REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MACTAN ELECTRIC COMPANY, INC.,
Petitioner,

-*versus*-

THE MUNICIPALITY OF CORDOVA, THE MUNICIPAL ASSESSOR OF CORDOVA, THE PROVINCE OF CEBU, AND THE PROVINCIAL TREASURER OF CEBU,
Respondent.

CTA *EB* NO. 2957
(CTA AC No. 258)

Present:
RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 0 2 2026
3:26 p.m.

x --- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* ("Petition"), filed on September 16, 2024,[1] with respondent's Comment (on Petitioner's Petition for Review) ("Comment"), filed on October 28, 2024,[2] and a Reply from petitioner filed on November 5, 2024.[3] The Petition assails the November 17, 2023 Decision[4] of the Court's Special Second Division denying its Petition for Review, which assailed the Decision of Branch 12 of the Regional Trial Court of Cebu City dismissing its Complaint in Civil Case No. CEB-38689,

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1 *Rollo*, pp. 8-101.
2 *Id.*, at 104-115.
3 *Id.*, at 116-133.
4 *Id.*, at 47-70.

which, in turn, sought to declare the Notice of Assessment, dated June 12, 2008, and Tax Declaration Nos. 14788-14799 as null and void, as well as the July 9, 2024 Resolution[5] denying its Motion for Reconsideration.

The Parties

Petitioner, **MACTAN ELECTRIC COMPANY INC.** ("MECO"), is a private distribution utility duly organized and existing as a corporation under Philippine laws, with Securities and Exchange Commission Registration No. 31-388 and with principal office address at MECO Building, Sangi Road, Lapu-Lapu City 6015, Cebu City, Philippines.[6]

On the other hand, respondent, Municipality of Cordova, is a local government unit of the Republic of the Philippines and one of the municipalities of the Province of Cebu, with principal address at the Municipal Hall, Cordova, Cebu. Meanwhile, respondent, Municipal Assessor of Cordova, is an appointive local official in the Municipality of Cordova with principal address at the Municipal Hall, Cordova, Cebu. Moreover, respondent, Province of Cebu, is a local government unit of the Republic of the Philippines, with principal address at the Cebu Capitol, Cebu City. Further, respondent, Provincial Treasurer of Cebu, is an appointive local official in the Province of Cebu, with principal address at the Cebu Capitol, Cebu City.[7]

The Facts

MECO is a private distribution utility duly authorized to operate an electric light and power service in the Municipality of Cordova, Cebu, and other areas. The electrical poles and distribution transformers of MECO in the Cordova area are composed of different kinds. For instance, its electrical poles can be made out of wood or concrete with different sizes depending on its purpose. Its distribution transformers have different capacities depending on their function. Each electrical pole and distribution transformer of MECO was acquired on different dates with different acquisition costs and depreciation values.[8]

Sometime in 2008, MECO received a Notice of Assessment, dated June 12, 2008, from the Municipality of Cordova, prepared by the Municipal Assessor of Cordova, informing MECO that "the real property(ies) indicated (therein)... are... assessed for the year 1992 in this...Municipality and ownership of which... are stated in (MECO's) name for taxation purposes, as well as for subsequent years until (MECO) is informed of any changed/ s..."

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5 *Id.* at 72-101.
6 Petition, *id.*, p. 9.
7 *Ibid.*
8 *Id.*, at 9-10.

Attached to the Notice of Assessment were Tax Declaration Nos. 14788, 14789, 14790, 14791, 14792, 14793, 14794, 14795, 14796, 14797, 14798, and 14799 for supposed real properties – classified as "commercial" with aggregate market value of Php5,274,800 and assessed value of Php4,219,760." The Tax Declaration covered the electrical poles and distribution transformers of MECO in the Municipality of Cordova.[9]

On October 13, 2011, MECO received a Letter, dated October 13, 2011, from the Provincial Treasurer of Cebu, informing MECO of supposed unpaid taxes in the total amount of ₱2,842,430.35, allegedly representing "Tax Due Basic/SEF" and "Penalties" for the "C Years Delinquent" which were from 1992 to 2011. Attached to the Letter was a "Computations on Real Property Tax Municipality of Cordova" for "transformers."[10]

On March 16, 2012, MECO received a Letter, dated March 14, 2012, from the Provincial Treasurer, inviting MECO to a meeting with the Provincial Governor of Cebu on March 21, 2012 to discuss franchise and real property tax delinquency. MECO attended the meeting, where the Provincial Governor asked MECO and other companies to settle their unpaid real property taxes.[11]

On March 28, 2012, MECO received a Letter, dated March 27, 2012, from the Provincial Treasurer, inviting MECO to another meeting with the Provincial Governor on March 30, 2012 to again discuss franchise and real property tax delinquency. MECO attended the meeting, where the Provincial Governor stated that the provincial government would auction the assets of those who have unpaid real property taxes.

On April 3, 2012, a news article entitled, "Province: 'Delinquents' could lose assets due to unpaid tax" appeared in Sun.Star Cebu. The article reported that the Province of Cebu announced it would auction the assets of telecommunications and power utility firms that owe the provincial government real property taxes. The article quoted the Provincial Governor saying that MECO has unpaid taxes of about ₱3 million.[12]

On April 11, 2012, a Notice of Delinquency in the Payment of Real Property Tax was published by the Provincial Treasurer in Cebu Daily News. The notice listed MECO as a delinquent taxpayer with unpaid real property taxes for its transformers and electrical posts for the years 1992 to 2012. On April 12, 2012 a news article entitled, "Capitol sends notices to firms, sets auction of assets on July 2", appeared in Sun.Star Cebu, reporting that the Province of Cebu scheduled the auction of MECO's properties in 12 barangays in the Municipality of Cordova on July 2 this year. On April 18, 2012, a

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9 *Id.*, at 48-49.
10 *Id.*, at 49.
11 *Ibid.*
12 *Ibid.*

second Notice of Delinquency in the Payment of Real Property Tax was published by the Provincial Treasurer in Cebu Daily News.[13]

On April 30, 2012, MECO filed its Complaint, dated April 28, 2012 which was docketed as Civil Case No. CEB-38689 and raffled to the Regional Trial Court of Cebu City, Branch 12. In said Complaint, MECO argued that: a) the Notice of Assessment and Tax Declarations are void because the Municipality of Cordova has no power to levy real property tax under *Section 232 of the Local Government Code of 1991* ("*LGC*"); b) the electrical poles and distribution transformers are not subject to real property tax pursuant to the ruling in *Board of Assessment Appeals, et al. v. Manila Electric Company*;[14] and c) MECO is entitled to a preliminary injunction in view of the unlawful levy of real property tax on the subject electrical poles and distribution transformers and the subsequent schedule of the auction of the said properties.[15]

On January 28, 2020, the Regional Trial Court promulgated a Decision dismissing petitioner's Complaint.[16] Petitioner's Motion for Reconsideration was likewise denied by the Regional Trial Court through an Order, dated October 25, 2011.[17]

Undaunted, MECO filed a Petition for Review before the Court of Tax Appeals in Division on December 21, 2021.[18] The Court in Division, however, denied the same for lack of merit.[19] Moreover, in a Resolution, dated July 9, 2024, petitioner's Motion for Reconsideration on such Decision was likewise denied by the Court in Division.[20]

After filing a Motion for Extension of Time to File Petition for Review,[21] MECO filed the instant Petition on September 16, 2024. Meanwhile, respondents filed their Comment on October 28, 2024. In response thereto, petitioner filed a Motion for Leave of Court to File Reply attaching therein its Reply on November 5, 2024. On January 3, 2025, the case was submitted for Decision.[22]

Hence, this Decision.

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13 *Id.*, at 49-50.
14 G.R. No. L-15334, January 31, 1964.
15 *Id.*, at 10-11.
16 *Id.*, at 50.
17 *Ibid.*
18 *Ibid.*
19 *Id.*, at 69.
20 *Id.*, at 75.
21 *Id.*, at 1-6.
22 *Rollo.*

The Issues

The issues to be resolved by this Court are:[23]

a) Whether the Notice of Assessment and Tax Declarations issued by respondents are null and void;

b) Whether MECO is not required to pay the assailed real property taxes under protest;

c) Whether MECO is justified in seeking immediate judicial recourse; and

d) Whether MECO is not liable to pay back taxes from 1992.

Arguments of the Parties

Petitioner's Arguments

Petitioner interposes the following arguments in support of its Petition:[24]

a) Contrary to the ruling of the Court in Division in the Decision, dated November 17, 2023, and Resolution, dated July 9, 2024, MECO is not required to pay the assailed real property taxes under protest because the subject tax assessments are null and void, issued in violation of *Sections 224 and 225 of the LGC* and of MECO's right to due process;

b) Contrary to the ruling of the Court in Division in the Assailed Decision and Assailed Resolution, MECO is not required to pay the assailed real property taxes under protest because it questions the very legality of the assessment made by the respondents and did not concern itself with the reasonableness of the amount assessed;

c) Contrary to the ruling of the Court in Division in the Assailed Decision and Assailed Resolution, MECO is justified in not exhausting administrative remedies and in immediately seeking judicial recourse; and

d) Assuming arguendo that MECO is liable to pay the tax imposed upon the subject properties, MECO is not liable for back taxes starting from 1992, in accordance with *Section 222 of the LGC.*

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[23] *Id.*, at 17-18.
[24] *Id.*, at 19-39 and 116-128.

Respondents' Arguments

Respondents counter petitioner's arguments, as follows:[25]

a) The Notice of Assessment and Tax Declarations issued by respondents are valid;

b) MECO is required to pay the assailed real property taxes under protest;

c) MECO is not justified in seeking immediate judicial recourse; and

d) MECO is liable to pay back taxes from 1992.

The Ruling of the Court

The determination of the instant case initially rests on a primary issue of whether or not MECO availed of the correct legal remedy to contest the real property tax assessment issued against it by respondents. We find that MECO incorrectly questioned its real property tax assessment instantly before the Regional Trial Court of Cebu City, Branch 12 without following the procedure provided under *Sections 252, 226 and 229 (c) of the LGC.*

The manner by which an RPT assessment is contested depends on whether a question of fact exists.

Jurisprudence provides two ways to contest an RPT assessment. The method to be chosen depends on what is being contested by the taxpayer. If the taxpayer assails the "reasonableness" of the amount involved in the RPT assessment, the proper recourse would be to first pay the assailed RPT assessment and protest the same with the local treasurer and/or assessor, as the case may be, within 30 days from payment, in accordance with *Section 252 of the LGC.*[26] The local treasurer and/or assessor shall have 60 days from receipt within which to decide the protest. Should the decision of the local

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[25] *Id.*, at 105-113.

[26] Section 252. *Payment Under Protest.* -

(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(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.

treasurer and/or assessor be unfavorable, the taxpayer may appeal, within 60 days from the date of receipt of the written notice of assessment, to the Local Board of Assessment Appeals ("LBAA"), in accordance with *Section 226 of the LGC.*[27] If the decision of the LBAA remain unfavorable, the taxpayer may, within 30 days from receipt of the decision, appeal to the Central Board of Assessment Appeals ("CBAA"), in accordance with *Section 229 (c) of the LGC.*[28] Thereafter, if the decision of the CBAA is still unfavorable, the taxpayer may file an appeal with the Court of Tax Appeals ("CTA") *En Banc,* in accordance with *Section 7 (a) (5)*[29] *of RA 1125,* in relation to *Section 2 (e), Rule 4*[30] *of the Revised Rules of the CTA* ("*RRCTA*"). Under this method, administrative remedies are required to be exhausted prior to an appeal in the CTA because the issue of "reasonableness" of an RPT assessment involves questions of fact which the local treasurer and/or assessor, LBAA, and CBAA are specifically competent to adjudicate on.

The case of *Camp John Hay Development Corporation v. Central Board of Assessment Appeals,*[31] is instructive, to wit:

> Section 252 of RA No. 7160, also known as the LGC of 1991, categorically 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

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[27] Section 226. *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the 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.

[28] Section 229. *Action by the Local Board of Assessment Appeals.* -

....

(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.

[29] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

....

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

[30] RULE 4
JURISDICTION OF THE COURT

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SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

....

(e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

[31] G.R. No. 169234. October 2, 2013.

> (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
> (b) The tax or a portion thereof paid under protest, shall beheld 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 tax payer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.

Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes, follow:

> 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.
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> SEC. 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.
>
> (b) In the exercise of its appellate jurisdiction, the Board shall have the powers 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 here in provided. The decision of the Central Board shall be final and executory.
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> SEC. 231. Effect of Appeal on the Payment of Real Property Tax. – Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

The above-quoted provisions of RA No. 7160 or the LGC of 1991,clearly sets forth the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Verba legis non est recedendum. From the words of a statute there should be no departure.

To begin with, Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty (30) days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with 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.

Significantly, in Dr. Olivares v. Mayor Marquez, this Court had the occasion to extensively discuss the subject provisions of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes. The pertinent articulations follow:

> "x x x A perusal of the petition before the RTC plainly shows that what is actually being assailed is the correctness of the

assessments made by the local assessor of Parañaque on petitioners' properties. The allegations in the said petition purportedly questioning the assessor's authority to assess and collect the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor's alleged lack of authority. What petitioners raise are the following:

(1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4)some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the 'improper, excessive and unlawful the collection of taxes against the petitioners.'

Moreover, *these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA.*

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.

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

. . . .

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

(Emphasis Ours)

On the other hand, the cases of *Ty v. Trampe*[32] and *City of Lapu-Lapu v. Philippine Economic Zone Authority and Province of Bataan, represented by Governor Enrique T. Garcia, Jr., and Emerlinda S. Talento, in her capacity as Provincial Treasurer of Bataan v. Philippine Economic Zone Authority*

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[32] G.R. No. 117577, December 1, 1995.

(*"Lapu-Lapu and Bataan"*)[33] provide another option for appealing RPT assessments. This option, however, is solely limited to illegal RPT assessments, where only the legality and authority of the assessment is questioned. Under this option, a taxpayer may directly resort to the regular courts (*i.e.,* RTC) to question an RPT assessment. Should the regular courts decide against the taxpayer, the latter may file an appeal with the CTA *Division,* in accordance with *Section 7 (a) (3)*[34] *of RA 1125,* in relation to *Section 3 (a) (3), Rule 4*[35] *of the RRCTA.* Afterwards, the taxpayer may appeal an adverse decision with the CTA *En Banc,* in accordance with *Section 2 (a) (2), Rule 4*[36] *of the RRCTA.* Under this option, direct resort to the regular courts is allowed since only a question of law is involved which does not require the presentation of evidence or the expertise of the local treasurer/and or assessor, LBAA, and CBAA. *Lapu-Lapu and Bataan* citing *Ty v. Trampe* is instructive, *viz:*

> On the other hand, 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.
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> In Ty v. Trampe, the Municipal Assessor of Pasig sent Alejandro B. Ty a notice of assessment with respect to Ty's real properties in Pasig. Without resorting to the administrative remedies under the Local Government Code, Ty filed before the Regional Trial Court a petition, praying that the trial court nullify the notice of assessment. In assessing the real property taxes due, the Municipal Assessor used a schedule of market values solely prepared by him. This, Ty argued, was void for being contrary to the Local Government Code requiring that the schedule of market values be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.
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> This court ruled that the assessment was illegal for having been issued without authority of the Municipal Assessor. Reconciling provisions of the Real Property Tax Code and the Local Government Code, this court held

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33 G.R. No. 184203 and G.R. No. 187583, November 26, 2014.

34 Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
....
"3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

35 RULE 4
JURISDICTION OF THE COURT
....
SEC. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
....
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

36 RULE 4
JURISDICTION OF THE COURT
....
SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
....
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction;

> that the schedule of market values must be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.
>
> As to the issue of exhaustion of administrative remedies, this court held that Ty did not err in directly resorting to judicial action. According to this court, payment under protest is required only 'where there is a question as to the reasonableness of the amount assessed.' As to appeals before the Local and Central Board of Assessment Appeals, they are 'fruitful only where questions of fact are involved.'
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> Ty raised the issue of the legality of the notice of assessment, an issue that did not go into the reasonableness of the amount assessed. Neither did the issue involve a question of fact. Ty raised a question of law and, therefore, need not resort to the administrative remedies provided under the Local Government Code.[37]

In the case at bar, petitioner raised the following issues in the Complaint it filed before the Regional Trial Court of Cebu City, Branch 12:[38]

1. First Issue: Notice of Assessment and Tax Declarations are void. *Section 232 of the LGC* does not empower a municipality, except those within the Metropolitan Manila Area, to levy real property tax. The Municipality of Cordova is not within the Metropolitan Manila Area, and thus, it has no power to levy real property tax;

2. Second Issue: Electrical Poles and Distribution Transformers Not Subject to real property tax. Assuming the Municipality of Cordova has the power to levy real property tax, the properties covered by the Notice of Assessment and Tax Declarations, which are electrical poles and distribution transformers, are not subject to real property tax. The only classes of real property that are subject to real property tax under *Sections 215 and 216 of the LGC* are residential, agricultural, commercial, industrial, mineral, timberland or special. Electrical poles are not buildings nor are they constructed on the real properties enumerated under *Sections 215 and 216 of the LGC*. Moreover, they are not machinery under *Section 199 (o) in relation to Section 210 of the LGC*. Distribution Transformers are not machinery under *Section 199 (o) in relation to Section 210 of the LGC*. They are not attached or affixed on land or to another real property. Their locations are not also permanent as they are being moved from one place to another without breaking the material or causing deterioration upon the object to which they are attached, and moving them takes less than an hour. Thus, they are not subject to real property tax.

3. Third Issue: Preliminary and Final Injunction. The unlawful levy of real property tax on the subject electrical poles and distribution transformers and the scheduled auction of these properties violate the right of MECO

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[37] G.R. Nos. 184203 and 187583, November 26, 2014.
[38] Division Docket, Vol. I, pp. 81-90.

against unlawful tax levy and collection as well as MECO's right to trade (or to operate its distribution system) and its right to the subject properties being the owner thereof. The invasion of these rights of MECO is material and substantial as it arises from unlawful levy and assessment of real property tax. The Municipality of Cordova has no power to levy real property tax and assess MECO for such tax on its electrical poles and distribution transformers. Moreover, electrical poles and distribution transformers are not properties subject to real property tax under the *LGC,* nor are they real properties under the Civil Code subject to real property tax. Second, MECO has a clear and unmistakable right to the use and enjoyment of the electrical poles and distribution transformers in the Municipality of Cordova being the undisputed owner of these properties and the exclusive franchise holder to distribute electric power in the municipality. It also has the right against unlawful tax levy and collection. Third, there is an urgent and permanent necessity for a preliminary injunction to prevent serious damage not only to MECO but to the Municipality of Cordova and its residents and businesses.

Moreover, in the Pre-Trial Order, dated February 11, 2015,[39] the following issues were raised as regards electrical poles and distribution transformers:

1. Whether or not MECO's electrical poles are personal property under *Art. 416 of the Civil Code.*

2. Whether or not MECO's electrical poles are real property subject to property tax.

3. Whether or not MECO's distribution transformers are real property subject to real property tax.

4. Whether or not the Municipality of Cordova has the power to levy real property tax under *the LGC.*

5. Whether or not the Notice of Assessment, dated June 12, 2008, and Tax Declarations are null and void.

6. Whether or not MECO is entitled to a final injunction perpetually restraining defendants from levying, assessing, and collecting real property taxes on its electrical poles and distribution transformer.

Clearly, the issues raised by MECO are a mix of factual and legal issues.

[39] Petition for Review, par. 40, Division Docket, Vol. I, pp. 5-35.; Memorandum for Petitioner, par. 31, Division Docket - Vol. II, unpaginated.

As stated in *Republic of the Philippines v. Caraig*:[40]

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

The resolution of some of the above cited issues can only be done through an evaluation of the documentary evidence and testimonial evidence presented by MECO. In fact, during the trial before the Regional Trial Court of Cebu City, Branch 12, MECO presented documentary and testimonial evidence to support its contention that its electrical poles and distribution transformers are not subject to real property tax.

In essence, in the present case, MECO insists that its electrical poles and distribution transformers are exempt from real property tax. In *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*,[41] it was ruled that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with *Section 252 of the LGC.* Such an argument, which involve a question of fact, should be resolved, at the first instance, by the LBAA.[42]

This is true regardless of the presence of the *Manila Electric Company v. The City Assessor and City Treasurer of Lucena City*[43] ("*Meralco case*"), which petitioner insists has already resolved the issue of whether or not electrical poles and distribution transformers are subject to real property tax. Even if this is already the legal precedent, there is still a need to introduce evidence to prove that the subject matter of the present assessment are indeed electrical poles and distribution transformers which qualify for such real property tax exemption. Moreover, the said case was only promulgated by the High Court last 2015. The present case arose sometime in 2008 when the alleged real property tax exemption of electrical poles and distribution

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40 G.R. No. 197389, October 12, 2020, citing *Leoncio v. De Vera*, G.R. No. 176842 (Resolution), February 18, 2008.
41 G.R. No. 169234, October 2, 2013.
42 See also *National Power Corporation v. The Provincial Treasurer of Benguet et al.*, G.R. No. 209303, November 14, 2016.
43 G.R.No.166102, August 5, 2015.

transformers had not yet been definitely pronounced. Thus, the circumstances obtained in this case and petitioner's claim that the subject electrical poles and distribution transformers are exempt from real property tax involve questions of fact that invite a review of the evidence presented, which should be resolved, at the very first instance, by the LBAA.

Further, in the *Meralco case,* it has been stated that the issue of whether electrical posts are not machinery subject to real property tax because MERALCO is not exclusively using said posts is a factual issue, *viz.*:

> MERALCO maintains that its electric posts are not machinery subject to real property tax because said posts are not being exclusively used by MERALCO; these are also being utilized by cable and telephone companies. This, however, is a factual issue which the Court cannot take cognizance of in the Petition at bar as it is not a trier of facts. Whether or not the electric posts of MERALCO are actually being used by other companies or industries is best left to the determination of the City Assessor or his deputy, who has been granted the authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991.

Like the *Meralco case,* MECO claims that the electrical poles stand on public lots and easements,[44] and are thus not exclusively used by MECO. However, as held in the *Meralco case,* such a claim is a factual issue which should first be resolved by the LBAA.

MECO's failure to first pay the real property tax assessment before protesting the same and availing of the remedies contained under Sections 252, 226 and 229 of the LGC made the present assessment final and executory.

Sections 252, 226 and 229 of the LGC clearly provide that remedies for contesting a real property tax assessment: initially, a taxpayer must first pay the tax under protest and then file a protest with the Local Treasurer within thirty days from the date of payment of tax. If the protest is denied or upon the lapse of the sixty-day period for the Local Treasurer to decide on the protest, the taxpayer may appeal to the LBAA within sixty days from the denial of the protest or the lapse of the sixty-day period to decide. The LBAA has 120 days to decide the appeal. If the taxpayer is unsatisfied with the decision of the LBAA, the taxpayer may appeal before the CBAA within

[44] Par. 24 of the Complaint, Annex "C", Petition for Review, Division Docket- Vol. I, pp. 77-91.

thirty days from receipt of the LBAA's decision. The decision of the CBAA is appealable before the CTA En Banc.[45]

In the case at bar, however, and as admitted by MECO in its Petition, it received a Notice of Assessment, dated June 12, 2008, sometime in 2008 from the Municipality of Cordova, which was prepared by respondent Municipal Assessor of Cordova, informing MECO that "the real property(ies) indicated (therein)... are... assessed for the year 1992 in this...Municipality and ownership of which... are stated in (MECO's) name for taxation purposes, as well as for subsequent years until (MECO) is informed of any changed/ s..." Attached to the Notice of Assessment were Tax Declaration Nos. 14788, 14789, 14790, 14791, 14792, 14793, 14794, 14795, 14796, 14797, 14798, and 14799 for supposed real properties – classified as "commercial" with aggregate market value of Php5,274,800 and assessed value of Php4,219.760." The Tax Declaration covered the electrical poles and distribution transformers of MECO in the Municipality of Cordova.[46]

Moreover, MECO received a Letter, dated October 13, 2011, on even date from respondent Provincial Treasurer informing MECO of supposed unpaid taxes in the total amount of Php2,842,430.35, allegedly representing "Tax Due Basic/SEF" and "Penalties" for the "C Years Delinquent" which were from 1992 to 2011. Attached to the Letter was a "Computations on Real Property Tax Municipality of Cordova" for "transformers."[47]

In addition to these, MECO received two Letters, dated March 14, 2012 and March 27, 2012, from respondent Provincial Treasurer of Cebu, inviting the former to meetings with the Provincial Governor of Cebu to discuss MECO's alleged franchise and real property tax delinquency.[48]

However, despite receipt of the Notice of Assessment in 2008 and the Letter, dated October 13, 2011, petitioner did not pay "under protest" the assessed real property taxes and filed a protest as required by *Section 252 of the LGC*. Further, no appeal has been made before the LBAA or, subsequently, to the CBAA in accordance with *Sections 226 and 229 of the LGC*.

Instead, on April 30, 2012, MECO directly filed a Complaint with the Regional Trial Court of Cebu City, Branch 12.[49] Only upon Order of said Court did petitioner deposit with the Office of the Clerk of Court of the Regional Trial Court the supposed unpaid taxes of P2,842,430.35.[50]

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[45] *City of Lapu-Lapu v. Philippine Economic Zone Authority and Province of Bataan, represented by Governor Enrique T. Garcia, et al., Philippine Economic Zone Authority*, G.R. No. 184203 and G.R. No. 187583, November 26, 2014.
[46] *Rollo*, at 10.
[47] *Ibid.*
[48] *Ibid.*
[49] *Id.*, at 11.
[50] *Id.*, at 12.

Clearly, petitioner failed to comply with the administrative remedies outlined in *Section 252 in relation to Sections 226 and 229(c) of the LGC.* Thus, petitioner's real property tax assessment has become final and executory. The same can no longer be revisited by this Court *En Banc*.

ACCORDINGLY, the Court *En Banc* finds it unnecessary to discuss the other issues raised by MECO. The Petition, filed on September 16, 2024, is hereby **DENIED** for lack of merit. The Assailed Decision and the Assailed Resolution of the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice