REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

- versus-

THE CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF BATAAN, THE PROVINCE OF BATAAN, PASTOR P. VICHAUCO PROVINCIAL TREASURER OF BATAAN, HERMENEGILDO C. PILAPIL, PROVINCIAL ASSESSOR, PROVINCE OF BATAAN AND RODOLFO C. GOMEZ, MUNICIPAL ASSESSOR, LIMAY BATAAN,
Respondents.

CTA EB No. 1025
(CBAA Case Nos. L-26 & L-26A)

Present:

Del Rosario, *PJ*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

NOV 26 2015
3:30 p.m.

x- x

RESOLUTION

COTANGCO-MANALASTAS, J.:

For resolution is petitioner's *Motion for Reconsideration (of the Decision dated 23 March 2015)*[1], sent via registered mail on April 21, 2015, and received by this Court on April 23, 2015. On August 28, 2015, this Court received respondents'

[1] *Rollo*, EB Case No. 1025, pp. 192-204.

Comment/Opposition (To Petitioner's Motion for Reconsideration)[2], sent by registered mail on August 14, 2015.

The Decision[3], dated March 23, 2015, subject of this motion for reconsideration, dismissed petitioner's petition for review, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for failure of petitioner to perfect an appeal with the Local Board of Assessment Appeals within the period prescribed by law."[4]

In its motion for reconsideration, petitioner argues that there is nothing in the law which provides that the 60-day period to take an appeal applies equally to cases where the protest has been resolved and to those where the protest has not been acted upon. Petitioner argues that without a final act, decision or resolution by the Provincial Treasurer, there is as yet no final assessment upon which the appeal should be based.[5] Since there is no final resolution of petitioner's protest, the 60-day period to appeal has not begun after the lapse of the 60-day period to resolve the protest.[6] Petitioner cites the September 17, 2003 resolution of the Central Board of Assessment Appeals (CBAA) as support for the contention that its appeal was filed on time.

On the other hand, respondent argues that the September 17, 2003 resolution merely made a distinction between an appeal filed pursuant to Section 226 of the Local Government Code (LGC) and the appeal under Section 252 of the same Code. Respondent avers that the CTA *En Banc* decision is consistent with the Decision, dated May 17, 2012, of the CBAA that dismissed petitioner's appeal pursuant to Section 226 of the LGC for having been filed out of time.[7]

The Court *En Banc* finds that petitioner raises no argument which would merit reversal or even modification of the assailed Decision. Indeed, the interplay of the periods provided in Sections 226 and 252 of the LGC have been

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[2] *Rollo*, pp. 297-302.
[3] *Rollo*, pp. 166-187.
[4] *Rollo*, p. 180.
[5] *Rollo*, p. 196.
[6] *Rollo*, p. 197.
[7] *Rollo*, pp. 298-300.

discussed thoroughly in the said Decision, which the Court reiterates below:

> "As emphasized in *Manila Electric Company vs. Barlis, et al.*, the requirement of 'payment under protest' is a condition *sine qua non* before a protest or an appeal questioning the correctness of an assessment of real property tax may be entertained. The requirement of 'payment under protest' is mandatory pursuant to Section 252, and in relation with Section 231 of the LGC as to non-suspension of collection of the realty tax pending appeal.
>
> Thereafter, if the local treasurer and local assessor denies the protest **<u>or fails to act upon it within the 60-day period</u>** provided for in Section 252(a) of the LGC, **<u>Section 252(d) provides that the taxpayer or real property owner may then appeal by filing a verified petition with the LBAA, within 60 days from denial of the protest or inaction, as provided in Section 226 of the LGC</u>**. If the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA within 30 days from receipt of the decision of the LBAA pursuant to Section 229(c) of the LGC."[8] (*citations omitted, emphasis and underscoring ours*)

The Court then applied the foregoing discussion to petitioner's situation, and found that petitioner filed its petition with the LBAA beyond the period prescribed by law. Thus:

> "xxx, petitioner paid the assessment under protest on November 8 and 11, 1996. Counting 30 days therefrom, petitioner had until December 11, 1996 within which to file its written protest with the Provincial Treasurer. Hence, petitioner timely filed its protest on November 15, 1996. Reckoned from the filing of the protest on November 15, 1996, respondents Provincial Treasurer and Municipal Assessor had 60 days or until January 14, 1997 within which to decide the protest. Considering petitioner's protest was not acted upon within said period, petitioner should have filed an appeal with the LBAA within 60 days after the lapse of the 60-day period or until March 15, 1997 as provided in Section 252(d) in relation to Section 226 of the LGC. Unfortunately, petitioner filed its petition with the LBAA only on April 14, 1998 (or May 7, 1997), or

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[8] *Rollo*, p. 178.

beyond the period prescribed by law, hence, filed out of time."[9]

WHEREFORE, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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 M. RINGPIS-LIBAN
Associate Justice

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[9] *Rollo*, p. 179.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

-versus-

THE CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF BATAAN, THE PROVINCE OF BATAAN, PASTOR P. VICHUACO, PROVINCIAL TREASURER OF BATAAN, HERMENEGILDO C. PILAPIL, PROVINCIAL ASSESSOR PROVINCE OF BATAAN AND RODOLFO C. GOMEZ, MUNICIPAL ASSESSOR, LIMAY BATAAN,
Respondents.

CTA EB CASE NO. 1025
(CBAA Case Nos. L-26 & L-26A)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
NOV 26 2015
3:30 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

I maintain my position in dismissing the Petition for Review on the ground that petitioner failed to perfect an appeal with the Local Board of Assessment Appeals (LBAA) pursuant to Section 226 of the Local Government Code (LGC), as amended and accordingly, deny petitioner's "Motion for Reconsideration."

In this case, the *ponencia* applied Section 252 of the Local Government Code (LGC), as amended, to question the reasonableness or correctness (or excessiveness) of the assessment. For failure of petitioner to timely file an appeal to the LBAA within 60 days after the expiration of the 60-day period for the city treasurer to decide petitioner's protest, the present Petition for Review was dismissed.

To reiterate, in invoking Section 252 of the LGC, as amended, petitioner has actually availed of the wrong remedy for purposes of questioning the action of the assessor; it is clear that under Section 226 of the LGC, as amended, the appropriate remedy of a property owner or person having legal interest in a real property is to question the assessment made by local assessors by a petition with the LBAA, *viz*:

> "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."

Otherwise stated, **the remedy of an aggrieved taxpayer is to file an outright appeal before the LBAA against an adverse action of the assessor in the assessment of real property within sixty (60) days from receipt of the written notice of assessment.**

In the case at bar, records show that on October 21, 1996, petitioner received a Notice from respondent Municipal Assessor Rodolfo C. Gomez regarding a revised real property assessment made on petitioner's machineries, buildings and other improvements. Pursuant to Section 226 of the LGC, as amended, petitioner has sixty (60) days from receipt of the written notice of assessment or until December 20, 1996, within which to question the validity of the said revised assessment. Petitioner, however, filed a petition with the LBAA on April 14, 1998, which is 480 days late. Thus, the questioned assessment has become final, executory and demandable.

All told, I maintain my **VOTE** to **DISMISS** the Petition for Review filed by National Power Corporation in CTA EB Case NO. 1025 and **DENY** its "Motion for Reconsideration" for the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice