REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BEVERAGES PHILIPPINES, INC., (formerly COCA-COLA FEMSA PHILIPPINES, INC./COCA-COLA BOTTLERS PHILIPPINES, INC.),
Petitioner,

- *versus* –

CITY TREASURER OF MANILA,
Respondent.

CTA EB NO. 2173
(CBAA Case No. L-142-2018)
(LBAA Case No. 13-4258)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:
MAY 19 2021 11:58am

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DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is an Amended Petition for Review[1] filed by petitioner Coca-Cola Beverages Philippines, Inc. pursuant to Section 7(a)(5) of Republic Act (RA) No. 1125, as amended, in relation to Rule 4 and Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). The Amended Petition for Review seeks the reversal and/or modification of the Decision dated May 20, 2019,[2] (Assailed Decision) as well as the Resolution dated October 4, 2019[3] (Assailed Resolution) of the Central Board of

[1] Court *En Banc's* Docket, pp. 292-305.
[2] *Id.*, pp. 24-61.
[3] *Id.*, pp. 63-91.

Assessment Appeals (CBAA) in CBAA Case No. L-142-2018 entitled *Coca-Cola Bottlers Philippines, Inc. (now Coca-Cola Bottlers Philippines, Inc.) v. Local Board of Assessment Appeals of the City of Manila and The City Treasurer of Manila.*

The dispositive portions of the Assailed Decision and Assailed Resolution, respectively, are quoted hereunder:

Assailed Decision

> "**WHEREFORE**, in view of all the foregoing, this Board **partially grants** the Appeal of Petitioner-Appellant and further rules that Petitioner-Appellant is entitled only to the refund of the real property tax collected for the fourth quarter of 2012 in the amount of **Php 210,863.25 plus interest** in the concept of actual or compensatory damages at the rate of 6% per annum from April 15, 2013 until fully paid.
>
> **SO ORDERED.**"

Assailed Resolution

> "**WHEREFORE**, in view of the foregoing, both partial Motions for Reconsideration filed by the parties are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

As found by the CBAA in its Assailed Decision dated May 20, 2019, the antecedent facts of the present case are as follows:[4]

> "In September 2012, Petitioner-Appellant received a Notice of Realty Tax Delinquency on improvements dated September 11, 2012 and Statement of Account dated September 18, 2012 from the Office of the City Treasurer of Manila assessing the Petitioner-Appellant for real property taxes for the years 2000 to 2012 in the total amount of Php14,414,611.84, detailed as follows:

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[4] *Id.*, pp. 24-33 (Citations omitted).

Tax Year	Amount
2000	726,775.34
2001	726,775.34
2002	726,775.34
2003	726,775.34
2004	726,775.34
2005	1,453,550.67
2006	1,453,550.67
2007	1,453,550.67
2008	1,453,550.67
2009	1,453,550.67
2010	1,402,943.51
2011	1,200,514.79
2012	909,523.49
	14,414,611.84

The said tax delinquency was based on Tax Declaration No. (TDN) 0003, with Property Index No. (PIN) 117-05-831-01-001B2, issued by the Department of Assessment of the City of Manila.

On September 28, 2012, Petitioner-Appellant filed a letter of protest, based on the following grounds:

> (1) the real property tax being collected are for buildings and improvements which are either destroyed or rendered unusable by fire in 1998 or demolished in 2011; and
>
> (2) substantial portion of the taxes being collected amounting to Php6,540,978.04 are for the years 2000 to 2006 for which the right of the City Government to assess has already prescribed in accordance with Section 270 of the Local Government Code (LGC) of 1991.

On the same date, Petitioner-Appellant tendered BPI Manager's Check No. 2007 in the amount of Php14,414,611.84 in full payment of the alleged realty tax delinquency inclusive of penalty, interest and fire inspection fees.

Consequently, the City of Manila issued Official Receipt Nos. RAL-220170 for Php3,633,876.70 and RAL-220171 for Php10,780,735.14, or for a total of Php14,414,611.84, with handwritten annotations: 'Payment Under Protest'.

On November 7, 2012, upon the request of Petitioner-Appellant, the Department of Assessment of the City of Manila cancelled TDN 0003 with PIN 117-05-831-01-001B002 for the reason 'Improvement demolished as per field verification conducted on October 31, 2012'.

Subsequently, on January 18, 2013, Petitioner-Appellant, through counsel, filed a written claim for refund, in the total amount of Php6,751,841.29, with the following breakdown:

Tax Year	Amount
2000	726,775.34
2001	726,775.34
2002	726,775.34
2003	726,775.34
2004	726,775.34
2005	1,453,550.67
2006	1,453,550.67
2012 (4th quarter)	210,863.25
	Php 6,751,841.29

However, Petitioner-Appellant's claim for refund was not acted upon by the City Treasurer within the period prescribed. Thus, on April 15, 2013, Petitioner-Appellant filed an appeal with the LBAA docketed as LBAA Case No. 13-4258.

On July 16, 2018, Petitioner-Appellant received a copy of the LBAA Resolution denying the appeal of Petitioner-Appellant. Pertinent Portions of the LBAA Resolution states:

> *'xxx*
>
> *The instant appeal is without merit. Contrary to the contention of Appellant's counsel the present Appeal is TIME-BARRED for being filed with this Board too late in the day.*
>
> *xxx*
>
> *It was plain error for Appellant to file the appeal with this Board only last April 15, 2013. Evidently, Appellant's counsel made a total blunder in thinking that the sixty (60) day period to file an appeal COMMENCES on the supposed last day for the City Treasurer 'to take action on the claim for refund.'*
>
> *The law on this particular point is unequivocal. (RA 7160 local Government Code 1991)*
>
> *Section 252 Payment under Protest xxx*

Since Appellant's Letter of Protest was filed last Sept. 28, 2012 then the sixty (60) day period ended on Nov. 27, 2012.

On the other hand, even if this Board were to allow Appellant's Counsel's argument that the present appeal was tacked from time it filed the written Claim for Refund last January 18, 2013, then the sixty (60) day period 'from receipt thereof' as contemplated by law, definitely ended on March 19, 2013.

Accordingly, in both cases the filing of the instant appeal only last April 15, 2013 was long overdue.

Furthermore, with regard to the issue raised by Appellant-CCBPI on prescription under Section 270 of R.A. 7160 of the Local Government Code of 1991; xxx

And assuming, for the sake of argument, that the Appellee City Treasurer of Manila failed to collect real property taxes for five (5) years, the government's inherent power to collect taxes cannot just be easily subjected to estoppel. xxx

Thus, CCBPI cannot feign ignorance to its yearly tax liability as it is their duty to declare the true value of their property for tax assessment purposes. In fact, appellants payment history would show that they already started paying real property taxes for the subject property with Property Identification Number (PIN) 117-05-831-001-001- B002 (sic.) on January 20, 1999 and quite surprising and questionable is that they paid their tax liabilities covering the year 2000 to 2012 in the year 2012 only, paying under protest because they are now invoking prescription period under Section 270 of the Local Government Code of 1991, considering that they know fully well as far as back as year 2000 that they incur yearly real property tax liabilities.

From this, it may be inferred that Appellant CCBPI possesses intent to evade payment of taxes, in which, assuming without admitting that prescription under Sec. 270 of the same Code may apply, it must be for the period of ten (10) years, not five (5) years from the discovery of the intent to evade such payment."

Aggrieved by the Resolution of the LBAA, Petitioner-Appellant filed its Appeal before this Board.

The Notice of Appeal and Memorandum on Appeal was filed to this Board by Petitioner-Appellant on August 15, 2018. Advice to Submit Original Records of the Case and Advice to

Answer Appeal were both issued by this Board on September 05, 2018.

Subsequently, on October 02, 2018 this Board received Respondent-Appellee's Comment on Appeal. On October 03, 2018 original and complete records of the case as stated in the Transmittal Letter of Atty. Marissa E. Timones, Chairman, LBAA Manila was received by this Board.

On October 04, 2018, this Board issued the Notice of Preliminary Conference and set the Preliminary Conference on October 30, 2018.

During the preliminary conference both parties were asked to peruse the transmitted case records from the LBAA Manila to determine whether or not they are the same and complete documents submitted to or issued by the LBAA Manila. Atty. Henson Montalvo, Counsel of Petitioner- Appellant, confirmed that the LBAA case records are the same and complete pleadings submitted. Atty. Neil Salcedo, Counsel of Respondent-Appellee, manifested that Respondent-Appellee will rely on the regularity of the proceedings in the LBAA since Respondent-Appellee did not participate in the LBAA and no Comment was filed by Respondent-Appellee. Both parties confirmed that the LBAA case records contained the complete Orders, Decision, and other issuances of the LBAA Manila relative to the instant case.

Relative to the case title of the instant case, the Petitioner-Appellant is adding the words, *"now Coca-Cola FEMSA Philippines, Inc."*. The Secretary's Certificate and Special Power of Attorney submitted to the Board likewise contained said statement. However, the documents submitted by Petitioner-Appellant did not prove that Petitioner-Appellant amended its name. In view thereof, Petitioner-Appellant was ordered to submit to the Board proof of the amended name or its Amended Articles of Incorporation.

Petitioner-Appellant submitted the proof of authority of its authorized representatives to represent them during the preliminary conference, while Atty. Salcedo manifested that he will still secure a Special Power of Attorney from Respondent-Appellee.

A perusal of the Secretary's Certificate dated July 26, 2018 submitted by Petitioner-Appellant shows that the signing authority for the instant case required any one from Group A or B signatories *with any one from Group C signatories.* A Special

Power of Attorney which authorized A.M. Sison, Jr. & Partners Law Office or any of its partners and associates to perform several acts mentioned therein was issued by only one signing authority from Group A. Petitioner-Appellant was ordered to clarify whether or not said Special Power of Attorney is compliant with the Secretary's Certificate; and in the alternative, the proper Secretary's Certificate and/or Special Power of Attorney should be submitted.

During the preliminary conference, both parties manifested that they are not open for a possible amicable settlement. Hence, the proceedings of the case continued. The parties agreed that the issues of the instant case are as follows:

1. Whether or not the Appeal is time-barred for being filed out of time;
2. Whether or not the City Treasurer's right to collect has not yet prescribed; and
3. Whether or not petitioner-appellant is entitled to a claim for refund and interest in the concept of actual or compensatory damages.

As regards the Petitioner-Appellant's proposed stipulations of facts, Respondent-Appellee admitted all the proposed stipulations of facts of Petitioner-Appellant except the following:

1. That Tax Declaration No. 0003 was cancelled by the Department of Assessment of the City of Manila on November 7, 2012. (The admission will be subject to the presentation of the original or certified true copy of the cancellation of the tax declaration); and

2. That City Treasurer of Manila was furnished a copy of the Petitioner's appeal and requested for extension of time to file an answer, but never file the same.

On the other hand, all the proposed stipulations of facts of Respondent-Appellee were admitted by Petitioner-Appellant.

Atty. Montalvo did not bring the original documents that will be marked as their evidence in this case. As regards the evidence to be marked for Respondent-Appellee, Atty. Salcedo manifested that the evidence that will be marked are the documents in possession of Petitioner-Appellant. Hence, the parties moved for the resetting of hearing for the marking of their evidences.

Relative to the parties' compliance with the Order dated October 30, 2018, this Board received Petitioner-Appellant's Compliance with Manifestation on November 28, 2018 while Atty. Salcedo submitted on December 06, 2018 the Special Power of Attorney issued by the Respondent-Appellee. Atty. Salcedo manifested that he will submit the Special Power of Attorney to be issued by the mayor of Manila.

As regards Petitioner-Appellant's compliance this Board asked the Petitioner-Appellant to clarify the following:

1. Whether or not the Secretary's Certificate dated November 26, 2018 and Special Power of Attorney dated November 27, 2018 (Second Secretary's Certificate and SPA) attached in its Compliance with Manifestation pertain only to the preliminary conference and the connection of these documents to the previously issued Secretary's Certificate and Special Power of Attorney attached to its Memorandum of Appeal filed on August 15, 2018; and

2. Whether or not the interpretation stated in its Compliance with Manifestation specifically on page 2 on the number of signatories is the same interpretation on the Secretary's Certificate and Special Power of Attorney attached to its Memorandum of Appeal.

As a reply on question number one (1), Atty. Limosinero initially clarified that the second SPA and Secretary's Certificate pertained to the preliminary conference only. However, subsequently, Atty. Limosinero mentioned that in the second SPA, the authority also referred 'to cause the preparation and filing of an appeal'. As regards the inquiry on number two (2), Atty. Limosinero stated that the interpretation on the Compliance with Manifestation is the same interpretation on the previously issued Secretary's Certificate and Special Power of Attorney attached to the Memorandum of Appeal. In view of the foregoing, Atty. Limosinero moved that Petitioner-Appellant be clarified on these matters in writing and to incorporate them in Petitioner-Appellant's Position Paper. The motion was granted. Respondent-Appellee may likewise comment on Petitioner-Appellant's response and explanation and include them in her Position Paper.

The parties marked their respective pieces of evidences (sic). In view of the observation on the SPA of Petitioner-

Appellant, Atty. Salcedo manifested and moved to add the following issue although the parties have already defined the issues involved in this case: *'Whether or not the Appeal filed before the Central Board of Assessment Appeals is authorized'*.

The parties were ordered to submit their respective verified Position Papers and Replies. The Position Papers of Petitioner-Appellant and Respondent-Appellee were both received on December 21, 2018. Petitioner-Appellant's Reply on the Position Paper of Respondent-Appellee was received on January 18, 2019. No Reply was received from Respondent-Appellee.

On February 12, 2019 Clarificatory Hearing was conducted. Atty. Salcedo failed to appear despite proper notice. Atty. Regina Portento, representative of the Office of the City Treasurer, represented Respondent-Appellee. During the hearing all the evidence of the parties was confirmed by them. Petitioner-Appellant's Manifestation as regards its new corporate name, ***'Coca-Cola Beverages Philippines, Inc.'*** was received by the Board. Attached to said Manifestation is a photocopy of the Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission with photocopy of the Amended Articles of Incorporation. Atty. Montalvo moved that said Certificate with attached Amended Articles of Incorporation be included as an additional evidence for Petitioner-Appellant and proposed it to be marked as Exhibit 'K'. Atty. Portento interposed no objection on said motion. The motion was granted subject to the submission of the certified true copy of said document.

The Clarificatory Hearing proceeded and questions and/or clarifications were asked to both parties. As a result of the Clarificatory Hearing, the parties were ordered to submit several documents and /or comply to the Order dated February 12, 2019.

Respondent-Appellee's Compliance on the February 12, 2019 Order and Re[s]pondent-Appellee's Motion For Admission of Additional Evidence with Compliance and Manifestation were both received on February 27, 2019.

Another Clarificatory Hearing was conducted on March 11, 2019. During the hearing, Petitioner-Appellant marked the additional and substitute evidence in the instant case. The Revised List of Evidences for Petitioner-Appellant was confirmed by both parties. ℛ

> Relative to the Certification executed by Mr. Gil T. Lizaso, Jr. dated February 27, 2019 as regards authenticating the scanned copy of the Letter of Protest dated September 28, 2012 duly stamped as received by the City Treasurer's Office on October 16, 2012, Atty. Portento moved that Respondent-Appellee be given time to Comment on said Certification within five (5) days from today. Atty. Limosinero likewise moved that Petitioner-Appellant be given the same period from receipt of the Respondent-Appellee's Comment to file its Reply. The motions of the parties were granted.
>
> The Clarificatory Hearing proceeded. Questions and/or clarifications were asked to both parties. After clarifications from the parties, the hearing on the instant case was terminated. Upon receipt of Respondent-Appellee's Comment on the Certification and Petitioner-Appellant's Reply or the lapse of the period to file the same the case will be submitted for decision by the Board.
>
> No Compliance from Respondent-Appellee was received despite proper receipt of the Order dated March 11, 2019 on March 18, 2019. Certification issued by the Manila Central Post Office Acting Record Officer, Ms. Marissa Sable, stating the receipt of the said Order was received by this Office on April 25, 2019.
>
> In view of the foregoing circumstance, with the submission of the parties' Position Papers and Petitioner-Appellant's Reply, and the evidences of both parties the instant case was considered submitted for decision on April 25, 2019."

On May 20, 2019, the CBAA rendered the Assailed Decision partially granting petitioner's appeal.

Unsatisfied, both petitioner and respondent filed their respective Motions for Partial Reconsideration against the Assailed Decision which the CBAA denied in the Assailed Resolution for lack of merit.

On November 18, 2019, petitioner filed its Petition for Review.

In a Resolution dated December 5, 2019,[5] the Court *En Banc* required respondent to file its Comment within ten (10) days from notice.

On January 16, 2020, respondent filed its Comment.[6] Ju

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[5] *Id.*, pp. 275-276.
[6] *Id.*, pp. 277-280.

In a Resolution dated February 14, 2020, the Court *En Banc* noted the submission of respondent's Comment. In the same Resolution, the Court *En Banc* likewise granted petitioner a period of five (5) days from notice to take appropriate corrective action as regards the fact that the CBAA and the Local Board of Assessment Appeals of the City of Manila were improperly impleaded in the Petition for Review. The Court *En Banc* also ordered the Chairperson of the CBAA to elevate the entire original records of the case to this Court within ten (10) days from notice.

On March 3, 2020, petitioner filed a Motion for Leave of Court to Amend Petition for Review with Attached Amended Petition for Review.[7]

In a Resolution dated June 5, 2020,[8] the Court *En Banc* granted petitioner's Motion and admitted the present Amended Petition for Review. Accordingly, respondent was directed to file its Comment to the Amended Petition for Review within ten (10) days from notice.

In a Resolution dated December 1, 2020,[9] the Court *En Banc* noted that respondent failed to file its Comment to the Amended Petition for Review as per the Records Verification Report dated November 11, 2020 issued by this Court's Judicial Records Division. Thus, the present case was deemed submitted for decision.

THE ISSUES

Petitioner filed the present Amended Petition for Review on the basis of the following grounds: [10]

1. Whether petitioner's Appeal from inaction of the City Treasurer on its claim for refund is time-barred for being filed out of time.

2. Whether respondent City Treasurer's right to collect has already prescribed.

3. Whether petitioner is entitled to legal interest in the concept of actual or compensatory damages.

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[7] *Id.*, pp. 284-305.
[8] *Id.*, pp. 565-566.
[9] *Id.*, pp. 570-571.
[10] *Id.*, p. 297.

THE COURT *EN BANC*'S RULING

In the present Amended Petition for Review, petitioner claims that its appeal from the inaction of the City Treasurer on its claim for refund of real property taxes (RPT) was filed within the period allowed by law.[11] Citing a decision previously rendered by the CBAA, petitioner submits that a taxpayer who is not satisfied with the inaction of the local treasurer on his claim for refund may appeal to the Local Board of Assessment Appeals (LBAA) within sixty (60) days after the lapse of sixty (60) days from the date the claim was filed with the local treasurer.[12] Under Section 253 of the Local Government Code (LGC) respondent had 60 days or until March 19, 2013 to act on the same. After the lapse of the said period, petitioner had a period of 60 days from March 19, 2013 until May 18, 2013 to appeal to the LBAA. Petitioner asserts that its claim for refund was filed on January 13, 2013. As the said claim for refund was not acted upon by the respondent within the 60-day period, petitioner posits that its appeal to the LBAA on April 15, 2013 was well within the prescribed period.[13]

Petitioner also emphasizes that the subject of its appeal to the LBAA is the inaction of respondent on its claim for refund and not its letter of protest.[14] Petitioner contends that the remedy of protesting an RPT assessment is separate and distinct from the remedy of filing a claim for refund of overpaid RPT.[15] The first remedy is governed by Section 252 of the LGC while the second remedy is governed by Section 253 of the LGC.[16] Given that these remedies are governed by separate provisions of law, petitioner postulates that they shall be considered as separate remedies, especially where the reliefs sought are different.[17] Petitioner likewise advances the view that the protest filed under Section 252 has nothing to do with the claim for refund filed under Section 253 and that a finding by the city treasurer in the protest that a tax was illegally or erroneously collected is not a requirement for filing a separate claim under Section 253.[18] It adds that there is no law, jurisprudence, or ruling which prohibits the filing of a claim for refund subsequent to a protest. Consequently, a taxpayer who had protested an assessment is not precluded from later on filing a claim for refund.[19]

Petitioner also maintains that respondent's right to collect RPT has already prescribed.[20] Citing Section 270 of the LGC and Section 128 of the Revenue Code of Manila, petitioner submits that failure to collect RPT within five (5) years from the date it becomes due bars the collection thereof even by

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[11] *Id.*, pp. 297-300.
[12] *Id.*, pp. 298-299.
[13] *Id.*
[14] *Id.*, pp. 299-300.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*, pp. 300-302.

administrative action through levy or by judicial means, unless the 5-year prescriptive period was suspended under the circumstances.[21] According to petitioner, the RPT for the years 2000 to 2006 can no longer be collected since 5 years have already lapsed without any action on the part of the respondent.[22]

Finally, petitioner claims that it is entitled to legal interest in the concept of actual or compensatory damages.[23] Petitioner avers that it is entitled thereto due to the unexplained and unjust refusal of respondent to grant its claim for refund.[24]

On the other hand, respondent counters that the grounds raised by petitioner are but mere reiteration or rehash of the issues already raised before the CBAA and which were found to be unmeritorious.[25] It also insists that petitioner's appeal was filed beyond the 60-day period provided under Section 252 of the LGC.[26]

Meanwhile, it may be recalled that the CBAA in its Assailed Decision held that petitioner failed to exhaust administrative remedies when it filed its claim for refund even when its protest against the RPT assessment previously issued by respondent was still pending.[27] According to the CBAA, there is still no finding that the RPT levied by respondent is illegal or erroneous because there is a pending protest with the issues involved therein are left unresolved.[28] The CBAA further stated that entitlement to a tax refund does not necessarily call for the automatic payment of the sum claimed especially if it is part of a previous protest and no judgment has yet been rendered.[29] Curiously, though, the CBAA held that the appeal is time-barred for failure to file the same within the reglementary period allowed by law.[30]

The CBAA had also ruled that petitioner cannot avail of the remedy of the claim for refund because there was still no finding that the RPT paid are illegal or erroneous.[31] The CBAA also categorically stated that petitioner's claim for refund was only an afterthought remedy availed of since the period to file an appeal on its protest already lapsed.[32] The foregoing pronouncement notwithstanding, the CBAA still partially granted petitioner's claim for refund in the amount of ₱210,863.25 representing RPT payment for the subject properties for the 4th quarter of 2012.[33] In granting the said amount, the CBAA

[21] *Id.*
[22] *Id.*
[23] *Id.*, pp. 302-303.
[24] *Id.*
[25] *Id.*, pp. 278-279.
[26] *Id.*
[27] *Id.*, p. 56.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*, pp. 56-57.

had ruled that there is a clear and convincing evidence that the RPT pertaining to the tax declaration subject of the present case was already cancelled and the taxes due therefor had ceased effective 4th quarter of 2012.[34] The CBAA had likewise imposed interest in the concept of actual or compensatory damages on the amount to be refunded.[35]

As regards the issue of prescription, the CBAA held that the same was moot and academic given that the appeal was time-barred.[36]

After judicious review of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* holds that petitioner's claim for refund lacks legal and factual bases and, hence, shall be denied.

At the outset, the Court *En Banc* expresses its agreement with petitioner's assertion that the subject of the present Amended Petition for Review is the appeal of respondent's inaction on petitioner's claim for refund and not the protest of the RPT assessment issued by respondent. The Court *En Banc* likewise agrees that the filing of protest of RPT assessment is a separate and distinct remedy from the remedy of filing a claim for refund of overpaid RPT.

In *Olivarez v. Marquez*,[37] the Supreme Court aptly discussed the nature of the protest of RPT assessment as follows:

> "Republic Act (R.A.) No. 7160, or the Local Government Code 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 R.A. No. 7160 provides:
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> > 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 Area, who shall decide the protest within sixty (60) days from receipt. *9z*

[34] *Id.*
[35] *Id.*, pp. 57-60.
[36] *Id.*, p. 57.
[37] G.R. No. 155591, September 22, 2004, 438 SCRA 683-685 ("*Olivarez*").

> (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 credits 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 Two, Book II of this Code. *(Emphasis supplied)*

Chapter 3, Title Two, Book II of the Local Government Code, entitled 'Assessment Appeals,' refers to the appellate procedure before the Local Board of Assessment Appeals (LBAA), as provided in Section 226, et seq. of the Code, and the Central Board of Assessment Appeals (CBAA), as provided in Section 230 thereof.

<u>Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained.</u> There shall be annotated on the tax receipts the words 'paid under protest.' It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

<u>If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the notice of assessment</u>, as provided in Section 226 of R.A. No. 7160, to wit:

> 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.

> And, if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof." *(Underscoring supplied and citations omitted)*

On the other hand, the remedy of claim for refund of RPT was explained in *Allied Banking Corporation v. Quezon City Government*,[38] to wit:

> "x x x [E]ntitlement to a tax refund does not necessarily call for the automatic payment of the sum claimed. <u>The amount of the claim being a factual matter, it must still be proven in the normal course and in accordance with the administrative procedure for obtaining a refund of real property taxes, as provided under the Local Government Code.</u>
>
> <u>Under Section 253 of the Local Government Code, the claim for refund or credit for taxes must be filed before the city treasurer who shall decide the claim based on the tax declarations, affidavits, documents and other documentary evidence to be presented by petitioner.</u>
>
>> 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 provided in Chapter 3, Title Two, Book II of this Code."

In essence, the protest contemplated under Section 252 of the LGC is needed when there is a question as to the reasonableness of the amount assessed or, stated differently, when it involves an erroneous assessment.[39] An

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[38] G.R. No. 154126. September 15, 2006 (Resolution), 502 SCRA 117-118.

[39] *Ty v. Trampe*, G.R. No. 117577, December 1, 1995, 250 SCRA 519.

erroneous assessment presupposes that the taxpayer is subject to the tax but is disputing the correctness of the amount assessed.[40] With an erroneous assessment, the taxpayer claims that the local assessor erred in determining any of the items for computing the real property tax, *i.e.*, the value of the real property or the portion thereof subject to tax and the proper assessment levels.[41] By way of example, it may be noted that the Supreme Court had ruled in *Olivarez* that the following issues are questions of fact involving the correctness or reasonableness of an assessment, to wit: (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.

On the other hand, the claim for refund under Section 253 of the LGC is the prescribed administrative procedure for obtaining refund of overpaid RPT, on the basis of illegal or erroneous RPT assessments. Section 253 of LGC succinctly states:

> "SEC. 253. *Repayment of Excessive Collections.* — **When an assessment of basic real property tax**, or any other tax levied under this Title, **is <u>found to be illegal or erroneous</u> 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 provided in Chapter 3, Title Two, Book II of this Code." *(Emphasis and underscoring supplied)*

As may be gleaned above, the claim for refund under Section 253 is explicitly predicated on an erroneous or illegal[42] assessment of RPT and/or other taxes levied under Title II, Book II of the LGC. ℘

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[40] *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014 citing *National Power Corporation v. Province of Quezon*, G.R. No. 171586, January 25, 2010, 611 SCRA 71, 91.

[41] *Id.*

[42] An assessment is illegal if it was made without authority under the law. In case of an illegal assessment, the taxpayer may directly resort to judicial action without paying under protest the assessed tax and filing an appeal with the Local and Central Board of Assessment Appeals. (*City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014 citing *Ty v. Trampe*, 321 Phil. 81 [1995]).

The records of the present case clearly show that the subject of the present Petition for Review is the appeal of respondent's inaction on petitioner's claim for refund. As such, it is primarily governed by Section 253 in relation to the provisions of Chapter 3, Title II, Book II of the LGC. As it is true with any other claims for tax refund, the claim for RPT refund is subject to the well-settled doctrine that **tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.**[43] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

At this juncture, it must be pointed out that petitioner grievously erred when it alleged that the protest it filed under Section 252 has nothing to do with its claim for refund subject of the present case. It likewise erred in asserting that a finding by the respondent in the pending protest that the RPT was illegally or erroneously collected is not a requirement for filing a separate claim under Section 253. The very text of Section 253 of the LGC belies such assertions. The said provision expressly requires a prior finding that the RPT assessment is either illegal or erroneous and that the taxpayer is entitled to a reduction or adjustment of the RPT it previously paid. In fact, the two-year period within which the written claim for refund must be filed before the local treasurer is unequivocally reckoned from the date when the taxpayer becomes legally entitled to the RPT reduction or adjustment.

As correctly pointed out by the CBAA, there is yet no concrete finding that the RPT levied by the respondent is either illegal or erroneous at the time the claim for refund was filed because petitioner's protest was then still pending. The Notice of Realty Tax Delinquency dated September 11, 2012 and Statement of Account dated September 18, 2012 issued by respondent assessing petitioner for RPT for the years 2000 to 2012 in the total amount of ₱14,414,611.84 still subsist at that time. Accordingly, there is no basis, factual or legal, for the grant of petitioner's claim for refund. To be sure, the two-year period prescribed by Section 253 has not even commenced because it was never established that petitioner is entitled to the reduction or adjustment of the RPT it previously paid.

Based on the records, it appears that the filing of petitioner's claim for refund was triggered by the issuance of the Notice of Cancellation of Tax Declaration dated November 7, 2012 by the Department of Assessment of the City of Manila which effectively cancelled the tax declaration of the subject properties.[44] A closer look on the said document, however, reveals that the same cannot be used as basis for petitioner's claim for refund. For proper frame of reference, a scanned copy of the Notice of Cancellation of Tax

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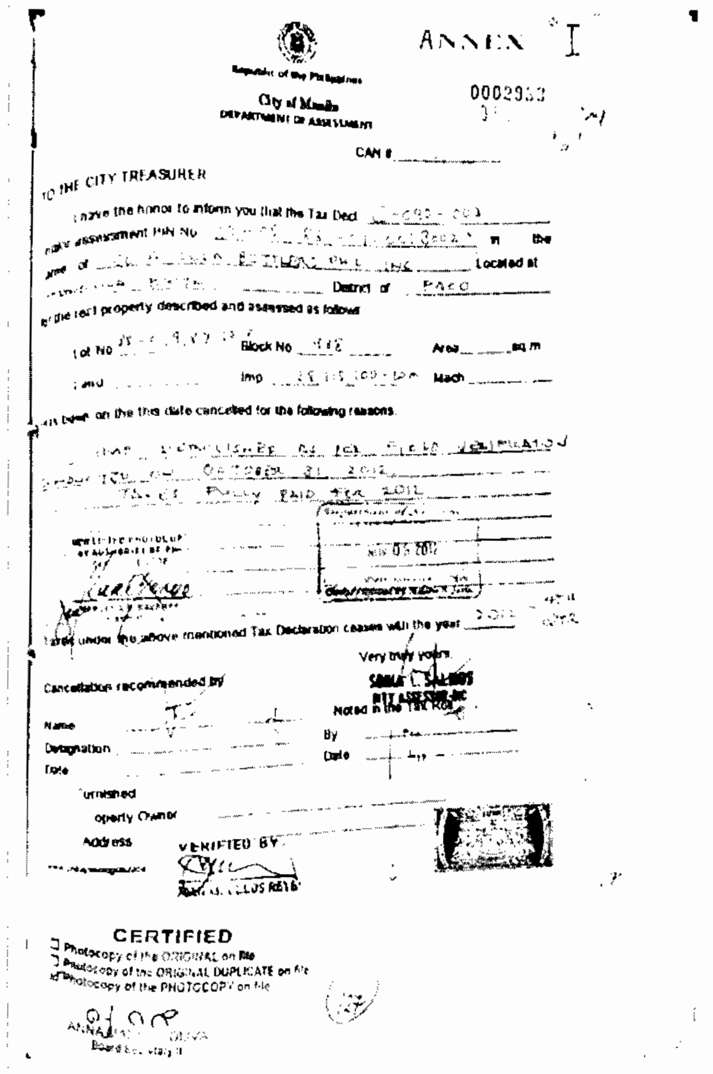
[43] *International Container Terminal Services, Inc. v. City of Manila*, G.R. No. 185622, October 17, 2018, 883 SCRA 397; *China Banking Corporation v. City of Manila*, G.R. No. 204117, July 1, 2015, 761 SCRA 259.

[44] See Annex "I" and Annex "J" and "I" of the Petition for Review, Court *En Banc*'s Docket, pp. 127-130.

Declaration dated November 7, 2012 by the Department of Assessment of the City of Manila is reproduced below:


ANNEX "I"

Republic of the Philippines
City of Manila
DEPARTMENT OF ASSESSMENT

0002933

CAN # ____

TO THE CITY TREASURER

I have the honor to inform you that the Tax Decl. ____ covering assessment PIN No. ____ in the name of ____ located at ____ District of PACO, the real property described and assessed as follows:

Lot No. ____ Block No. ____ Area ____ sq.m

Land ____ Imp ____ Mach ____

has been on this date cancelled for the following reasons:

____ DEMOLISHED AS PER FIELD VERIFICATION CONDUCTED ON OCTOBER 31, 2012

TAX FULLY PAID FOR 2012

NOV 05 2012

Taxes under the above mentioned Tax Declaration ceases with the year 2012 4th QTR

Very truly yours,

Cancellation recommended by:

Noted in the Tax Roll

Name ____ By ____

Designation ____ Date ____

Date ____

Furnished

Property Owner

Address

VERIFIED BY:

CERTIFIED

Photocopy of the ORIGINAL on file
Photocopy of the ORIGINAL DUPLICATE on file
Photocopy of the PHOTOCOPY on file

Board Secretary II

Truth be told, the CBAA erred in granting the refund of the amount of ₱210,863.25 representing RPT payment for the subject properties for the 4th quarter of 2012. The above document shows that the tax declaration covering the subject properties was cancelled because of two (2) reasons, namely: (1) the improvements were demolished as per field verification conducted on October 31, 2012; and **(2) taxes were fully paid for the year 2012**. While it is true that the above document contains a statement that **"Taxes under the above[-]mentioned Tax Declaration ceases with the year 2012 – 4th QTR"**, the same does not mean that no RPT should have been paid for such quarter. It only signifies that it was the last quarter in which the subject properties will be liable for RPT. This interpretation is in consonance with Section 221 of the LGC which states:

> "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 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**." *(Emphasis and underscoring supplied)*

As earlier stated, the cancellation of the tax declaration covering the subject properties was made on November 7, 2012. Considering that such reassessment of petitioner's properties due to the total destruction thereof falls within the 4th quarter of 2012, the same shall take effect only on the immediately succeeding quarter, *i.e.*, 1st quarter of 2013. It is therefore clear that petitioner has no basis to ask for a refund of RPT covering the 4th quarter of 2012.

Given that there is no basis for the grant of petitioner's claim for refund, the award of interest is likewise unwarranted. At any rate, the Court *En Banc* holds that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest.[45] There is nothing in the Local Government Code or any other law whatsoever that allows the award of interest to the taxpayer in cases of RPT refunds.

WHEREFORE, the Amended Petition for Review is **DENIED** for lack of merit. The Assailed Decision of the Central Board of Assessment Appeals dated May 20, 2019 is **MODIFIED**. Accordingly, petitioner's claim for refund of real property taxes and interests dated January 17, 2013 in the total amount of ₱6,751,841.29 is **DENIED** for lack of legal and factual bases.

SO ORDERED.

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

[45] *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. Nos. L-26686 & L-26698, October 30, 1980, 100 SCRA 568 citing *Collector of Internal Revenue v. Binalbagan Estate, Inc.*, 13 SCRA 10; *Collector of Internal Revenue v. Fisher*, 1 SCRA 113; *Collector of Internal Revenue v. Sweeney*, 106 Phil. 65.

WE CONCUR:

(See Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I join the Separate Opinion of the Presiding Justice)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I join the Separate Opinion of the Presiding Justice)
MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BEVERAGES PHILIPPINES, INC., (formerly COCA-COLA FEMSA PHILIPPINES, INC./COCA-COLA BOTTLERS PHILIPPINES, INC.), *Petitioner,*	**CTA EB No. 2173** (CBAA Case No. L-142-2018) (LBAA Case No. 13-4258)
	Present:
-versus-	**DEL ROSARIO,** ***P.J.,*** **CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
CITY TREASURER OF MANILA, *Respondent.*	Promulgated: MAY 19 2021 11:58am

x --- x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the result.

I submit that the claim for refund must be denied as the Notice of Realty Tax Delinquency on Improvements dated September 11, 2012 and Statement of Account dated September 18, 2012 from the Office of the City Treasurer of Manila assessing petitioner for real property taxes for the years 2000 to 2012 in the total amount of Php14,414,611.84 had become **final and executory** for failure of petitioner to appeal the City Treasurer's inaction on its protest within the period provided under Section 252 of the Local Government Code (LGC) of 1991.[1]

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[1] Republic Act No. 7160, October 10, 1991.

Records reveal the following:

1. In September 2012, petitioner received a Notice of Realty Tax Delinquency on Improvements dated September 11, 2012 and Statement of Account dated September 18, 2012 from the Office of the City Treasurer of Manila assessing petitioner for real property taxes for the years 2000 to 2012 in the total amount of Php14,414,611.84, based on the Tax Declaration No. 003[2] issued by the Department of Assessment of the City of Manila;

2. On September 28, 2012, petitioner tendered BPI Manager's Check No. 2007 in the amount of Php14,414,611.84 in full payment of aforesaid tax delinquency;[3]

3. On October 16, 2012, petitioner filed with the Office of the City Treasurer a Letter dated September 28, 2012 protesting the Notice of Realty Tax Delinquency and Statement of Account;[4]

4. On November 7, 2012, upon request of petitioner, the Department of Assessment of the City of Manila cancelled petitioner's Tax Declaration No. 003;[5]

5. On January 18, 2013, petitioner filed a written claim for refund in the amount of Php6,751,841.29 (covering the taxable years 2000 to 2006 and the 4th quarter of taxable year 2012);

6. Due to inaction of the City Treasurer on its claim for refund, petitioner filed an appeal before the Local Board of Assessment Appeals (LBAA) on April 15, 2013;

7. On July 16, 2018, petitioner received LBAA's Resolution denying its appeal; thus, petitioner filed an appeal before the Central Board of Assessments Appeal (CBAA);

8. In a Decision rendered on May 20, 2019, the CBAA partially granted petitioner's appeal and ordered the refund of the real property tax collected for the 4th quarter of 2012 in the amount of Php210,863.25 plus interest.

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

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[2] Property Index No. 117-05-831-01-001 B2.
[3] Inclusive of penalty, interest and fire inspection fees.
[4] Amended Petition for Review, p. 4.
[5] *Supra* Note 1.

> Metropolitan Manila Area, 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 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."

Relative thereto, Section 226, Chapter 3 (entitled 'Assessment Appeals'), Title II, Book II of the LGC of 1991, states:

> "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."

In *Dr. Pablo R. Olivarez, et al. vs. Mayor Joey Marquez, et al.,*[6] the Supreme Court clarified the reckoning point of the 60-day period within which to appeal before the LBAA, viz.:

> "Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.
>
> If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the

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

> protest or receipt of the notice of assessment, as provided in Section 226 of R.A. No. 7160 xxx:
>
> Xxx xxx xxx."

The 60-day period within which to appeal to LBAA under Section 252 (d), in relation to Section 226, of the LGC shall be reckoned from the receipt of the denial of the protest or from the lapse of the 60-day period within which the treasurer should act on the protest. It would be absurd to reckon the 60-day period to appeal to LBAA from the date of the receipt of the notice of assessment as the same would necessarily have lapsed even before the expiration of the 60-day period for the treasurer to decide the protest.

In the present case, petitioner filed its protest on October 16, 2012. The City Treasurer had 60 days from October 16, 2012 or until December 15, 2012 within which to act thereon. Upon the lapse of the 60-day period on December 15, 2012, *sans* any action on the part of the City Treasurer, petitioner had 60 days from December 15, 2012 or until **February 13, 2013 within which to file an appeal before the LBAA**.

Instead of filing an appeal within the reglementary period with the LBAA to question the inaction of the City Treasurer on its protest, petitioner filed **an appeal with the LBAA on April 15, 2013 to appeal the City Treasurer's inaction on its claim for refund**. Evidently, at the time of filing the appeal with the LBAA on April 15, 2013, the assessment against petitioner has become final and executory.

On this point, I find the doctrine laid down in *City of Manila and Office of the City Treasurer of Manila vs. Cosmos Bottling Corporation*[7] applicable to the present case, although it involves a local business tax assessment, *viz.*:

> "Xxx **an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable**. Even if the action in court is one of claim for refund, **the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally**. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. **It cannot be anytime thereafter because the lapse of 30 days from decision**

[7] G.R. No. 196681, June 27, 2018.

> **or inaction results in the assessment becoming conclusive and unappealable.**" *(Boldfacing supplied)*

Considering that the assessment against petitioner, which, as eloquently put in the *ponencia* actually triggered the filing of the claim for refund, has **become final, conclusive and unappealable** for petitioner's failure to appeal the City Treasurer's inaction on its protest within the reglementary period, I submit that the CBAA may not modify the assessment *nay* grant petitioner a refund, albeit partially, in the amount of Php210,863.25 plus interest.

All told, I VOTE to: (i) DENY the Amended Petition for Review for lack of merit; (ii) MODIFY the Decision dated May 20, 2019 of the CBAA; and, (iii) DENY petitioner's claim for refund of real property taxes in the amount of Php6,751,841.29, plus interest, for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice