REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

*Third Division*

**SPC REALTY CORPORATION,**
Petitioner,

-*versus*-

**MUNICIPAL TREASURER OF CAINTA,**
Respondent.

**CTA AC NO. 77**
(Civil Case No. 06-7957)

Members:
**BAUTISTA,** *Chairperson*
**PALANCA-ENRIQUEZ,** and
**COTANGCO-MANALASTAS,** *JJ.*

Promulgated:
NOV 15 2012
ABFernandez 11:09 a.m.

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# *DECISION*

***BAUTISTA, J.:***

The Petition for Review,[1] filed pursuant to Sections 3 and 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals, seeks the review of the Decision rendered by the Regional Trial Court, Branch 73, Antipolo City, dated March 11, 2010, dismissing the case for lack of jurisdiction;[2] and the Order dated February 25, 2011, denying its Motion for Reconsideration.[3]

## *Facts of the Case*

The facts, as culled from the records of the case, are as follows:

[1] *Records*, pp. 5-40, with Annexes.
[2] *Id.*, at pp. 23-24; Penned by Presiding Judge Ronaldo B. Martin; *Annex "A."*
[3] *Id.*, at p. 25; *Annex "B."*

Petitioner, SPC Realty Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at Km. 22, Ortigas Avenue Extension, Barrio Mapandan, Cainta Rizal.

On the other hand, respondent is the Treasurer of the Municipality of Cainta, tasked with the implementation of the Municipality's Revenue Code, as well as the collection and assessment of business taxes, license fees, and permit fess within the said municipality.

On September 12, 2005, respondent issued Letter of Authority No. 0468, addressed to petitioner, authorizing Mr. Bernardo M. Bautista and Ms. Aileen C. Austria to examine books of accounts and other pertinent records of the business, to verify, assess, and collect the true and correct amount of tax or taxes, fees and charges due during the period from unexamined previous years to December 31, 2004.[4] On even date, an assessment was issued against petitioner for deficiency taxes, including interests and surcharges for the period covering years 1999 to 2005, in the aggregate amount of ₱1,945,202.97.[5]

On December 29, 2005, Finance and Accounting Manager, Emiliano L. Gutierrez, Jr., of Alcan Packaging Starpack Corporation, the lessee on the property owned by petitioner located within the jurisdiction of the municipality, filed a letter addressed to respondent, in response to the local business taxes of petitioner, with attached copy of its tax advisor's opinion.[6]

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[4] *Id.*, at p. 26; *Annex "C."*
[5] *Id.*, at p. 27; *Annex "D."*
[6] *Id.*, at pp. 28-29; *Annex "E."*

On July 4, 2006, respondent issued a Denial of Protest and Ultimate Demand to Settle Delinquency Taxes against petitioner.[7]

On July 7, 2006, petitioner received a revised computation of deficiency taxes issued by respondent, in the increased amount of ₱2,346,781.32.[8]

On July 11, 2006, petitioner wrote to respondent, attaching thereto the opinion rendered by its corporate counsel dated July 6, 2006.[9]

And, on August 2, 2006, petitioner filed a Petition for Review before the Regional Trial Court ("RTC") of Antipolo City, docketed as Civil Case No. 06-7957, elevating the said assessment.

On March 11, 2010, the RTC rendered a Decision, the dispositive portion, to quote:

> WHEREFORE, premises considered, the instant petition for review is hereby dismissed for lack of jurisdiction.
>
> SO ORDERED.

The said Decision was received by petitioner on April 12, 2010.

The RTC, likewise, issued an Order dated February 25, 2011, denying petitioner's Motion for Reconsideration for lack of merit. The same was received by petitioner on March 28, 2011.

On April 27, 2011, petitioner filed before this Court a Motion for Extension of Time to File Petition for Review.

Accordingly, on May 12, 2011, petitioner filed the present Petition for Review.

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[7] *Id.*, at pp. 30-33; *Annex "F."*
[8] *Id.*, at pp. 34-36; *Annex "G."*
[9] *Id.*, at pp. 37-40; *Annex "H."*

On October 13, 2011, respondent filed its Comment (Re: Petitioner's Petition for Review).

And on November 2, 2011, petitioner filed by registered mail its Reply.

On January 13, 2012, the case was deemed submitted for decision, taking into consideration petitioner's Memorandum filed on December 5, 2011,[10] and respondent's Memorandum filed on January 11, 2012.[11]

Hence, this Decision.

### *Issues*

The Petition for Review assigns the following errors:

I. THE RTC ERRED IN DISMISSING THE PETITION AND DETERMINING THAT IT LACKED JURISDICTION OVER THE CASE;

II. THE RTC ERRED IN NOT FINDING THAT PETITIONER IS NOT SUBJECT TO PAYMENT *(sic)* OF LOCAL BUSINESS TAXES IN THE MUNICIPALITY OF CAINTA FOR THE YEARS 1999-2005; and

III. THE RTC ERRED IN NOT FINDING THE ASSESSMENT FOR THE YEARS 1999 AND 2000 TO HAVE BEEN BARRED BY PRESCRIPTION.[12]

#### *Petitioner's Arguments*

Petitioner claims that it has duly complied with the requirements under Section 195 of the Local Government Code. It avers that it filed a judicial action before the RTC only after the receipt of the denial of its protest on the assessment

[10] *Id.*, at pp. 90-104.
[11] *Id.*, at pp. 106-120.
[12] *Id.*, at p. 8.

made by respondent; the procedure mandated by the earlier-mentioned provision. Thus, the RTC erred when it dismiss the case on the ground of non-compliance with the procedural requirements under Local Government Code.

Petitioner also asserts that even *in arguendo* that it failed to exhaust all administrative remedies before seeking judicial relief; such fact should not have hindered the RTC from ruling on the merits. It posits that since respondent failed to timely raise the issue of non-exhaustion of administrative remedies, the same is deemed waived, and the RTC cannot dismiss the case *motu propio*.

Petitioner likewise maintains that considering it did not operate or maintain a branch or sales outlet in Cainta during the subject period of assessment, it cannot be made to pay local business taxes to respondent.

Petitioner further advances that prescription had already set in insofar as the assessment for years 1999 to 2000 are concerned, pursuant to Section 194 of the Local Government Code.

***Respondent's Counter-arguments***

On the other hand, respondent counters that since the assessment against petitioner involves taxes over its realty property and/or realty business, the provisions of Sections 226 and 229 of the Local Government Code may be applicable. With petitioner's direct resort to the RTC, without exhausting all administrative remedies, respondent, thus, submits that the RTC has no jurisdiction to entertain the case.

Respondent responds as well that even arguing that Section 195 of the Local Government Code is the applicable remedy, petitioner failed to comply with the said provision for instead of appealing the denial of its protest, it went directly to the RTC by way of a Petition for Review, which is a wrong mode of appeal.

Respondent also maintains that the imposition of realty business taxes against petitioner is pursuant to Section 150 of the Local Government Code, and opinions rendered by the Bureau of Local Government Finance - Department of Finance regarding on the "situs of taxation."

Respondent further disputes that the assessment for the years 1999 and 2000 had prescribed; petitioner's apparent intention to evade the payment of taxes justifies the application of the ten (10)-year period to assess and collect the same.

Respondent lastly submits that for the sake of argument that the RTC erred in dismissing the case, the same should be remanded to the court *a quo* for further proceedings so as to determine and appreciate the entire merits of the case.

## *Ruling of the Court*

The Petition for Review is bereft of merit.

In the assailed Decision dated March 11, 2010, the RTC, Branch 73 of Antipolo City, rendered as follows:

> The case of *Philippine Clearing House Corp. vs. City Treasurer of Manila*, C.A. G.R. C.V. No. 73439 falls squarely on the instant case. In the afore-cited case, the Court of Appeals held that:
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> > "Basic is the rule that under the doctrine of primacy of administrative remedies, any question on the tax assessment must first be administratively pursued to the exclusion of

> ordinary courts; otherwise, the latter's decision would be void for lack of jurisdiction."

In the same case, the Court of Appeals went on to cite the case of *Manila Electric Company vs. Barlis*, 357 SCRA 832 (2001):

> "It cannot be gainsaid that petitioner should have addressed its arguments to respondent at the first opportunity upon receipt of the 3 September 1986 notices of assessment signed by the Municipal Treasurer Norberto A. San Mateo. Thereafter, it should have availed of the proper administrative remedies in protesting an erroneous tax assessment, *i.e.*, to question the correctness of the assessment before the Local Board of Assessment Appeals (LBAA), and later, invoke the appellate jurisdiction of the Central Board of Assessment Appeals (CBAA). Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decision would be void for lack of jurisdiction. xxx The failure to appeal within the statutory period shall render the assessment final and unappealable. Petitioner having failed to exhaust the administrative remedies available to it, the assessment attained finality and collection would be in order."

Based on the allegations in its Petition for Review and on its documentary and testimonial evidence, it is clear that [p]etitioner did not avail of the proper administrative remedies in protesting the [r]espondent's assessment. In view thereof, to render a decision on the merits of this case would be futile inasmuch as the same would be rendered void for lack of jurisdiction.[13]

Based on the assailed Decision, the RTC effectively ruled that petitioner failed to observe the procedures prescribed under Sections 226 and 229 of the 1991 Local Government Code ("LGC"),[14] to quote:

> 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

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[13] *Id.*, at p. 24.
[14] Republic Act No. 7160, entitled *"An Act Providing for a Local Government Code of 1991,"* dated October 10, 1991.

> 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 provincial 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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> xxx xxx xxx
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> SECTION 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.
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> (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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> (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.

A plain reading of the above-quoted provisions shows that the same pertains to assessment on real properties under the 1991 LGC. A perusal, however, of the assessment made by respondent against petitioner shows that the basis thereof is Section 150 of the 1991 LGC, which states:

> SECTION 150. *Situs of the Tax.* – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers,

repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

(b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

And for easy reference, Section 143 of the same Code provides as follows:

SECTION 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

xxx xxx xxx

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

xxx xxx xxx

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsections (a), (b) and (d) of this Section:

xxx xxx xxx

(d) On retailers,

xxx xxx xxx

*Provided, however,* That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided,* That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

From the foregoing, respondent is assessing petitioner for local business taxes, and not for real property taxes. Therefore, the procedures prescribed under Sections 226 and 229 of the 1991 LGC cannot be made to apply to the case at bench.

Accordingly and as correctly maintained by petitioner, Section 195 of the 1991 LGC provides for the following remedies, to quote:

> SECTION 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

The above-quoted provision states that the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest; while the local treasurer, on the other hand, has sixty (60) days from the date of filing of the protest within which to decide the same. The provision, further, provides that the taxpayer has thirty (30) days, either from the receipt of the denial of the protest, or from the lapse of the sixty (60)-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.

Based on the records of the case, an assessment was issued by respondent against petitioner for deficiency taxes, including interests and surcharges for the period covering years 1999 to 2005, in the aggregate amount of ₱1,945,202.97, on September 12, 2005;[15] counting sixty (60) days from said date, petitioner had until November 11, 2005, within which to file its protest on the subject assessment.

However, petitioner failed to file any protest, and it was only on December 29, 2005, that Finance and Accounting Manager, Emiliano L. Gutierrez, Jr., of Alcan Packaging Starpack Corporation, the lessee of the subject property of petitioner, who filed a letter addressed to respondent, in response to the assessment.[16]

In accordance with Section 195 of the 1991 LGC, that "within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory," as a result therefore, for failure of petitioner to timely contest the assessment, the same has become final and executory.

In the case of *Romulo San Juan v. Ricardo Castro, in his capacity as City Treasurer of Marikina City*,[17] the High Court ruled that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof in accordance with Section 195 of the 1991 LGC.[18]

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[15] *Records*, p. 27; *Annex "D."*
[16] *Id.*, at pp. 28-29; *Annex "E."*
[17] G.R. No. 174617, December 27, 2007.
[18] *Ibid., citing Ernesto D. Acosta and Jose C. Vitug, TAX LAW AND JURISPRUDENCE, 2nd edition. Rex Book Store: Manila, Philippines, 2000, pp. 463-464.*

It is of no consequence that respondent issued a Denial of Protest and Ultimate Demand to Settle Delinquency Taxes against petitioner on July 4, 2006,[19] that petitioner received a revised computation of deficiency taxes in the increased amount of ₱2,346,781.32 on July 7, 2006,[20] and that petitioner timely filed a Petition for Review before the RTC of Antipolo City, docketed as Civil Case No. 06-7957, elevating the said assessment on August 2, 2006; for the assessment issued by respondent dated September 12, 2005 had become final and executory, due to petitioner's failure to observe the sixty (60)-day period within which to file a protest.

It may not be amiss to note that petitioner should have been more mindful of the remedies prescribed by Section 195 of the 1991 LGC before claiming that it had duly complied therewith; it cannot conveniently raise that it had complied with the thirty (30)-day period from receipt of the denial of its protest within which to elevate its appeal with the court of competent jurisdiction, without, first and foremost, complying with the sixty (60)-day period to file a protest on the assessment.

Therefore, while petitioner timely filed the present Petition for Review before this Court, in accordance with Sections 3 and 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals, from its receipt of the Order rendered by the RTC, the assessment has become final and executory, and this Court has no recourse but to uphold the same.

**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated March 11, 2010, and Order dated February 25, 2011,

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[19] *Records*, pp. 30-33; *Annex "F."*
[20] *Id.*, at pp. 34-36; *Annex "G."*

rendered by the Regional Trial Court, Branch 73, Antipolo City, is hereby **AFFIRMED,** but on the ground that the assessment had long become final and executory.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

***WE CONCUR:***

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
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.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## *CERTIFICATION*

Pursuant to Section 13 of Article VIII 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.

**ERNESTO D. ACOSTA**
Presiding Justice