REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY, Represented by MA. THERESA S. VILLAFUERTE, in her capacity as Director of NFA Legal Affairs Department,
Petitioner,

-versus-

CITY GOVERNMENT OF KIDAPAWAN; CITY TREASURER OF KIDAPAWAN,
Respondents.

CTA EB NO. 1587
(CTA AC NO. 169)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
JUN 05 2017 3:28 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Petitioner's "Compliance (with the Order[1] dated March 15, 2017) filed on March 31, 2017 is NOTED.

Upon re-examination of the records of this case, however, this Court finds that it has no jurisdiction over petitioner's "Petition for Review (under Rule 8 of A.M. No. 05-11-07- CTA) with Motion for Suspension of Collection of Tax" filed on February 7, 2017.

"The jurisdiction of the court or other tribunal is determined by the relevant allegations of the complaint and the character of the relief sought,

[1] Should be Resolution.

irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims accorded therein."[2]

A reading of the petition shows the allegation that "On 6 October 2016, the public auction involving NFA's real properties in Kidapawan City, was conducted by the respondents." Also, one of the prayers of petitioner is "2. **DECLARING** as **INVALID** the public auction conducted by Respondents last October 2016 involving the sale of NFA's real properties in Kidapawan City, as well as the Notice of Delinquency and Warrants of Levy issued by Respondents against NFA;."

In the consolidated cases of *City of Lapu-Lapu v. Philippine Economic Zone Authority*[3] and *Province of Bataan v. Philippine Economic Zone Authority,*[4] the Supreme Court ruled that the proper remedy of a taxpayer **depends on the stage** in which the local government unit is enforcing its authority to collect real property taxes. Pertinent portions of these consolidated cases read:

> "The remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes
>
> **The proper remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to collect real property taxes.** For the guidance of the members of the bench and the bar, we reiterate the taxpayer's remedies against the erroneous or illegal assessment of real property taxes.
>
> **Exhaustion of administrative remedies under the Local Government Code is necessary in cases of erroneous assessments where the correctness of the amount assessed is assailed.** The taxpayer must first pay the tax then file a protest with the Local Treasurer within 30 days from date of payment of tax. If protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide the protest. The Local Board of Assessment Appeals has 120 days to decide the appeal.

[2] *R.V. Marzan Freight, Inc. v. Court of Appeals*, G.R. No. 128064, March 4, 2004.
[3] G.R. No. 184203, November 26, 2014.
[4] G.R. No. 187583, November 26, 2014.

If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.

The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals En Banc. The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.

In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes.

The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.

In case the local government unit has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. **In case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction. The decisions of the Regional Trial Court in these cases shall be appealable before the Court of Tax Appeals,** and the latter's decisions appealable before this court through a petition for review on certiorari under Rule 45 of the Rules of Court." *(Emphases Supplied.)*

Based on the *City of Lapu-Lapu* case (*supra)*, it is clear that in case the local government unit has already sold the property at public auction, the taxpayer may file a complaint to assail the validity of the public auction. It is a "must" for a taxpayer to first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The decision of the Regional Trial Court in this case shall be appealable to the CTA.

Applying the ruling in the *City of Lapu-Lapu* case *(supra)*, the CTA has only appellate jurisdiction and no original jurisdiction in cases where the local government in enforcing its authority to collect the tax has already sold the real property at public auction. Considering that during the pendency of the case in the CTA 3rd Division, the respondent City Government of Kidapawan had already auctioned the real properties of petitioner on October 6, 2016, this petition, therefore, must be dismissed because of this Court's lack of jurisdiction.

Moreover, the *City of Lapu-Lapu* case *(supra)* also states that the "party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court." It is emphasized that in the CTA 3rd Division, petitioner filed a "Petition for Certiorari (under Rule 65 of the Rules of Court) with Prayer for TRO and/or Writ of Preliminary Injunction" seeking to reverse and set aside the Order dated 29 April 2016 of the Regional Trial Court Branch 23, Kidapawan City, denying petitioner's Motion for Reconsideration of the Decision dated 20 August 2015. Applying the pronouncement of the Supreme Court in the *City of Lapu-Lapu* case *(supra),* indeed petitioner sought a wrong remedy in the CTA 3rd Division.

Considering that this Court has no jurisdiction, it shall *motu proprio* dismiss the case.

Indeed, while it is true that litigation is not a game of technicalities — it is equally true, however, that every case must be established in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[5]

[5] *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.

WHEREFORE, for lack of jurisdiction, petitioner's "Petition for Review (under Rule 8 of A.M. No. 05-11-07- CTA) with Motion for Suspension of Collection of Tax" filed on February 7, 2017 is **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL FOOD AUTHORITY, represented by MA. THERESA S. VILLAFUERTE, in her capacity as Director of NFA Legal Affairs Department, *Petitioner,*	**CTA EB NO. 1587** (CTA AC No. 169)
	Present: Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
-versus-	
CITY GOVERNMENT OF KIDAPAWAN; CITY TREASURER OF KIDAPAWAN, *Respondent.*	Promulgated: JUN 05 2017 3:28 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia*'s dismissal of the Petition for Review for lack of jurisdiction. As aptly pointed out in the *ponencia*, petitioner resorted to a wrong remedy when it filed a Petition for Certiorari (under Rule 65 of the Rules of Court) before the Court in Division assailing the August 20, 2015 Decision,[1] April 29, 2016 Order,[2] and May 25, 2016 Order[3] of the Regional Trial Court of Kidapawan City (RTC).

[1] CTA EB No. 1587 Docket, pp. 121-143.
[2] CTA EB No. 1587 Docket, pp. 119-120.
[3] CTA EB No. 1587 Docket, pp. 183-185.

The Notice of Assessment has become final and executory

As borne by the records, the controversy stemmed from the Notice of Assessment issued against petitioner assessing it for real property taxes on its real properties.[4] In a letter dated January 15, 2008, petitioner contested said Notice of Assessment on the ground that as a government instrumentality, it is exempt from local taxes, fees and charges pursuant to Section 133(o) of the LGC.[5] When respondents issued warrants of levy involving petitioner's real properties, petitioner filed on December 6, 2013 a Petition for Prohibition with prayer for issuance of a Temporary Restraining Order and/or Writ of Injunction against respondents before the RTC.

It is settled that once an assessment for real property tax has been issued against the taxpayer or owner, the proper remedy of the taxpayer or owner depends on whether the assessment was erroneous or illegal.[6]

In the recent case of *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*,[7] the Supreme Court reiterated that a claim for tax exemption from the payment of real property taxes neither involves the legality of the assessment nor the assessor's authority to assess and collect taxes, but relates to the reasonableness or correctness of the assessment, a question of fact that should have been raised before the Local Board of Assessment Appeals (LBAA), after compliance with the mandatory requirement of payment under protest in accordance with Section 252 of Republic Act No. 7190, otherwise known as the Local Government Code (LGC). Pertinent parts of the Supreme Court pronouncement read:

> "At the outset, settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained, thus:
>
> xxx xxx xxx

[4] Par. 19, Petition for Review, CTA EB No. 1587 Docket, p. 6.
[5] Annex H, Petition for Certiorari, CTA AC No. 169 Docket, p. 189.
[66] *City of Lapu-Lapu vs. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014 and *Province of Bataan vs. Philippine Economic Zone Authority*, G.R. No. 187583, November 26, 2014.
[7] G.R. No. 209303, November 14, 2016.

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 30 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. Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, provides for 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, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.

NPC alleges that payment under protest under Section 252 of the LGC is required when the reasonableness of the amount assessed is being questioned. Challenging the very authority and power of the assessor to impose the assessment and of the treasurer to collect the tax is an attack on the very validity on any increase and not merely on the amounts of increase in tax. Thus, such payment is not a condition *sine qua non* for the LBAA to entertain the NPC's challenge on the validity of the tax imposed on its tax- exempt properties.

We are not persuaded. **As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA**. The same may be inferred from Section 206 of the LGC of 1991, to wit:

xxx xxx xxx

Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, **if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon**.

xxx xxx xxx

xxx, [I]t is evident that NPC's failure to comply with the mandatory requirement of payment under protest in accordance

> with Section 252 of the LGC was fatal to its appeal. **We note that it is not the first occasion where this Court ruled that the NPC, in claiming tax exemption, questions the reasonableness or correctness of the assessment by the local assessor and not the legality of the assessment or his authority to assess real property tax. As such, petitioner should have first complied with Section 252. Its failure to prove that this requirement has been complied with renders its administrative protest under Section 226 of the LGC without any effect**. No protest shall be entertained unless the taxpayer first pays the tax." *(Boldfacing supplied)*

In the case at bar, the notice of assessment[8] demands the payment of real property tax on petitioner. Since petitioner is questioning the correctness and reasonableness of the assessment on the ground that petitioner is exempt from payment of real property tax, petitioner should have followed the procedures under Sections 252, 226, 229 and 231 of the LGC) instead of directly filing a Petition for Prohibition with the RTC. Its failure to comply therewith is fatal to its cause.

It is well-settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional[9] and a party's failure to comply with the procedure regarding appeal will render the subject matter thereof final, executory and unappealable.[10] If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due becomes absolute upon the expiration of such period, with respect to the taxpayer's property.[11] **For failure of petitioner to "first pay under protest" <u>and</u> "file a protest" against the assessment before the Municipal Treasurer and eventually question the inaction or denial of said protest, as the case may be, before the LBAA, within the reglementary period, the notice of assessment issued against it became final and unappealable.**

In fine, as the notice of assessment has become final and unappealable for petitioner's failure to timely and properly protest the same, the RTC should have dismissed the petition for lack of jurisdiction.

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[8] Letter Dated January 9, 2008, CTA EB No. 1587 Docket, p. 250.
[9] *Jaime L. Yaneza vs. The Honorable Court of Appeals, et al.*, G.R. No. 149322, November 28, 2008.
[10] *Felisa L. Peña vs. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006.
[11] *Manila Electric Company vs. Nelia A. Barlis, et al.*, G.R. No. 114231, Resolution dated June 29, 2004.

The dismissal of the Petition for Certiorari filed before the Court in Division was proper

Anent the Petition for Certiorari filed before the Court in Division, the Court in Division correctly ruled that a Petition for Certiorari under Rule 65 of the Rules of Court is not the proper remedy to assail the August 20, 2015 Decision,[12] April 29, 2016 Order,[13] and May 25, 2016 Order[14] of the RTC.

In a long line of cases, the Supreme Court has consistently ruled that the extraordinary writ of certiorari is available only where there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Here, the remedy of appeal was available to petitioner pursuant to Section 11 of Republic Act (RA) No. 1125, as amended, and Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). To assail the August 20, 2015 Decision[15] and April 29, 2016 Order[16] of the RTC, petitioner should have filed an appeal by way of a petition for review within thirty (30) days from its receipt of the April 29, 2016 Order of the RTC denying its Motion for Reconsideration.

While certiorari under Rule 65 of the Rules of Court is not a substitute for a lost appeal or remedy,[17] it is true that in some cases, the Supreme Court has treated a petition for certiorari as an appeal under certain conditions, specifically: (1) if the petition for certiorari was filed within the reglementary period within which to file a petition for review on certiorari; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.[18]

In the present case, however, I submit that no sufficient reason justifies the relaxation of the rules. For one, the notice of assessment has become final and unappealable and as such, it may no longer be assailed. For another, even if the Petition for Certiorari filed on June 9, 2016 is treated as an ordinary appeal, the same is nonetheless

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[12] CTA EB No. 1587 Docket, pp. 121-143.
[13] CTA EB No. 1587 Docket, pp. 119-120.
[14] CTA EB No. 1587 Docket, pp. 183-185.
[15] CTA EB No. 1587 Docket, pp. 121-143.
[16] CTA EB No. 1587 Docket, pp. 119-120.
[17] *Ferdinand R. Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[18] *The City of Manila, et al., vs. Hon. Caridad H. Grecia-Cuerdo, et al.*, G.R. No. 175723, February 4, 2014.

jurisdictionally infirm as it was filed beyond the 30-day period, counted from May 2, 2016 when petitioner received the April 29, 2016 Order of the RTC.

Besides, even if the petition is considered a proper remedy that was timely filed, still - - the same may not prosper since the notice of assessment has become final and unappealable for petitioner's failure to timely and properly protest the same, as afore-discussed.

The present Petition for Review filed before the Court En Banc should likewise be dismissed

While the filing of a Petition for Review before the Court *En Banc* to assail the November 3, 2016 and January 23, 2017 Resolutions of the Court in Division was procedurally proper, the same should likewise be dismissed for being patently without merit.

To reiterate, the taxpayer's failure to appeal in the manner and within the period provided for by law to assail an assessment renders such assessment of the local assessor final, executory and demandable. **In essence, the taxpayer is thereby precluded from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.**[19]

The requirement to make a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale is jurisdictional, the non-payment of which warrants the dismissal of the action

In *City of Lapu-Lapu vs. Philippine Economic Zone Authority and Province of Bataan, et al. vs. Philippine Economic Zone Authority,*[20] cited in the *ponencia,* the Supreme Court emphasized that the remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes. Said the Supreme Court:

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[19] *Fels Energy, Inc. v. The Province of Batangas and the Office of the Provincial Assessor of Batangas,* G.R. Nos. 168557 and 170628, February 16, 2007.
[20] G.R. Nos. 1842203 and 187583, November 26, 2014.

> In case the local government unit has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. **In case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction.** The decisions of the Regional Trial Court in these cases shall be appealable before the Court of Tax Appeals, and the latter's decisions appealable before this court through a petition for review on certiorari under Rule 45 of the Rules of Court.

Applying *City of Lapu-Lapu, supra,* petitioner could have assailed the sale through public action of the subject properties by filing an action in court an making the required deposit. In *Spouses Silvestre O. Plaza and Elena Y. Plaza vs. Guillermo Lustiva, et al.,*[21] the Supreme Court emphasized the jurisdictional nature of the deposit, *viz.*:

> "A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that the deposit requirement applies only to initiatory actions assailing the validity of tax sales. The intent of the provision to limit the deposit requirement to actions for annulment of tax sales led to the Court's ruling in *National Housing Authority v. Iloilo City, et al.* that the deposit requirement is jurisdictional — a condition necessary for the court to entertain the action:
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> > 'As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. xxx. **Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action**.
> >
> > x x x x
> >
> > Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale.'

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[21] G.R. No. 172909, March 5, 2014.

The Court would later reiterate the jurisdictional nature of the deposit in *Wong v. City of Iloilo*, and pronounce:

> 'In this regard, National Housing Authority v. Iloilo City holds that the deposit required under Section 267 of the Local Government Code is a jurisdictional requirement, **the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints**.'" (*Citations omitted; Boldfacing supplied*)

Notwithstanding petitioner's failure to protest the notice of assessment, I submit that petitioner is not precluded from assailing the validity of the public auction of its properties before a competent court pursuant to the Section 267 of the LGC. Section 267 reads:

> "Section 267. Action Assailing Validity of Tax Sale. – No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
>
> Neither shall any court declare a sale at public action invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."

It is noted, however, that a public auction was conducted during the pendency of the controversy before the Court in Division. This supervening event necessarily rendered academic the issue pending with the Court in Division that should have warranted the dismissal of the case. The proper course of action was for petitioner to move for the dismissal of the petition filed with the Court in Division; and thereafter proceed with the filing of an action for the annulment of the tax sale with corresponding deposit of such amount prescribed under Section 267 of the LGC.

All told, I **VOTE** to **DISMISS** the Petition for Review for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL FOOD AUTHORITY, represented by MA. THERESA S. VILLAFUERTE, in her capacity as Director of NFA Legal Affairs Department,
Petitioner,

-versus-

CITY GOVERNMENT OF KIDAPAWAN; CITY TREASURER OF KIDAPAWAN,
Respondents.

CTA *EB* No. 1589
(CTA AC No. 169)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, JJ.

Promulgated:

JUN 05 2017 3:28 p.m.

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CONCURRING OPINION

BAUTISTA, J.:

With due reverence to the *ponente*, while I agree with the dismissal of the Petition for Review for lack of jurisdiction, I would like to emphasize some matters. For this, I believe that a brief discussion of the factual antecedents of the case is in order.

Petitioner received a Notice of Assessment on January 9, 2008 for Real Property Tax ("RPT") in the amount of Php611,155.24.[1] On January 16, 2008[2], petitioner filed a reply dated January 15, 2008.[3] Failing to obtain favorable relief, petitioner filed a Petition with the Local Board of Assessment Appeals ("LBAA") docketed as *LBAA Case No. 01-2008*, with the following issues: *(1)* whether the appeal to

[1] *Records, CTA AC No. 169, Petition for Prohibition, par. 19,* pp. 134-135.
[2] *Id., Annex "H,"* p. 189.
[3] *Id., Petition for Prohibition, par. 20,* p. 135.

the LBAA conforms with the requirements of *Section 226 of Republic Act ("RA") No. 7160 ("1991 LGC")* and *Article 317 of the Implementing Rules and Regulations of the 1991 LGC; (2)* whether petitioner should first pay the RPT under protest to perfect the appeal with the LBAA; and *(3)* whether petitioner is exempt from payment of RPT.[4] On June 23, 2009, the LBAA found petitioner liable for RPT and ordered payment of the RPT assessed.[5] Since no appeal or *certiorari* was filed by either party, the LBAA Resolution attained finality by operation of law.[6]

As a means of executing the LBAA Resolution,[7] a Final Demand Letter dated October 22, 2012 was issued to and received by petitioner covering RPT in the amount of Php5,741,159.52.[8] However, petitioner maintains that as a government instrumentality vested with corporate powers ("GICP"), it is exempt from payment of RPT.[9] Thereafter, on October 7, 2013, petitioner received Warrants of Levy from the Office of the City Treasurer over its real properties,[10] where its warehouses, office premises and other structures are built[11]. Hence, these properties are threatened to be auctioned by the City Government.[12]

Without filing any adverse communication or protest with respondents,[13] petitioner directly resorted to the filing of a Petition for Prohibition[14] on December 6, 2013 with the Regional Trial Court Branch 23, Kidapawan, North Cotabato ("RTC") docketed as *SP Case No. 19-2013*, with an application for Temporary Restraining Order ("TRO") and/or a Writ of Preliminary Injunction ("WPI"). Petitioner prayed for the RTC to: *(1)* grant and affirm its Petition for Prohibition; *(2)* declare petitioner as a government instrumentality, hence, exempt from RPT; *(3)* immediately issue a TRO; and *(4)* after due proceedings, to issue a WPI.[15]

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[4] *Records, CTA AC No. 169, RTC Decision,* p. 64.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id., Petition for Prohibition, par. 21,* p. 135.
[9] *Id., par. 22,* p. 135.
[10] *Records, CTA AC No. 169, Petition for Prohibition, par. 23,* p. 135.
[11] *Id., par. 24,* pp. 135-136.
[12] *Id.*
[13] *Id., RTC Decision,* p. 65.
[14] *Id., Petition for Prohibition,* pp. 131-150.
[15] *Id., Petition for Prohibition, Prayer,* p. 146-147.

On August 20, 2015, the RTC promulgated a Decision[16] dismissing the Petition for Prohibition on the basis that petitioner is not a GICP but a Government Owned or Controlled Corporation ("GOCC"), as appearing in its Charter; that petitioner has no governmental functions; that since the main issue involved is purely legal, the principle and doctrine of exhaustion of administrative remedies does not apply; that for failing to appeal the decision of the LBAA, the LBAA Resolution has become final and executory and *res judicata* applies; that petitioner is not exempt from local taxation; that respondents did not act without jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and that the subject properties are the proper subjects of sale in a public auction.

On April 29, 2016, the RTC denied[17] petitioner's Motion for Reconsideration (Of the [Decision] dated 20 August 2015)[18] for being filed out of time. Petitioner claims to receive the Decision on September 16, 2015. However, the RTC said that counting the fifteen (15)-day period to file the Motion for Reconsideration from September 16, 2015, petitioner had until October 1, 2015 to file the Motion for Reconsideration; and that considering that the Motion for Reconsideration was filed on October 2, 2015, it was already a day late. Thereafter, petitioner filed a Very Urgent Manifestation (on the Order dated 29 April 2016)[19] on May 3, 2016, submitting the original copy of Registry Receipt No. 384 as proof of filing of the Motion for Reconsideration on September 30, 2015 and a Certification issued by the Postmaster of Veterans Memorial Medical Center Post Office of Quezon City verifying that the Motion for Reconsideration was received by the post office of September 30, 2015.

On May 25, 2016, the RTC still denied petitioner's Very Urgent Manifestation (on the Order dated 29 April 2016) but nonetheless ruled upon the Motion for Reconsideration.[20] The RTC held that the Motion for Reconsideration failed to specifically point out the errors it allegedly committed; that the Motion for Reconsideration is a *pro forma* motion and considered as a mere scrap of paper; and that petitioner failed to raise any new matter that would warrant consideration of the RTC. Hence, the Motion for Reconsideration was denied.

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[16] *Records, CTA AC No. 169, RTC Decision,* pp. 63-85.
[17] *Id.* at 61-62.
[18] *Id., Motion for Reconsideration of RTC Decision,* pp. 86-114.
[19] *Id., Very Urgent Manifestation (on the Order dated 29 April 2016),* pp. 117-124.
[20] *Id., RTC Order re: Very Urgent Manifestation,* pp. 127-129.

On June 9, 2016, petitioner filed a Petition for *Certiorari* (under Rule 65 of the Rules of Court) With Prayer for [TRO] and/or [WPI][21] against respondents and Hon. Tabosares, in his capacity as Presiding Judge ("PJ") of the RTC. The case was docketed as *CTA AC No. 169* and raffled to the CTA Third Division ("Court in Division"). Petitioner sought to reverse the errors committed by the RTC PJ in the Decision dated August 20, 2016. It claims that the RTC PJ acted with grave abuse of discretion amounting to lack or excess of jurisdiction in: *(1)* promulgating the Orders dated April 29, 2016 and May 25, 2016; and *(2)* ruling that the Motion for Reconsideration was filed out of time despite overwhelming evidence of timely filing. Petitioner likewise insisted that the RTC acted in grave abuse of discretion, amounting to lack or excess of jurisdiction and erred when it held, through its Decision dated August 20, 2015, that petitioner's real properties are not exempt from RPT, despite clear showing that it is a government instrumentality. It then prayed for the Court in Division for an Order to be issued: *(1)* granting petitioner's prayer for the issuance of a TRO and a WPI; *(2)* reversing the Order of the RTC dated April 29, 2016, and holding that petitioner's Motion for Reconsideration was timely filed; *(3)* reversing the Decision of the RTC dated August 20, 2015 and holding that petitioner is a government instrumentality, thus, exempt from payment of RPT; *(4)* declaring the Notice of Assessment, Notice of Delinquency, Warrants if Levy, and Notice of Sale involving petitioner's real properties in Kidapawan City null and void; *(5)* absolving petitioner from any liability for RPT and declaring petitioner's real properties as exempt from taxation; and *(6)* prohibiting, enjoining and restraining respondents from making any future assessment and/or imposition of RPT upon petitioner.[22]

In a Resolution[23] dated November 3, 2016, the Court in Division dismissed the Petition for *Certiorari*, rendering the other incidents moot and academic. The Court in Division held that a Petition for *Certiorari* under *Rule 65 of the Rules of Court* may only be issued for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, and cannot be used for any other purpose; that petitioner is actually questioning the correctness of the Order dated April 29, 2016 which denied its Motion for Reconsideration challenging the wisdom or soundness of the

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[21] *Records, CTA AC No. 169, CTA Division Petition for Certiorari,* pp. 8-60.
[22] *Id., Prayer,* p. 57.
[23] *Id., November 3, 2016 Resolution,* pp. 435-450.

Decision dated August 20, 2015; that even assuming that the RTC erred in holding that petitioner's Motion for Reconsideration was filed out of time, it is by no means extraordinary and may be considered a simple mistake in the findings and conclusions of law and fact of the RTC; that it cannot be deemed a capricious and arbitrary exercise of authority to merit resort to the extraordinary remedy of *certiorari*; that petitioner could have easily filed within the reglementary period an appeal to the CTA through a petition for review under *Rule 42 of the Rules of Court*, and prayed for the same relief; that, instead, petitioner sought a reconsideration of the said Order by filing a Very Urgent Manifestation with the RTC; and that it was only when the RTC denied it in the Order dated May 25, 2016 that petitioner sought intervention of the Court in Division through its Petition for *Certiorari*. The Court in Division stated that a special civil action under *Rule 65 of the Rules of Court* will not be a cure for failure to timely file a petition for review; that records show that petitioner received the assailed Order dated April 29, 2016 on May 2, 2016, hence, it had thirty (30) days or until June 1, 2016 to file an ordinary appeal *via* a petition for review pursuant to *Section 11 of RA No. 1125*; that, however, the present Petition for *Certiorari* was filed only on June 9, 2016, evidently beyond the reglementary period for the filing of a proper petition for review; and that even assuming that petitioner's arguments fall right into the groove, the Petition for *Certiorari* will still be denied for lack of merit.

On November 21, 2016, petitioner filed a Motion for Reconsideration (of the Resolution dated 3 November 2016)[24], which was denied[25] by the Court in Division on January 13, 2017 for reiterating the same arguments which were already addressed.

On February 7, 2017, petitioner filed a Petition for Review (Under Rule 8 of A.M. No. 05-11-07-CTA) with Motion for Suspension of Collection of Tax[26], praying for the Court *En Banc* to issue a decision *(1)* reversing the assailed Resolution of the Court in Division dated January 13, 2017 and Resolution dated November 3, 2016, with a ruling that petitioner is a government instrumentality and not a GOCC, hence, exempt from payment of RPT; *(2)* declaring as invalid the public auction conducted by respondents last October 2016 involving the sale of petitioner's real properties, as well as the

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[24] *Records, CTA AC No. 169, MR on CTA Division's Resolution,* pp. 451-482.
[25] *Id., CTA Division's Resolution on MR,* pp. 491-494.
[26] *Rollo, Petition for Review (Under Rule 8 of A.M. No. 05-11-07-CTA) with Motion for Suspension of Collection of Tax,* pp. 1-42.

Notice of Delinquency and Warrants of Levy issued by respondents; and *(3)* granting petitioner's Motion for Suspension of Collection of Taxes while awaiting the resolution of the case.

At this point, it is necessary to discuss the procedure that should be followed in an instance wherein a taxpayer contests an assessment made by a Local Government Unit ("LGU"), as provided under *Sections 226, 229, 231, 252 of the 1991 LGC.*

When an assessment is issued, the taxpayer (owner or person with legal interest over the property) may: *(1)* question its reasonableness or correctness; or *(2)* question its legality or validity.

On one hand, should the taxpayer question the reasonableness, correctness, or excessiveness of the assessment, he/she/it should first pay under protest, then file a protest with the treasurer thirty (30) days after payment. The treasurer has sixty (60) days to act on the said protest. In case of denial or upon the lapse of the sixty (60)-day period, the taxpayer may then file an appeal with the LBAA within sixty (60) days from the date of receipt of the treasurer's denial of the protest. The LBAA has one hundred and twenty (120) days from the date of receipt of such appeal to issue a decision. Should the taxpayer/the assessor be unsatisfied with the decision of the LBAA, he/she/it may, within thirty (30) days after receipt of the decision of the LBAA, appeal to the CBAA, whose decision shall be final and executory. Thereafter, the taxpayer may file an appeal with the CTA *En Banc* pursuant to *Sections 7(a)(5) and 11 of RA No. 1125* and *Section 2(e), Rule 4 of the RRCTA.*

On the other hand, if the question deals with the legality or validity of the assessment (*e.g.* authority and power of the assessor to impose the assessment, and of the treasurer to collect the real property tax), or a question of law, direct judicial action may prosper.[27] That is, the taxpayer may appeal directly to the RTC, any appeal from the latter's decision should be made before the Court in Division.

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[27] *National Power Corporation v. Municipal Government of Navotas, Sangguniang Bayan of Navotas and Manual T. Enriquez, in his capacity as Municipal Treasurer of Navotas,* G.R. No. 192300, November 24, 2014.

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To determine the proper process to be followed, it is necessary to refer to the issues[28] brought by petitioner before the LBAA. In its Petition in *LBAA Case No. 01-2008*, petitioner raised the following issues: *(1)* whether the appeal to the LBAA conforms with the requirements of *Section 226 of the 1991 LFC* and *Article 317 of the Implementing Rules and Regulations of the 1991 LGC; (2)* whether petitioner should first pay the RPT under protest to perfect the appeal with the LBAA; and *(3)* whether petitioner is exempt from payment of RPT.[29] It must likewise be noted that in petitioner's Petition for Prohibition with the RTC in *SP Case No. 19-2013*, petitioner prayed for the RTC to *(1)* grant and affirm its Petition for Prohibition; *(2)* declare petitioner as a government instrumentality, hence exempt from RPT; *(3)* immediately issue a TRO; and *(4)* after due proceedings, to issue a WPI.[30]

From the foregoing, it is clear that petitioner is claiming exemption from RPT. In the case of *Camp John Hay Development Corporation v. CBAA, et. al.*[31], the Supreme Court declared that a claim for tax exemption merely raises a question of the reasonableness or correctness of the assessment, which requires compliance with *Section 252 of the 1991 LGC*, and such argument which may involve a question of fact should be resolved at the first instance by the LBAA. Moreover, in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[32], the Supreme Court had the occasion to state that a claim of exemption pertains to questioning the correctness of the assessment, and as such, payment under protest under *Section 252(d) of the 1991 LGC* should first be complied with before the taxpayer can file an appeal with the LBAA under *Section 226 of the 1991 LGC.*

Petitioner, in questioning the assessment on the basis of exemption, should have first paid under protest and filed a protest before the Treasurer, before filing a Petition with the LBAA. Having failed to do these, the assessment has attained finality. Therefore, petitioner cannot, through a Petition for Prohibition pray for the RTC to grant and affirm its Petition for Prohibition, to grant its applications for TRO and WPI over the same properties subject of the assessment in the LBAA case; and to be declared as a government

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[28] Finding no document indicating the prayer of petitioner in the LBAA case, the undersigned finds it necessary to refer to the issues instead.
[29] *Records, CTA AC No. 169, RTC Decision,* p. 64.
[30] *Id., Petition for Prohibition, Prayer,* pp. 146-147.
[31] G.R. No. 169234, October 2, 2013, 706 SCRA 547.
[32] G.R. No. 171586, January 25, 2010, 611 SCRA 71.

instrumentality exempt from RPT. Likewise, petitioner cannot, under the guise of a Petition for *Certiorari* seek for the issuance of a TRO and WPI and for declaration that the Notice of Assessment, Notice of Delinquency, Warrants if Levy, and Notice of Sale involving petitioner's real properties in Kidapawan City as null and void. Lastly, petitioner cannot, through the present Petition for Review pray for the Court *En Banc* to rule that petitioner is a government instrumentality and not a GOCC, hence, exempt from payment of RPT; and to declare that the public auction conducted by respondents are invalid, along with the Notice of Delinquency and Warrants of Levy.

Having questioned the assessment issued against it on the basis that it is exempt from RPT, petitioner should just have pursued the LBAA case instead of filing another case with the RTC. Moreover, the RTC, instead of taking cognizance of the case, should have dismissed it for lack of jurisdiction.

LOVELL R. BAUTISTA
Associate Justice