential properties and, thus, assessed with lower real property taxes.

[34] Annex "B" to the Petition for Review, Id., pp. 38-44.
[35] Par. 12, Statement of Facts and Material Dates, Petition for Review, Id., p. 12.

Petitioner, likewise, avers that after realizing the mistake in the assessment of the subject properties, the assessments thereon were reduced to P6,000/sq.m. from P12,000 sq.m. in the last quarter of 2000. Thus, petitioner is of the considered view that it is entitled to refund the excess payments it made for the first three quarters of year 2000. Petitioner also claims that the assessments in 1995 and 1996 were erroneously pegged at P9,000/sq.m. and P12,000/sq.m. in 1997 to 1999, thus, the same should likewise be refunded to it.

On the other hand, respondent posits that the instant Petition should be dismissed outright on the ground of lack of jurisdiction since the issue involved is not the correctness of assessment. Accordingly, LBAA and CBAA's jurisdiction under RZ No. 7160 is limited only to the issue of correct assessment on real properties and not a claim for tax refund or credit.

After a careful evaluation of the arguments, as well as jurisprudence on the matter, *We* find the Petition for Review bereft of merit.

To begin with, *We* deem it proper to point out that the authority to receive evidence, as basis for classification of properties for taxation purposes, is legally vested with the City Assessor[36] and not with the City Treasurer, to wit:

> "Under Section 199(f), Title II, Book II, of the Local Government Code of 1991, "assessment" is defined as the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification and appraisal of properties. Viewed from this broader perspective, the determination made by the respondent City Assessor with regard to the taxability of the subject real properties squarely falls within its power to assess properties for taxation purposes subject to appeal before the Local Board of Assessment Appeals.
>
> x x x
>
> It must be stressed that the authority to receive evidence, as basis for classification of properties for taxation, is legally vested on the respondent City Assessor whose action is appealable to the Local Board of

[36] G.R. No. 146382, August 7, 2003.

> Assessment Appeals and the Central Board of Assessment Appeals, if necessary."

Thus, petitioner is wrong in assuming that it was the City Treasurer who proceeded to "classify the subject properties as commercial lots and imposed a higher real property tax thereon" even if there was allegedly no improvements made on the same (at the time petitioner paid the realty taxes) and despite the fact that its neighboring lots were treated as residential properties.

In addition, there can be no denying that petitioner, in claiming that its properties were erroneously and excessively assessed in 1995 up to the 3rd quarter of year 2000, using the the previously cited grounds, is in effect questioning the validity of the assessments made by the City Assessor. Thus, the Court *En Banc* agrees with the following findings of the Central Board of Assessment Appeals:

> "x x x the proximate cause which led Petitioner to ask the Respondent Treasurer for a refund or tax credit or set-off was Petitioner's perception that the market values and classifications of Petitioner's properties were incorrect. Although petitioner does not agree, Petitioner was actually questioning the validity of the assessments made by the city assessor.
>
> Therefore, to prove that it is entitled to a refund or credit or set-off for the taxes it has allegedly overpaid, Petitioner must first establish that its properties were incorrectly assessed indeed. To do this, Petitioner must question the assessments through an appeal to the Local Board pursuant to the provisions of Section 226 of the Code. x x x"[37]

Thus, Section 226 of the Local Government Code provides:

> "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. x x x"

[37] CBAA 's Decision, Annex "A" to the Petition for Review, *En Banc* Rollo, p. 37.

It can be inferred from the foregoing that the dissatisfied owner or person having legal interest in the property has only sixty (60) days from receipt of the notice of assessment within which to appeal or to question before the LBAA the assailed assessment. Failure to do so will render the assessment of the local assessor final, executory and demandable. It will also preclude the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.[38]

To demonstrate the belated filing of petitioner's appeal with the LBAA, *We* deem it proper to make use of the payment with annotation of "paid under protest" on the tax receipts as the assumed dates of receipt of the notices of assessment since the actual dates of receipt of the assailed assessments were not indicated in the parties' pleadings. Records show that petitioner paid under protest the assailed assessments (assumed dates of receipt of the assailed assessments) for the 2nd and 3rd quarter of year 2000 on June 30, 2000[39] and September 29, 2000[40], respectively, while the assailed assessments for the 3rd and 4th quarters of year 1999 were paid under protest on September 29, 1999[41] and December 27, 1999[42], respectively. However, it was only on February 26, 2002[43] that petitioner filed its appeal with the LBAA. Thus, the filing thereof is way beyond the 60-day reglementary period. Evidently, petitioner's right to question the correctness of the said assessments has already prescribed.

Petitioner should bear in mind that the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[44]

Nonetheless, petitioner insists that instead of Section 226, what should have been applied to its case is the provision of Article 343 of the Rules and Regulations Implementing Section 252 of the Local Government Code. Accordingly, it timely filed its appeal with the Local Board of Assessment Appeals within the reglementary period of sixty

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[38] Napocor vs. Province of Quezon, et al., G.R. No. 171586, July 15, 2009.
[39] Annex "E" to the Petition for Review, En Banc Rollo, pp. 53-54.
[40] Annex "E" to the Petition for Review, En Banc Rollo, p. 54.
[41] Anne "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 39.
[42] Anne "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 41.
[43] Annex "R" to the Petition for Review, Id., pp. 100-121.
[44] D.M. Wenceslao and Associates, Inc. vs. City of Parañaque, et al., G.R. No. 170728, August 31, 2011.

(60) days from the denial of its claim for refund or offsetting by the City Treasurer. Said article reads:

> "Article 343. 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 or city treasurer, or municipal treasurer, in the case of a municipality within MMA, who shall decide the protest within sixty (60) days from receipt.
>
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the local treasurer concerned. Fifty percent (50%) of the tax paid under protest shall, however, be distributed in accordance with the provisions of this Rule on the distribution of proceeds.
>
> (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.
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in paragraph (a) hereof, the taxpayer may avail of the remedies provided in Article 317 and 320 of this Rule."

The foregoing article was copied almost verbatim from the provision of Section 252 of the LGC. It directs the taxpayer to first pay the tax due before his protest can be entertained and the words "paid under protest" should be annotated on the tax receipts. Thereafter, a protest in writing must be filed within 30 days from the payment of the tax to the provincial or city treasurer, or municipal treasurer, who shall decide the protest within sixty days from receipt. If the protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may avail of the remedies provided under Articles 317 and 320 of the IRR.

Assuming that the foregoing article is applicable to the case at bench, records, however, show that not all of the alleged overpayments made by petitioner for the subject periods were "paid under protest". In fact, only the assessments for the 2nd and 3rd quarters of year 2000[45] (for

[45] Annex "E" to the Petition for Review, En Banc Rollo, pp. 53-54.

the two properties) and 3rd (for EOO2-06129 and EOO2-06124)[46] and 4th quarters of year 1999 (for EOO2 -06129)[47] were "paid under protest" by petitioner on June 30, 2000, September 29, 2000, September 29, 1999 and December 27, 1999, respectively.

Likewise, the records are bereft of any showing that petitioner was able to file its written protest to the City Treasurer within thirty (30) days from the payment of the foregoing taxes as required under paragraph (a) of Article 343. A table is prepared for easy reference:

Year 2000	Date of Payment with Annotation of "Paid Under Protest" on the Tax Receipt	Last Day to File Protest with the City Treasurer	Date of Filing of Petitioner's Letter of Protest	Remarks
2nd quarter	June 30, 2000[48]	July 30, 2000	December 28, 2001	Prescribed
3rd quarter	September 29, 2000[49]	October 29, 2000	December 28, 2001	Prescribed

Year 1999	Date Paid	Last Day to File Protest with the City Treasurer	Date of Filing of Petitioner's Letter of Protest	Remarks
3rd quarter	September 29, 1999[50]	October 29, 1999	December 13, 2001	Prescribed
4th quarter	December 27, 1999[51]	January 26, 1999	December 13, 2001	Prescribed

In view of the foregoing findings, it is clear that petitioner failed to comply with the requirements set forth under Article 343 (a) of the Rules and Regulations Implementing Section 252 of the Local Government Code, thus, it is of no moment whether it allegedly timely filed its appeal with the LBAA within the reglementary period of sixty (60) days from the denial of its claim for refund or offsetting by the City Treasurer under paragraph (d) of the said provision.

[46] Annex "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 39.
[47] Annex "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 41.
[48] Annex "E" to the Petition for Review, En Banc Rollo, pp. 53-54.
[49] Annex "E" to the Petition for Review, En Banc Rollo, p.54.
[50] Annex "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 39.
[51] Annex "K" to petitioner's Appeal with the CBAA, CBAA Case No. L-54, Folder 1, p. 41.

It should, likewise, be noted that nowhere in all the documents submitted to this Court can *We* find that petitioner's protest has finally been decided in its favor. Thus, there is no reason that the amount of tax protested be refunded to petitioner or be applied as tax credit against its existing or future tax liability.

Anent the issue on offsetting, the High Tribunal, in the case of South African Airways vs. Commissioner of Internal Revenue,[52] ruled that taxes cannot be subject to set-off or compensation, *viz*:

> "Article 1279 of the Civil Code contains the elements of legal compensation, to wit:
>
> Art. 1279. In order that compensation may be proper, it is necessary:
>
> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
>
> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
>
> (3) That the two debts be due;
>
> (4) That they be liquidated and demandable;
>
> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.
>
> And we ruled in *Philex Mining Corporation v. Commissioner of Internal Revenue,* thus:
>
> In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is

[52] G.R. No. 180356, February 16, 2010.

> a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.
>
> Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that taxes cannot be subject to set-off or compensation, thus:
>
>> We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.
>
> The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit,* which reiterated that:
>
>> . . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.
>
> Verily, petitioner's argument is correct that the offsetting of its tax refund with its alleged tax deficiency is unavailing under Art. 1279 of the Civil Code."

We shall now proceed to respondent's argument.

Respondents have made their position clear from the very beginning that petitioner should have appealed the City Treasurer's denial of its claim for refund before the competent court and not before the LBAA or CBAA following the provisions of Sections 195[53] and 196[54] of the Local Government Code.[55]

But the CBAA is correct in ruling that the said provisions are inapplicable on the ground that they refer only to the provisions of local taxes and not of real property taxes, to wit:

> "The ground - and the arguments therefor-presented by Respondent-Appellee are misplaced. Sections 195 (Protest on Assessment) and 196 (quoted above) are provisions under Title One (Local Government Taxation) of Book II (Local Taxation and Fiscal Matters) of the Code. As the sub-title of Title One of Book II of the Code suggests, Section 195 and 196 refer to <u>local</u> taxes. Real property taxes are governed by the provisions of the Code under its Title Two of Book II. Under our jurisprudence, the real property tax is a <u>national</u> tax, not a local tax."[56]

Consequently, respondents' defense is wrongly anchored on the provisions of Sections 195 and 196 of the Local Government Code since they have nothing to do with real property taxation which is governed by Title Two, Book II of the LGC.

It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[57]

In light of these conclusions and observations, the CBAA did not err in denying the refund of the alleged real property tax overpayments for the years 1995 to 3rd quarter of 2000 and the offsetting of the real a

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[53] Section 195 of the LGC provides:

"SEC. 195. Protest of Assessment. — . . . The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

[54] Section 195 of the LGC states:

" SEC. 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

[55] Pars.7 and 9, respondents Comment/Opposition(To Petitioner-Appellant's Motion for Reconsideration) filed before the CBAA, CBAA Case No. L-54, Folder 2, p. 142.

[56] CBAA Decision dated June 22, 2012, En Banc Rollo, p. 32.

[57] Paseo Realty & Development Corp. vs. CA et al., G.R. No. 119286, October 13, 2004, citing the cases of Citibank, N.A. v. Court of Appeals, 345 Phil. 695 (1997), 280 SCRA 459; Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., 314 Phil. 220 (1995).

property tax payable for the 1st and 2nd quarters of 2003 against the amount claimed for refund.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated June 22, 2012 and Resolution dated February 26, 2013 of the Central Board of Assessment Appeals are both ***AFFIRMED.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

BAY RESOURCES AND DEVELOPMENT CORPORATION, *Petitioner,*	**CTA EB CASE NO. 1036** (CBAA Case No. L-54) (LBAA Case No. 2003-06)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
THE LOCAL BOARD OF ASSESSMENT APPEALS OF PARAÑAQUE CITY and CITY TREASURER OF PARAÑAQUE, *Respondents.*	Promulgated:
	DEC 16 2014 3:55 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

This involves a Petition for Review of the Decision dated June 22, 2012 and Resolution dated February 26, 2013 rendered by the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-54, denying petitioner's claim for refund or tax credit or set-off of real property tax (RPT) overpayments for the 1st to 3rd quarters of the year 2000.

I concur with the *ponencia* of my esteem colleague, the Honorable Associate Justice Caesar A. Casanova, affirming the denial of petitioner's claim for refund or tax credit or set-off, but on a different ground.

Upon perusal of the records, I find that petitioner has no factual and legal basis to claim for a refund of erroneous payment of RPT since the valuation of petitioner's properties in 2000 was still at ₱12,000.00 per square meter and not at ₱6,000.00 per square meter.

In this regard, Section 253 of the Local Government Code (LGC), as amended, provides for the procedure in repayment of excessive collection of RPT, to wit:

> "SEC. 253. *Repayment of Excessive Collections.* - When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment. The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of this Code."

Pursuant to the afore-quoted provision, a taxpayer may file a written claim for refund of illegal or erroneous RPT payment with the city treasurer, within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

Records show that in the last quarter of year 2000, the City Treasurer of Parañaque reduced the assessed value of petitioner's properties from ₱12,000.00 per square meter to ₱6,000.00 per square meter. A new tax declaration was issued, stating that the assessments therein will begin in the year 2000. On this basis, on December 13, 2001, petitioner filed a claim for refund of the alleged overpayment of RPT for the 1st to 3rd quarters of 2000, which petitioner paid using the ₱12,000.00 per square meter valuation.

While petitioner appears to have timely filed its written claim for refund, the said claim for refund must still be denied, pursuant to Section 221 of the LGC, as amended, which provides, as follows:

> "SEC. 221. *Date of Effectivity of Assessment or Reassessment.* - All assessments or reassessments made after the first (1st) day of January of any year shall take effect on the first (1st) day of January of the succeeding year: Provided, however, That the reassessment of real property due to its partial or total destruction, or to a major change in its

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> actual use, or to any great and sudden inflation or deflation of real property values, or to the gross illegality of the assessment when made or to any other abnormal cause, shall be made within ninety (90) days from the date any such cause or causes occurred, and shall take effect at the beginning of the quarter next following the reassessment."

Pursuant to the afore-cited provision, a reassessment shall take effect on either: (1) the first day of January of the succeeding year, or (2) at the beginning of the quarter next following the reassessment.

Considering that the reassessment of petitioner's properties was made in the last quarter of 2000, the new valuation of ₱6,000.00 per square meter shall take effect only on January 1, 2001. It is clear, therefore, that petitioner has no legal basis to ask for a refund of erroneous payment of RPT for the 1st to 3rd quarters of the year 2000 since the proper valuation of its properties in 2000 was still at ₱12,000.00 per square meter.

All told, I concur in the result and VOTE to DENY the Petition for Review filed by Bay Resources Development Corporation.

ROMAN G. DEL ROSARIO
Presiding Justice