REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL FOOD AUTHORITY, Represented by Atty. Ma. Theresa S. Villafuerte, Director of NFA-Legal Affairs,
Petitioner,

- versus -

MUNICIPALITY OF SHARIFF AGUAK, MUNICIPAL TREASURER, AND MUNICIPAL ASSESSOR OF SHARIFF AGUAK, MAGUINDANAO,
Respondents.

CTA AC NO. 202

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
JUL 2 2 2020
1:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner seeks for the reversal of the assailed Orders of the lower court dated January 31, 2018 and

March 21, 2018, respectively, and for the invalidation of the Notice of Delinquency issued by respondents.

THE FACTS

Petitioner alleges that it is a government instrumentality vested with corporate powers created under Presidential Decree No. 4 (PD 4), as amended.[1]

On the other hand, respondent Municipality of Shariff Aguak is a political subdivision created pursuant to law.[2] The municipal treasurer and assessor are impleaded in their respective capacities.

On February 2, 2017,[3] petitioner received from respondent municipal treasurer, Ms. Nadine G. Bayhon, a Notice of Real Property Tax (RPT) Delinquency in the amount of P1,815,313.82.

On April 3, 2017,[4] petitioner filed a Petition for Prohibition/Injunction with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the lower court.

In the said Petition before the lower court, petitioner argues that it is a government instrumentality exempt from paying RPT under Presidential Decree No. 4, as amended.

On January 31, 2018 and March 21, 2018, the lower court issued the assailed orders dismissing the case for failure of petitioner to file its memorandum.

On May 15, 2018, petitioner filed the instant Petition for Review. Likewise, petitioner moved for the suspension of collection of tax.

On April 11, 2019,[5] the Court issued a resolution granting petitioner's Motion for Suspension of Collection of Tax. The Court also ordered the parties to file their respective memoranda, among others. *ge*

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[1] Par. 17, The Parties, Petition for Review, Docket, p. 14.
[2] Par. 18, The Parties, Petition for Review, Docket, p. 15.
[3] Annex "A", Lower Court Records, pp. 31-32.
[4] Lower Court Records, pp. 1-29.
[5] Docket, pp. 234-243.

On May 17, 2019, petitioner filed its Memorandum (For Petitioner).[6] On the other hand, respondent failed to file the same.[7]

On July 29, 2019,[8] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUES

Petitioner raised the following grounds in support of its Petition:

I. The Trial Court erred in dismissing NFA's Petition for Prohibition because of NFA's alleged failure to file the required memorandum; and

II. Petitioner NFA is a government instrumentality and, hence, exempt from payment of real property taxes.[9]

THE RULING

Failure to file memorandum is not a ground for the dismissal of the Petition below

Section 8, Rule 65 of the Rules of Court (ROC) pertinently provides:

"**Section 8.** *Proceedings after comment is filed.* — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court **may hear the case or require the parties to submit memoranda**. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled."*(Emphasis supplied)* Je

[6] Docket, pp. 244-270.
[7] Records Verification, Docket, p. 273.
[8] Docket, p. 286.
[9] Grounds for the Petition, Petition for Review, Docket, p. 15.

Based on the above-quoted rule, the court may either hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

"The use of the word 'may' is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word 'may,' when used in a statute, does not generally suggest compulsion."[10]

Here, the court is given the discretion either: (1) to hear the case; or (2) to require the parties to submit memoranda. Considering that the lower court opted to require the parties to submit memoranda, Section 8, Rule 65 of the ROC provides that the court shall render judgment for the relief prayed for or to which the petitioner is entitled, after the submission of the memoranda or upon the expiration of the period for filing thereof.

Clearly, the rules do not sanction the dismissal of a petition for failure of a party to submit memorandum. On the contrary, the provision is explicit that the court shall render judgment for the relief prayed for or to which the petitioner is entitled. Thus, failure to file memorandum is not a ground for dismissal of a petition under Rule 65 of the ROC.

Petitioner is not without "other plain, speedy and adequate remedy"

Despite the above conclusion, the Court finds that petitioner availed the wrong remedy before the lower court.

In *City Engineer of Baguio and Hon. Mauricio Domogan v. Rolando Baniqued*,[11] the Supreme Court explained the nature of a Petition for Prohibition, as follows: *ge*

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[10] *Office of the Ombudsman v. Court of Appeals and Mercedita J. Macabulos*, G.R. No. 159395, May 7, 2008.
[11] G.R. No. 150270, November 26, 2008.

> "Prohibition is not a new concept. It is a remedy of ancient origin. It is even said that it is as old as common law itself. The concept originated in conflicts of jurisdiction between royal courts and those of the church. In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:
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> > Sec. 2. *Petition for prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.
> >
> > The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.
>
> **It is very clear that before resorting to the remedy of prohibition, there should be 'no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.' Thus, jurisprudence teaches that resort to administrative remedies should be had first before judicial intervention can be availed of.**"*(Emphasis supplied)*

Thus, a party seeking the remedy of prohibition must first show that there is no any other plain, speedy and adequate remedy in the ordinary course of law. *yr*

In the instant case, petitioner had plain, speedy and adequate remedies that it failed to avail.

The issue involved in the present case is the correctness of the assessment. Hence, petitioner failed to appeal before the Local Board of Assessment Appeals (LBAA) and consequently, before the Central Board of Assessment Appeals

Petitioner failed to pay under protest

Section 252 of the LGC of 1991 provides:

> "**Section 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.
>
> (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 subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.**"*(Emphasis supplied)*

Under the afore-quoted provision, No protest shall be entertained unless the taxpayer pays the tax, which must be filed within 30 days from payment thereof and shall be decided within 60 days from receipt of the protest. In the event of the denial of the protest or upon the lapse of the 60-day period, the aggrieved taxpayer may avail of the remedies provided for under Chapter 3, Title II, Book II of the LGC of 1991.

In relation thereto, Sections 226 and 230 of the LGC of 1991 provide:

> "**Section 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."*(Emphasis supplied)*

> "**Section 230.** *Central Board of Assessment Appeals.* – xxx The Board shall have appellate jurisdiction over all assessment cases decided by the Local Board of Assessment Appeals."

Under Sections 226 and 230 of the LGC of 1991, an aggrieved taxpayer must pay under protest before elevating the case to the LBAA and subsequently to the CBAA, in case of an unfavorable decision.

However, the foregoing procedure is premised on the condition that the issues raised are cognizable by the LBAA. In this regard, Section 229 of the LGC of 1991 provides:

> "**Section 229**. *Action by the Local Board of Assessment Appeals.* –

xxx xxx xxx

> (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.
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> xxx xxx xxx" *(Emphasis supplied)*

In the case of *Alejandro B. Ty v. The Hon. Aurelio C. Trampe,*[12] the respondent assessor sent notices of assessment to petitioner's real properties. Consequently, petitioner requested the municipal assessor to reconsider the subject assessments. Not satisfied with the unfavorable resolution, petitioner elevated the case to the Regional Trial Court where it filed a Petition for Prohibition with prayer for a restraining order and/or writ of preliminary injunction to declare null and void the new assessments and to enjoin the collection of real estate taxes. On this score, it is noteworthy that petitioner therein did not pay under protest.

One of the issues raised therein is whether the case is premature for failure of the petitioner to pay under protest under Section 252 of the LGC of 1991, among others. In ruling that payment under protest is not necessary, the Supreme Court held that:

> "In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229(b) that '(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . . .' It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to 'first pay the tax' under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power

[12] G.R. No. 117577, December 1, 1995, 250 SCRA 500.

of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of *any* increase."

Thus, in the *Ty* case, the Supreme Court categorically declared that when the issues involved are not factual, the taxpayer need not pay under protest. Incidentally, the petitioner therein elevated the case to the Regional Trial Court and not before the LBAA.

In other words, as early as when the *Ty* case was promulgated on December 1, 1995, the Supreme Court already had the occasion to rule that payment under protest is not necessary where no factual issue is involved. Moreover, in that case, petitioner commenced its action before the regular courts and not before the LBAA. Thus, it is apparent that when no factual issue is involved, it is the regular courts, not the LBAA, which has jurisdiction to take cognizance of the case.

In the case of *National Power Corporation v. Municipal Government of Navotas* promulgated on November 24, 2014,[13] the Supreme Court clarified the correct remedy of the aggrieved party/taxpayer when no factual issue is involved and when payment under protest is not necessary in cases where the party disputes the RPT assessments. Thus:

"In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . . ." It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench, however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to

[13] G.R. No. 192300, November 24, 2014.

> impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase.
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> **Accordingly, if the only issue is the legality or validity of the assessment – a question of law – direct recourse to the RTC is warranted.**"[14] *(Emphasis supplied)*

The *National Power Corporation* case reiterated and clarified the *Ty* case, such that when the issue involved is the legality or validity of the assessment – a question of law – direct recourse to the regular courts is warranted.

Interestingly, in the case of *Dr. Pablo R. Olivares v. Mayor Joey Marquez,*[15] the petitioner therein filed a petition for certiorari, prohibition and *mandamus* before the Regional Trial Court of Parañaque to question the levy made by the Office of the City Treasurer of Parañaque City on petitioner's properties. As in the *Ty* case and *National Power Corporation* case, petitioner therein did not pay under protest before commencing action before the regular courts.

In ruling against petitioner, the Supreme Court held that:

> "The Court is not convinced with petitioners' argument that their recourse of filing a petition before the trial court is proper as they are questioning the very authority of respondents to assess and collect the real estate taxes due on their properties, and not merely the correctness of said amount.
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> The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. A perusal of the petition before the RTC plainly shows that what is actually being assailed is the correctness of the assessments made by the local assessor of Parañaque on petitioners' properties. The allegations in the said petition purportedly questioning the assessor's authority to assess and collect

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[14] Citing *Ty v. Trampe,* see Note 35.
[15] G.R. No. 155591, September 22, 2004, 438 SCRA 679.

the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor's alleged lack of authority. What petitioners raise are the following: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the "improper, excessive and unlawful the collection of taxes against the petitioner[s]." Moreover, these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA.

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.

Even assuming that the assessor's authority is indeed an issue, it must be pointed out that in order for the court *a quo* to resolve the petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with.

In *Ty vs. Trampe*, cited by petitioners, the Court held that jurisdiction over the case was properly vested with the trial court because what was being questioned is the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax, and not merely of amounts of the increase in the tax. The petitioners therein were questioning the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not P.D. No. 921 was repealed by R.A. No. 7160. P.D. No. 921, particularly Section 9 thereof, requires that the schedule of values of real properties in the Metropolitan Manila area shall be prepared *jointly* by the city assessors in the districts created therein; while Sec. 212 of R.A. No. 7160 states that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the *sanggunian* concerned.

In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court *a quo* primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for *certiorari*, prohibition and *mandamus*. The court *a quo* is therefore precluded from entertaining the petition, and it appropriately dismissed the petition."[16]

In the *Dr. Pablo R. Olivares* case, the Supreme Court ruled that the RTC has no jurisdiction over petitioner's action because the issue involved is not purely legal, based on the allegations of the Petition. In other words, when the issues involved are not purely legal, i.e., the correctness of the tax assessment and collection are likewise in issue, it is the LBAA, not the regular courts, which has jurisdiction over the case.

Hence, the *Ty* case, *National Power Corporation* case and *Dr. Pablo R. Olivares* case instruct that when the issue/s involved is/are (1) purely factual in nature; or (2) both factual and legal in nature, jurisdiction over RPT assessments is lodged on the LBAA. However, when the issues involved are pure questions of law, jurisdiction is conferred upon the regular courts.

Thus, the Court is tasked to determine whether the issues raised by petitioner are factual or legal.

Section 206 of the LGC of 1991 provides:

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[16] *Id.*, citing *International Flavors and Fragrances (Phil.), Inc., vs. Argos*, G.R. No. 130362, September 10, 2001, 364 SCRA 792, 797; and *Manila Electric Company vs. Barlis*, G.R. No. 114231, May 18, 2001, 357 SCRA 832, 843.

> "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. 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 simply requires the presentation of documentary evidence in support of a claim for exemption, within thirty (30) days from the date of the declaration of real property, in order for the subject property not to be listed in the assessment roll. Should the taxpayer fail to do so, the same law affords the taxpayer an opportunity to still claim for exemption by providing proof in support thereof.

In *National Power Corporation v. The Provincial Treasurer of Benguet, et al.*,[17] the Supreme Court explained the application of the above-quoted provision, as follows:

> "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

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

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**."

Here, petitioner's claim for exemption from payment of RPT is in the nature of questioning the reasonableness or correctness of the assessment. Thus, it should have first complied with the requirement of payment under protest under the rule on exhaustion of administrative remedies under the above-quoted provisions of the law.

Considering petitioner's lapses, the assessment already became final and the collection of the deficiency RPT should naturally take its course.

Finally, in a similar case[18] recently decided by the CTA 2nd Division, NFA filed a petition for prohibition before the RTC of Bayombong, Nueva Vizcaya. Respondent in that case also issued Notices of Delinquency demanding payment for RPT. In ruling against petitioner, the Court also found that petitioner failed to pay under protest and to exhaust available administrative remedies before resorting to the remedy of prohibition. Thus, the Court dismissed the subject petition.

Considering the foregoing, the dismissal of the instant case is likewise in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

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

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[18] *National Food Authority, represented by Mario M. Gonzales Regional Director of NFA Region II v. Province of Nueva Vizcaya, Rhoda D. Soriano-Moreno, Office of the Provincial Treasurer and the Provincial Assessor's, Province of Nueva Vizcaya*, CTA AC No. 192, February 3, 2020, penned by Retired Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Jean Marie A. Bacorro-Villena concurring.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice