REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

CHINA BANKING CORPORATION,
Petitioner,

- versus -

CITY TREASURER OF KALOOKAN,
Respondent.

CTA-E.B. NO. 151
(C.T.A. Case AC No. 12)

Present:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ*.

Promulgated:
AUG 28 2006

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DECISION

UY, J.:

Petitioner elevates its case to the Court *en banc* on January 25, 2006 seeking for the reversal of the Decision promulgated on August 31, 2005 and the Resolution promulgated on December 2, 2005, rendered by the First Division of this Court in CTA Case AC No. 12, entitled "China Banking Corporation vs. City Treasurer of Kalookan."

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

Petitioner, China Banking Corporation, is a universal banking corporation organized and existing under the laws of the Philippines, with principal office at No. 8745 Paseo de Roxas corner Villar Streets, Makati City; while respondent, Treasurer of Kalookan, is the duly appointed and qualified City Treasurer of Kalookan City, impleaded in his/her capacity with office address at 3/F, City Hall of Kalookan City.

Sometime on October 20, 2004, petitioner filed a Complaint for Refund of Sum of Money before Branch 125 of the Regional Trial Court of Caloocan City docketed as Civil Case No. C-21049.[1] This is in relation to petitioner's payment under protest by its Kalookan Branch of the total amount of P692,117.59 to respondent on October 21, 2002 arising from the latter's demand for local tax embodied in notices of publication and auction sale uniformly dated July 29, 2002, pursuant to Sections 254 and 258 of the Local Government Code of 1991 (LGC). Section 254 of the LGC pertains to "Notice of Delinquency in the Payment of Real Property Tax", while Section 258 of the same Code pertains to "Levy on Real Property".

Respondent City Treasurer of Kalookan City filed a Motion to Dismiss dated January 24, 2005 stating that petitioner failed to exhaust administrative remedies under the LGC, particularly Section 252 (entitled "Payment under Protest"), in relation to Section 226 (entitled "Local Board of Assessment Appeals"). Respondent posits that petitioner cannot bypass the authority of the concerned Local Board of Assessment Appeals (LBAA) and directly seek redress from the courts on the pretext of raising a supposedly pure question of law.

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[1] Complaint, Civil Case No. C-21049, Regional Trial Court of Caloocan City, Branch 125, Rollo, pp. 55-59.

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After petitioner filed its Opposition thereto on February 7, 2005, the court a quo rendered its assailed Order dated February 8, 2005 granting respondent's Motion to Dismiss on the ground that petitioner failed to exhaust all administrative remedies, that petitioner's action is still premature as the case is not yet ripe for judicial determination; and therefore, it has no cause of action to seek in court. We quote the said Order:

> "**ORDER**
>
> Before this Court is a 'Motion to Dismiss' filed by the defendant through counsel on January 26, 2005.
>
> The dismissal of this case is sought on ground of failure to state a cause of action. The movant alleged that the plaintiff failed to appeal the disputed assessment before the Local Board of Assessment as required for by R.A. 7160. Further, the plaintiff also failed to comply with the rule on exhaustion of administrative remedy.
>
> The motion is meritorious.
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> Indeed, R.A. 7160 known as the Local Government Code of 1991 particularly Sec. 226, Chapter 3, Title II, Book II requires filing of an appeal within sixty (60) days from receipt of the written notice of assessment before the Local Board of Assessment Appeals. The herein plaintiff failed to comply thereto having admitted that they merely paid under protest with the corresponding letter of protest filed.
>
> As correctly pointed out by the defendant, the plaintiff failed to exhaust the administrative remedy available. Suffice it to state that the plaintiff's action is still premature as the case is not yet ripe for judicial determination and therefore, it has no cause of action to seek in court.
>
> 'If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the Court's judicial power can be sought. The party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent

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unnecessary and premature resort to court.' (Laguna CATV Network, Inc., vs. Hon. Alex D. Maranan, ETC., et al., GR No. 139492, November19, 2002, Sandoval-Gutierrez, J.)

WHEREFORE, in view of the foregoing, let this case be as it is hereby ordered **DISMISSED**.

SO ORDERED:

Caloocan City, February 8, 2005.

(Signed)
MODESTO C. JUANSON
Judge"[2]

Thereafter, petitioner filed a Motion for Reconsideration[3] of said Order on March 2, 2005, but the same was denied in the Order dated March 29, 2005. The Order reads:

"**ORDER**

Before this Court is a 'Motion for Reconsideration' filed by the plaintiff *(herein petitioner)* thru counsel on March 2, 2005 and the corresponding 'Comment' thereto filed by the plaintiff *(should be defendant; herein respondent)* thru counsel on March 9, 2005.

The allegations contained in the aforesaid motion has been extensively discussed and appropriately passed upon by the court, hence, the Court finds no cogent reason to modify or reverse its order.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is **DENIED**.

SO ORDERED.
Caloocan City, March 29, 2005.

(Signed)
MODESTO C. JUANSON
Judge"[4]

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[2] Order dated February 8, 2005, Rollo, pp. 34-35.
[3] Motion for Reconsideration in Civil Case No. C-21049, RTC, Branch 125, Caloocan City, Rollo, pp. 47-50.
[4] Order dated March 29, 2005, Rollo, p. 36.

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Consequently, petitioner filed a Petition for Review docketed as CTA Case AC No. 12 before the First Division of this Court on May 12, 2005 raising the sole issue of whether or not it is entitled for refund.[5] Respondent filed an Answer/Comment thereto on June 8, 2006.

On August 31, 2005, the First Division of this Court found the dismissal of Civil Case No. C-21049 by the trial court proper, and correspondingly dismissed the aforesaid petition for lack of merit. Petitioner's Motion for Reconsideration of said Decision was likewise denied in the Resolution promulgated on December 2, 2005.[6]

Hence, this petition for review pursuant to Sections 3(b) and 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the Revised Rules of Court, as amended, praying for the reversal of the Decision dated August 31, 2005 and Resolution dated December 2, 2005 rendered by the First Division of this Court in CTA Case AC No. 12.

ISSUE

A sole issue is raised in this petition identical to that raised in CTA Case AC No. 12, to wit: "Whether or not petitioner is entitled to refund of its alleged overpayment in the amount of P692,117.59".

PETITIONER'S THEORY

Petitioner contends that the subject tax was collected without legal basis due to the following reasons:

[5] Petition for Review, CTA Case AC No. 12, Rollo, pp. 22-31.
[6] Resolution dated December 2, 2005, Rollo, pp. 138-142.

1) Such payment should be refunded for being in excess of that allowed to be collected by the Local Government Code, specifically Section 270 thereof which limits the collection of taxes to five (5) years from the time they became due;

2) Interest is limited to thirty six months under Section 255 of the Local Government Code; in excess thereof, return is proper;

3) Only automated teller machines are subject to taxation and any excess should be refunded as provided in Department of Finance 2nd Indorsement dated January 30, 2001 which states that machineries subjected to taxation, as far as banks are concerned are limited to Automated Teller Machines (ATMs) and therefore collection on other machines is not proper; and

4) Recourse to the Regional Trial Court was proper because of the inference that no assessment was sent by respondent to petitioner as only notices of publication and auction sale uniformly dated July 29, 2002 were brought to the attention of petitioner's counsel; and in the absence of an assessment, there was no occasion for petitioner to recover from a level higher than the City Treasurer herself. Moreover, petitioner claims that under Section 226 of the Local Government Code, the term used is "may", which is permissive in nature giving the impression that the taxpayer, at its option, could choose the remedy to avail of and appeal to the Board of Assessment Appeals or seek redress from the courts, or any other available legal remedy. Lastly, respondent did not send any written response to plaintiff's (herein

petitioner's) protest, leaving it with no recourse but to seek relief from the Courts.

RESPONDENT'S THEORY

In the Comment and/or Opposition filed by respondent through registered mail on March 29, 2006 and received by this Court on April 5, 2006, it is alleged that the instant petition is procedurally flawed as it was incumbent upon the petitioner to show that this Honorable Court committed reversible error in issuing the assailed Decision and Resolution in this case but petitioner miserably failed to do so. Furthermore, respondent contends as follows:

1) The collection of ten-year back taxes on the real properties of petitioner is justified because petitioner has allegedly deliberately and fraudulently evaded the payment of its real property taxes on the subject essential and indispensable machines of petitioner for its banking enterprise, from 1991 to 2002; thereby denying the City government of Kalookan of its much needed funds;

2) Official duty has been regularly performed by the City Assessor of Kalookan City when it allegedly made an assessment on the machines of petitioner which were among other things, listed, classified, and appraised as real properties; while the alleged non-receipt by the petitioner of an assessment was based solely on the presumption made by the counsel for the petitioner;

3) R.A. 7160, also known as the Local Government Code of 1991 (LGC), provides for remedies against the action of administrative board, body or officer and petitioner did not avail of the proper remedy, specifically Section 252 entitled "Payment Under Protest", in relation to Section 226, Chapter 3, Title II of the same Code, which provides the method of appeal before the Local Board of Assessment Appeals; and

4) Petitioner's complaint was properly dismissed for failure to exhaust available administrative remedies for refund of taxes found to be erroneously or illegally collected, as the arguments raised by petitioner involve questions of facts, which should have been threshed out before the proper administrative arm prior to seeking judicial recourse.

THE COURT EN BANC'S RULING

The instant petition is bereft of merit.

Republic Act (R.A.) No. 7160 or the Local Government Code of 1991 (LGC), 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. Relative thereto, the Supreme Court laid down the following guidelines on the administrative remedies available to the affected taxpayer in the case of ***Lopez vs. the City of Manila***,[7] to wit:

> "As a general rule, where the law provides for the remedies against the action of an administrative board, body, or officer, relief to courts can be sought only after exhausting all

[7] 303 SCRA 448, 458 (1999).

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remedies provided. The reason rests upon the presumption that the administrative body, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. **Therefore, where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts.** This rule, however, admits certain exceptions.

With regard to questions on the legality of a tax ordinance, the remedies available to the taxpayer are provided under **Sections 187, 226, and 252 of R.A. 7160.**

Section 187 of R.A. 7160 provides, that the taxpayer may question the constitutionality or legality of tax ordinance on appeal within thirty (30) days from effectivity thereof, to the Secretary of Justice. The petitioner after finding that his assessment is unjust, confiscatory, or excessive, must have brought the case before the Secretary of Justice for questions of legality or constitutionality of the city ordinance.

Under ***Section 226 of R.A. 7160***, an owner of real property who is not satisfied with the assessment of his property may, within sixty (60) days from notice of assessment, appeal to the Board of Assessment Appeals.

Should the taxpayer question the excessiveness of the amount of tax, he must first pay the amount due, in accordance with ***Section 252 of R.A. 7160***. Then, he must request the annotation of the phrase 'paid under protest' and accordingly appeal to the Board of Assessment Appeals by filing a petition under oath together with copies of the tax declarations and affidavits or documents to support his appeal.

The rule is well-settled that courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulations of activities coming under the special technical knowledge and training of such agencies. Furthermore, the crux of petitioner's cause of action is the determination of whether or not the tax is excessive, oppressive or confiscatory. This issue is essentially a question of fact and thereby, precludes this Court from reviewing the same. *(Emphasis*

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supplied).

Thus, a taxpayer who wishes to question the constitutionality of a local tax ordinance should avail of the remedy under Section 187 of the LGC which provides the procedure to be taken before the Secretary of Justice. On the other hand, should the taxpayer question the excessiveness of the amount of a local tax, he must first pay the amount due, in accordance with Section 252 of the said Code, request the annotation of the phrase "paid under protest" on the tax receipts, and file a written protest first before the appropriate local treasurer, who must decide the same within sixty (60) days from receipt thereof. Again, this is still subject to his right of appeal to the Board of Assessment Appeals, in cases of denial or upon lapse of the prescribed sixty (60)-day period, by filing a petition under oath together with copies of the tax declarations under the procedure mentioned in Section 226 of the said Code. Section 226 pertains to the remedy available before the LBAA.

On the basis of the foregoing guidelines, We look into the propriety of the legal remedies taken by petitioner. An affirmative determination will favorably resolve the sole issue raised in this petition as to the entitlement of petitioner to the refund of its alleged overpayment of real property tax to respondent City Treasurer.

As culled from the evidence on record, the controversy between herein parties arose from respondent's demand for real property taxes embodied in

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notices of publication and auction sale all dated July 29, 2002,[8] referring to alleged unpaid taxes for the period from 1991-2002 on machines of the petitioner other than automated teller machines. Consequently, petitioner's Kalookan Branch paid under protest the assailed real property taxes in accordance with Section 252 of the LGC in the total amount of P692,117.59, together with its Letter of Protest, on October 21, 2002. Said letter reads:

"October 21, 2002

The City Treasurer
Caloocan City

Dear Madame,

*We are hereby paying **UNDER PROTEST** alleged deficiency real property tax under Tax Declarations (TD's) 01273C, 01275C, 01284C, 01285C, 01287C, 06-055-01289C and 06-055-01291c, in the amount of P692,117.59 under Manager's Check No. 34514 payable to 'The City Treasurer of Caloocan City'.*

Please be notified that we are presently instituting the appropriate legal actions to effect refund of any erroneous/excessive payment made hereby.

Very truly yours,

(Sgd) JAMES NGKAION
Senior Asst. Vice President"[9]

Section 252 of the LGC states:

"**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**

[8] Notices of Publication & Auction Sale, Annexes "I, J, K, L, M, N and O" of the Complaint, Rollo, pp. 88-94.
[9] Letter dated October 21, 2002, Annex "A", ibid., Rollo, p. 60.

> **<u>municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.</u>**
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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 and underscoring supplied)*."

Chapter 3, Title II, Book II of the LGC entitled "Assessment Appeals", speaks about the LBAA, consisting of Sections 226 to 231 thereof. Section 226 requires that: "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."

Clearly, the aforequoted Letter of petitioner to respondent dated October 21, 2002 is not the written protest contemplated under Section 252 of the LGC because it merely notified respondent that it was then instituting the appropriate legal actions to effect refund of any erroneous/excessive payment

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made thereby. Moreover, records show that it was only on August 9, 2004 (which is way beyond the thirty [30]-day period mandated under Section 252 of the LGC) that petitioner formalized its demand upon respondent, for the refund and/or credit of the amount of P692,117.59 which it paid on October 21, 2002. We quote the Letter dated August 9, 2004:

"August 9, 2004

MS. LOURDES R. JOSE
City Treasurer
Kalookan City

Re: Alleged Deficiency Real Property Taxes under Tax Declaration Nos. 01273C, 01275C, 01284C, 01285C, 01287C, 06-055-01289C & 06-55-01291C

Dear Madam:

In relation to our Letter of Protest dated November 6, 2002, we hereby make **formal demand** upon your office to refund and/or give credit in the amount of P692,117.59 which we paid on October 21, 2002 for the reason that the abovementioned Tax Declarations refer to movable properties and hence, may not be classified as real property, and the provisions of Sec. 270 of the Local Government Code, which limits collection of taxes to five years from the date it becomes due, and Sec. 225 of the same Code which limits interest to two per centum per month, not exceeding thirty-six months.

We anticipate your prompt response.

Very truly yours,
(Sgd) JOSEFINA GO
Manager"[10]

Although the aforequoted letter mentions of a Letter of Protest dated November 6, 2002, the same was not attached to the records of this case thereby presenting no evidentiary value thereto because the Court is unable

[10] Letter dated August 9, 2004, Annex "Q", ibid., Rollo, p. 97.

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to determine whether said letter complied with the requirements of a formal letter protest.

Subsequently, on October 20, 2004, petitioner filed the Complaint for Refund for Sum of Money before the Regional Trial Court, Branch 125 of Caloocan City, which appropriately dismissed the same upon motion of herein respondent, as defendant therein, on the ground of failure to exhaust the administrative remedy available or of prematurity as the case was not yet ripe for judicial determination. Correspondingly, the First Division of this Court, in the assailed Decision in the instant petition for review, correctly denied due course thereto for utter lack of merit considering the failure of petitioner to comply with the requirements set forth under Sections 252 and 226 of the LGC. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[11]

All the foregoing considered, the Court En Banc finds no cogent reason to depart from the assailed Decision and assailed Resolution of the First Division of this Court as it correctly held that under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively

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[11] Paat vs. Court of Appeals, 266 SCRA 167 (1997); Teotico vs. Agda, Sr., 197 SCRA 675, 693 (1991).

pursued to the exclusion of ordinary courts whose decision would be void for lack of jurisdiction.[12]

Although cases raising purely legal questions are excepted from the ruling requiring exhaustion of administrative remedies before a party may resort to the courts, in the case at bench, the legal questions raised by petitioner require proof of facts for their resolution with respect to the nature of the subject machines of respondent classified as real properties by respondent.[13] Therefore, petitioner's action in the Regional Trial Court of Caloocan City was premature, and the trial court appropriately dismissed the same on the ground of failure to exhaust all available administrative remedies. Correspondingly, no reversible error was committed by the First Division of this Court in denying due course to CTA Case AC No. 12 as it effectively affirmed the Order of Dismissal by trial court, dated February 8, 2005 in Civil Case No. C-21049.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[12] Olivares vs. Marquez, G.R. No. 155591, September 20, 2004 citing Meralco vs. Barlis, G.R. No. 11421, May 18, 2001, 357 SCRA 832, 843.
[13] Figuerres vs. Court of Appeals, City Assessors of Mandaluyong, et al., G.R. 119172, March 25, 1999.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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