REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, *Petitioner,*	**CTA EB No. 1025** (CBAA Case Nos. L-26 & L-26A)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
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.*	Promulgated: MAR 2 3 2015 3:30 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, National Power Corporation, pursuant to Section 2(e), Rule 4, in relation to Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals, assailing the *Decision*[1] dated May 17, 2012 rendered by the Central Board of Assessment Appeals (CBAA) in CBAA Case Nos. L-26 & L-26A and the *Order*[2] dated March 22, 2013 denying reconsideration of the said decision. The Decision upheld the dismissal of

[1] *Rollo*, pp. 29-39.
[2] *Rollo*, pp. 41-57.

petitioner's petition before the Local Board of Assessment Appeals (LBAA) of the Province of Bataan in its Resolution[3] dated May 22, 2000.

The Facts

Petitioner is a government-owned and controlled corporation created by virtue of Republic Act No. 6395, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City.[4]

Respondent CBAA is a nominal party which rendered the assailed Decision and Order. It is a quasi-judicial body created under Section 229(c) of the Local Government Code to decide real property tax assessment cases brought on appeal from the decisions of the LBAA of cities and provinces.[5]

Respondent LBAA of the Province of Bataan is the Board of Assessment Appeals in the Province of Bataan which has jurisdiction to hear and decide appeals of owners of real property from the actions of the Provincial Assessor of Bataan.[6]

Respondent the Province of Bataan is a local government unit organized and existing under the Local Government Code with postal address at 2/F Capitol Bldg., San Jose, Balanga Bataan. Respondent Pastor P. Vichuaco is the Provincial Treasurer of Bataan, while Hermenegildo C. Pilapil is the Provincial Assessor of the Province of Bataan and Rodolfo C. Gomez is the Municipal Assessor of Limay, Bataan, who are all being sued in their official capacities.[7]

The facts[8] as culled from the records are as follows:

On October 21, 1996, petitioner received a Notice from respondent Gomez, Municipal Assessor of Limay, Bataan, regarding a revision of the real property tax assessment made on petitioner's machineries, buildings and other improvements (Block A & B) at its Bataan Combined Cycle Power Plant in

---

[3] *Rollo*, pp. 65-69.
[4] The Parties, Petition for Review, p. 2.
[5] *Ibid.*
[6] *Ibid.*
[7] The Parties, Petition for Review, p. 3.
[8] *Rollo*, pp. 3-12, 30-34, 72-73.

Limay, Bataan. Also attached in said letter are copies of Tax Declaration Nos. 13137, 13138, 13139 and 13140. Respondent Municipal Assessor's letter was also accompanied by a copy of the Real Property Tax Order of Payment assessing the subject properties at the market value of P1,500,000,000.00 for Block A and P1,500,0000,000.00 for Block B for a total amount of P3,000,000,000.00[9].

On October 23, 1996, petitioner, thru Mr. Antonio O. Nerona of Metro Manila Regional Office, wrote a letter to respondent Municipal Assessor informing the latter that in petitioner's Sworn Declaration submitted to the office of respondent Provincial Treasurer, the value of the subject properties is lower than those reflected in the aforesaid tax declarations. Petitioner also asked respondent Municipal Assessor to consider petitioner's sworn declaration in respondents' assessment.

Respondent Municipal Assessor replied and requested a meeting with petitioner's counsel.

Meanwhile, on November 8, 1996, petitioner paid "under protest" a portion of the subject real property tax in the amount of P8,160,000.00 to respondent Provincial Treasurer. The balance of P12,213,114.90 was also paid "under protest" on November 11, 1996.

On November 15, 1996, petitioner formally filed its protest and requested that respondents' assessment be corrected and the excess payment be refunded or credited in its favor.

Thereafter, a series of meetings and discussions were held between petitioner and respondents Municipal Assessor, Provincial Assessor and Provincial Treasurer. On January 13, 1997, petitioner furnished respondent Municipal Assessor additional supporting documents for its protest.

On November 6, 1997, petitioner paid "under protest" the amount of P6,000,000.00 for the 1997 real property tax on the subject property.

---

[9] *Rollo*, p. 38.

Respondent Provincial Treasurer failed to act on petitioner's protest. Hence, petitioner filed a petition with the LBAA of Bataan on April 14 1998[10].

Petitioner paid "under protest" the real property tax of the subject real properties as follows:

For the year 1997	-	P6,000,000.00	-	11-06-97
For the year 1998	-	P33,459.74	-	03-31-98
1st quarter of 1998	-	P1,350,000.00	-	03-31-98
2nd quarter of 1998	-	P1,350,000.00	-	11-20-98
3rd quarter of 1998	-	P1,500,000.00	-	11-27-98
4th quarter of 1998	-	P1,350,000.00	-	12-09-98
For the year 1999	-	P4,553,106.38	-	03-31-99

During the hearing, respondent LBAA required petitioner to submit its books to support its allegation that the assessment was excessive and erroneous. Respondents Municipal Assessor and Provincial Assessor filed their Comment thereto. An ocular inspection was also conducted.

On October 12, 1999, with the approval of the LBAA, it was agreed that respondents Provincial and Municipal Assessor, shall submit within fifteen (15) days from said date a revised assessment on the real property tax of petitioner's property. Respondents failed to comply with this agreement.

For the year 2000, respondents issued another assessment which maintained its assessment for petitioner's real property subject matter of this case, without considering depreciation costs and remaining economic life of the improvements and machineries therein.

On May 22, 2000, respondent LBAA issued a Resolution[11], which dismissed petitioner's petition for having been filed out of time and for lack of merit. The LBAA ruled, among others, that having received a notice of the assessment on October 21, 1996, Section 226 of Republic Act (RA) No. 7160 or the Local Government Code (LGC) governs, and pursuant thereto, petitioner who professed dissatisfaction with the assessment had sixty (60) days from said date within which to make an appeal to the LBAA, hence, the petition was

[10] In the Order dated March 22, 2013 of the CBAA, it was stated that the petition was filed with the LBAA on May 7, 1998, *rollo*, p. 52.
[11] *Supra*, note 3.

filed out of time. Even assuming that the petition is not barred by prescription, Section 203 of RA No. 7160 imposes upon the taxpayer the duty of filing a sworn declaration of the true value of a subject property within 60 days from acquisition. Refusal or failure to do so within the time prescribed shall give the local assessor the right to make the declaration himself (Section 204, RA No. 7160). Considering that respondent Municipal Assessor sent a letter dated April 24, 1995 informing petitioner of such duty and petitioner failed to comply with such duty, the LGU was within its right when it prepared the assessment. Petitioner has lost its right to complain that its situation was not taken into consideration.

Petitioner appealed before the CBAA and on September 17, 2003, the CBAA issued a Resolution[12] setting aside the Order of the LBAA dismissing petitioner's appeal. The dispositive portion of which reads:

> "Wherefore, the Resolution of the Local Board of Assessment Appeals of the Province of Bataan pertaining to its Order of Dismissal of the Appeal therein by the National Power Corporation, Petitioner-Appellant, for having been filed, not in accordance with the provisions of the Local Government Code of 1991 (R.A. 7160) and therefore (filed) out of time is hereby set aside. The Appeal filed pursuant to Sec. 252 of R.A. 7160 is hereby upheld. Hearing of the case on the merits will be on October 7, 2003, the parties are hereby ordered to act accordingly."

The CBAA thereby allowed petitioner to present its evidence.

During the course of the proceedings, the CBAA encouraged the parties to enter into an amicable settlement pursuant to RA No. 9285 or the Alternative Dispute Resolution Act of 2004 and Executive Order No. 523. The parties made considerable and lengthy negotiations for a compromise agreement, but they were not able to succeed.

On May 17, 2012, the CBAA rendered its assailed *Decision*[13], ruling as follows:

---

[12] *Rollo*, pp. 70-80.
[13] *Supra*, Note 1.

THE BOARD'S RULING

This Board is in full accord with Respondents-Appellees' view that Petitioner-Appellant is "effectively barred from questioning the assessment of the subject properties."

In the case of *Ty v. Trampe* (500 SCRA 519) the Supreme Court said:

"Xxx, the protest contemplated under Section 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in real estate tax assessment, he is required to 'first pay the tax' under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench, however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of increase in the tax but attacks the validity of the increase."

The herein appeal is against the action of the treasurer, not against the action of the assessor. Petitioner-Appellant before this Board, however, did not adduce evidence against the action of the treasurer. Instead it proceeded against the action of the assessor which is not under appeal. Parenthetically, Petitioner-Appellant can no longer appeal the assessment made by the assessor as it is already barred by time.

This Board is therefore constrained to dismiss the herein appeal for lack of merit. However, since there are accrued depreciations on the property, the treasurer concerned is hereby ordered to take full consideration thereof for Petitioner-Appellant.

SO ORDERED.

Petitioner filed a Motion for Partial Reconsideration (Agreeing Fully with the Ruling on Depreciation Allowance)[14] praying for the partial reconsideration of the Decision.

On March 22, 2013, the CBAA issued its assailed *Order*[15] where the majority of the CBAA denied petitioner's Motion for

[14] *Rollo*, pp. 81-102.
[15] *Supra*, Note 2.

Partial Reconsideration. The Order contained the Dissenting Opinion[16] of Commissioner Roberto D. Geotina.

In the said order, the CBAA held, among others, that the petition filed by petitioner with the LBAA on May 7, 1998 was primarily against the assessment made by respondent assessor – not against the treasurer's constructive denial of petitioner's protest. In the said petition/appeal, petitioner prayed that the LBAA (1) declare the assessment as excessive and, consequently, (2) order the respondent assessors to revise the assessment. Petitioner's third prayer that the LBAA order the respondent treasurer to refund the "excess payment" is incidental to the first two reliefs prayed for. Therefore, Section 226 of the LGC applies to this case. Considering that the Written Notice of Assessment was received by petitioner on October 21, 1996, the appeal to the LBAA should have been filed not later than December 20, 1996, the 60th day after October 21, 1996. However, petitioner filed its appeal to the LBAA only on May 7, 1998, thus, the appeal was tardy for about 1 year, 4 months and 17 days.

Aggrieved, petitioner filed the instant *Petition for Review* on June 6, 2013 by registered mail and received by this Court on June 11, 2013.

Respondents were ordered to file their comment within ten (10) days from receipt of the Resolution[17] dated July 23, 2013.

Respondents filed their Comment[18] on September 9, 2013 by registered mail and received by this Court on September 18, 2013. Respondents argue, among others, that petitioner no longer possesses the required legal standing to file the petition. The subject real properties were already transferred to the Power Sector Assets and Liabilities Management Corporation (PSALM) as evidenced by a Deed of Transfer executed on January 8, 2009. PSALM, in turn, sold the same properties to a private entity, Panasia Energy Holdings, Inc., as evidenced by a Deed of Absolute Sale dated July 26, 2010. As a direct consequence of its losing ownership of the properties in question, petitioner has likewise lost its requisite legal standing to institute the present petition.

---

[16] *Rollo*, pp. 58-64.
[17] *Rollo*, pp. 106-107.
[18] *Rollo*, pp. 108-111.

Considering the arguments/discussion raised by the parties, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[19].

Petitioner, through its counsel, the Office of the Solicitor General (OSG), filed a Manifestation and Motion [20] on December 20, 2013 by registered mail asking for an extension of time, or until January 14, 2014, to file its memorandum, which the Court granted on January 8, 2014[21].

On January 14, 2014, the OSG filed by registered mail another Manifestation and Motion[22] requesting for a copy of the comment on the petition filed by respondents considering that it was not furnished a copy thereof.

In the Resolution[23] dated February 24, 2014, the Court ordered respondents to furnish petitioner by personal service a copy of their comment.

Respondents filed a Motion for Reconsideration [24] on March 17, 2014 stating that they already sent a copy of the comment to the OSG by registered mail and received by the latter on September 19, 2013 as evidenced by the Registry Return Card, a photocopy of which was attached to the motion. Respondents also stated that they are opting not to file their memorandum and request that the petition be decided on the basis of the appeal memoranda submitted by the parties to the CBAA and all of their earlier submissions. Petitioner was ordered to comment on the motion but failed to do so.[25]

On July 30, 2014, the Court partly granted the motion for reconsideration [26] , thus, respondents were no longer required to send OSG a copy of their comment and petitioner was given a period of ten (10) days to file its memorandum.

[19] *Rollo*, pp. 124-125, Resolution dated October 18, 2013.
[20] *Rollo*, pp. 126-128.
[21] *Rollo*, pp. 131-132.
[22] *Rollo*, pp. 133-135.
[23] *Rollo*, pp. 140-142.
[24] *Rollo*, pp. 143-145.
[25] *Rollo*, pp. 151-153.
[26] *Rollo*, pp. 156-158.

Petitioner failed to file its memorandum. Hence, the above-captioned case was submitted for decision on October 16, 2014.

The Issues

Petitioner raises the following grounds in support of its petition[27]:

I. The CBAA's dismissal of the appeal is contrary to the Local Government Code and misapplied the ruling in *Ty v. Trampe.*

II. The CBAA's dismissal of the appeal is contrary to its own rules, the requirement of due process and fair play.

III. The CBAA's reversal of its own ruling requiring respondents to consider accrued depreciations on the property in its assessment is erroneous.

IV. The assessment was excessive and confiscatory.

From the foregoing, the issues may be summed up into one general issue: whether or not the CBAA erred in dismissing petitioner's appeal.

The Ruling of the Court

Before resolving the petition on its merits, the Court deems it necessary to first resolve the procedural issue involved in this case, *i.e.*, whether it was proper for respondent CBAA to dismiss petitioner's appeal on the basis that petitioner's appeal to the LBAA was filed out of time.

Petitioner argues that the CBAA erred in solely relying on the procedure under Section 226 of the LGC, which required the taxpayer to appeal within 60 days from the date of receipt of the written notice of assessment. Instead, Section 226 must be construed together with Section 252 of the LGC, which provides for the procedure when payment had already been made but there is inaction on the part of the local treasurer on

[27] *Rollo*, p. 15.

the taxpayer's protest. Reference in Section 252 to Chapter 3, Title II, Book II of the LGC, in turn, pertains to the procedure under the LBAA after the procedure for payment under protest under Section 252 had already been complied with. This was the procedure followed by petitioner in questioning the assessment. That is, petitioner paid, protested and appealed the amount of the assessment.

On the other hand, respondent CBAA is of the view that Section 252 of the LGC applies when the taxpayer believes that the assessment made by the assessor is satisfactory or correct, but that the treasurer's computation of the tax due thereon is erroneous. However, if the taxpayer believes that the assessment made by the assessor is illegal, incorrect or otherwise unsatisfactory, the taxpayer's recourse would be to file an appeal with the LBAA under Section 226 of the LGC, with the assessor and not the treasurer. In other words, the determining factor as to which provision of the LGC applies – Section 226 or 252 – is the perceived error complained of by the taxpayer in a given case. Considering that petitioner's protest was primarily against the assessment made by respondent Assessor, then Section 226 of the LGC applies. Thus, the appeal to the LBAA was filed beyond the 60-day period provided under Section 226 of the LGC.

To resolve this procedural issue, *We* refer to the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of his real property provided in RA No. 7160 or the LGC of 1991.

Section 252 of the LGC provides:

> SEC. 252. *Payment Under Protest.* — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax of 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.

In relation thereto, Chapter 3, Title II, Book II (which covers Sections 226 to 231) of the LGC, entitled "Assessment Appeals" refers to the appellate procedures before the LBAA and the CBAA, relevant provisions of which are as follows:

> 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.
>
> SEC. 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.
>
> 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.

In *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*[28], the Supreme Court had the occasion to reconcile the apparently conflicting provisions of Sections 252 and 226 of the LGC, *to wit*:

> "....**Sections 252 and 226 provide *successive* administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226**, in declaring that 'any owner or person having legal interest in the property who is not satisfied with the *action of the provincial, city, or municipal assessor in the assessment of his property* may . . . appeal to the Board of Assessment Appeals . . .,' **should be read in conjunction with Section 252 (d)**, which states that 'in the event that the protest is denied . . ., the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. **The 'action' referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252.** Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked...." (*Emphasis supplied*)

In the case of *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et al.*[29], the Supreme Court further clarified the procedure to be followed in case a taxpayer or real property owner does not agree with the assessment of the real property tax sought to be collected, thus:

> "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

[28] G.R. No. 171586, Resolution dated January 25, 2010.
[29] G.R. No. 169234, October 2, 2013.

> appeal with the LBAA of the province or city concerned, as provided in Section 226 of R.A. 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."

From all the foregoing, should the taxpayer or real property owner question the reasonableness or correctness (or excessiveness) of the assessment, Section 252 of the LGC directs that the taxpayer should first pay the tax due before his protest can be entertained. The words "paid under protest" shall be annotated on the tax receipts. It is only after such payment that the taxpayer may file a protest in writing within 30 days from payment of the tax to the local treasurer and local assessor, who shall decide the protest within 60 days from receipt.

As emphasized in *Manila Electric Company vs. Barlis, et al.* [30] , 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.[31]

Thereafter, if the local treasurer and local assessor denies the protest or fails to act upon it within the 60-day period provided for in Section 252(a) of the LGC, 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. 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.

In its protest filed with the Provincial Treasurer, petitioner requested that the Provincial Treasurer and Municipal Assessor "to cause the correction on the assessment

---

[30] G.R. No. 114231, May 18, 2001.
[31] *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et al.*, G.R. No. 169234, October 2, 2013.

and collection of the correct tax ... and thereupon issue to NPC a tax refund/credit of the portion of tax paid based on erroneous assessment".[32] Also, in its petition/appeal with the LBAA, petitioner prayed that the LBAA declare the assessment as excessive and consequently, to order the respondent assessors to revise the assessment and to order respondent Provincial Treasurer to refund the "excess payment" of petitioner.[33] Hence, there is no doubt that petitioner is questioning the reasonableness or correctness of the assessment, thus, Sections 252 and 226 of the LGC are applicable.

In this case, the written notice of the revised assessment from respondent Municipal Assessor was received by petitioner on October 21, 1996. On November 8, 1996, petitioner paid "under protest" a portion of the assessment in the amount of P8,160,000.00 to respondent Provincial Treasurer while the balance of P12,213,114.90 was paid "under protest" on November 11, 1996. On November 15, 1996, petitioner formally filed its protest and requested that respondents' assessment be corrected and the excess payment be refunded or credited in its favor. Respondent Provincial Treasurer failed to act on petitioner's protest. Hence, petitioner filed a petition with the LBAA of Bataan on April 14 1998 (or May 7, 1998)[34].

From the foregoing, 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, 1998), or beyond the period prescribed by law, hence, filed out of time.

[32] *Rollo*, p. 52.
[33] *Rollo*, pp. 52, 54-55.
[34] Per Resolution dated September 17, 2003 and Decision dated May 17, 2012 of the CBAA, the facts show that the appeal with the LBAA was filed on April 14, 1998, *rollo*, pp. 73 and 30, respectively. However, in the Order dated March 22, 2013 of the CBAA, it was stated that the petition was filed with the LBAA on May 7, 1998, *rollo*, p. 52.

Well-settled is the rule that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional [35] and failure of a party to conform to the rules regarding appeal will render the judgment final and executory and, hence, unappealable.[36] 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.[37] For failure of the petitioner to question the assessment before the LBAA within the reglementary period, the real property tax assessment became final and unappealable, consequently, petitioner cannot seek the refund of its alleged excess real property tax payments.

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised.

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.

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

---

[35] *Yaneza vs. Court of Appeals*, G.R. No. 149322, November 28, 2008.
[36] *Peña v. Government Service Insurance System*, G.R. No. 159520, September 19, 2006.
[37] *Meralco vs. Barlis*, G.R. No. 114231, Resolution dated June 29, 2004.

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

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

-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.

Present:

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

Promulgated:
MAR 2 3 2015
3:30 p.m.

x --- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Amelia R. Cotangco-Manalastas, in so far as it dismissed the instant Petition for Review, but 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,

In this case, **petitioner is actually questioning the assessment of the Municipal Assessor of Limay, Bataan on its machineries, buildings and**

om

other improvements on the ground that the valuation used by the assessor is higher than that indicated in the sworn declaration submitted by petitioner. Notwithstanding, petitioner opted to pay the real property tax under protest and filed a formal protest pursuant to Section 252 of the LGC, as amended, which states:

> "Section 252. *Payment Under Protest.*
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the **provincial, city treasurer or municipal treasurer,** in the case of a municipality within Metropolitan 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 credits against his existing or future tax liability.
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer **may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code**."

Notably, Section 252 of the LGC, as amended, falls under Chapter VI, Collection of Real Property Tax. **It must be stressed that the duty to collect the realty tax due on the assessment pertains to the treasurer while the duty to assess realty tax is the function of the assessor.**

In availing of the remedy under Section 252 of the LGC, as amended, petitioner has actually availed of the wrong remedy for purposes of questioning the action of the assessor as it is clear under Section 226 of the LGC, as amended, that a property owner or person having legal interest in a real property may question the assessment made by the assessor by directly filing a petition with the LBAA, pursuant to Section 226 of the LGC, *viz.*:

> "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 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."

Indubitably, Section 226 of the LGC, as amended, gives dissatisfied owners of real properties with an administrative forum where they can question the action of the provincial, city or municipal assessor in the assessment of their properties. Specifically, an aggrieved taxpayer can 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 *Systems Plus Computer College of Caloocan City vs. Local Government of Caloocan City,*[1] the Honorable Supreme Court confirmed that, under Section 226 of the LGC of 1991, **the remedy of appeal to the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property**, *viz.:*

> "Under Section 226 of RA 7160, **the remedy of appeal to the Local Board of Assessment Appeals is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property**, thus:
>
>> '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 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.'
>
> However, petitioner argues that it is not contesting any assessment made by respondent City Assessor. Petitioner's argument obviously proceeds from its misunderstanding of the term "assessment." Under Section 199(f), Title II, Book II, of the Local Government Code of 1991, **"assessment" is defined as the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, *classification* and appraisal of properties.** Viewed

[1] G.R. No. 146382, August 7, 2003.

OM

from this broader perspective, **the determination made by the respondent City Assessor with regard to the taxability of the subject real properties squarely falls within its power to assess properties for taxation purposes** subject to appeal before the Local Board of Assessment Appeals.

Petitioner also argues that it is seeking to enforce, through the petition for mandamus, a clear legal right under the Constitution and the pertinent provisions of the Local Government Code granting tax exemption on properties actually, directly and exclusively used for educational purposes. But petitioner is taking an unwarranted shortcut. The argument gratuitously presumes the existence of the fact which it must first prove by competent and sufficient evidence before the City Assessor. It must be stressed that the authority to receive evidence, as basis for classification of properties for taxation, is legally vested on the respondent City Assessor whose action is appealable to the Local Board of Assessment Appeals and the Central Board of Assessment Appeals, if necessary.

The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein. **Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.**" *(Emphases supplied)*

This ruling was reiterated in the case of *Fels Energy, Inc., vs. The Province of Batangas and The Office of the Provincial Assessor of Batangas,*[2] wherein the Honorable Supreme Court held:

"**The remedy of appeal to the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of the property**. It follows then that the determination made by the respondent Provincial Assessor with regard to the taxability of the subject real properties falls within its power to assess properties for taxation purposes subject to appeal before the LBAA.

We fully agree with the rationalization of the CA in both CA-G.R. SP No. 67490 and CA-G.R. SP No. 67491. The two divisions of the appellate court cited the case of Callanta v. Office of the Ombudsman, where we ruled that under Section 226 of R.A. No 7160, **the last action of the local assessor on a particular assessment shall be the**

[2] G.R. Nos. 168557 & 170628, February 16, 2007.

M

> **notice of assessment; it is this last action which gives the owner of the property the right to appeal to the LBAA.** The procedure likewise does not permit the property owner the remedy of filing a motion for reconsideration before the local assessor. The pertinent holding of the Court in Callanta is as follows:
>
> x x x [T]he same Code is equally clear that the aggrieved owners should have brought their appeals before the LBAA. Unfortunately, despite the advice to this effect contained in their respective notices of assessment, the owners chose to bring their requests for a review/readjustment before the city assessor, a remedy not sanctioned by the law. To allow this procedure would indeed invite corruption in the system of appraisal and assessment. It conveniently courts a graft-prone situation where values of real property may be initially set unreasonably high, and then subsequently reduced upon the request of a property owner. In the latter instance, allusions of a possible covert, illicit trade-off cannot be avoided, and in fact can conveniently take place. Such occasion for mischief must be prevented and excised from our system.
>
> For its part, the appellate court declared in CA-G.R. SP No. 67491:
>
> x x x. The Court announces: Henceforth, whenever the local assessor sends a notice to the owner or lawful possessor of real property of its revised assessed value, the former shall no longer have any jurisdiction to entertain any request for a review or readjustment. The appropriate forum where the aggrieved party may bring his appeal is the LBAA as provided by law. It follows ineluctably that the 60-day period for making the appeal to the LBAA runs without interruption. This is what We held in SP 67490 and reaffirm today in SP 67491.
>
> To reiterate, if the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the taxpayer's property becomes absolute upon the expiration of the period to appeal. **It also bears stressing that the taxpayer's failure to question the assessment in the LBAA renders the assessment of the local assessor final, executory and demandable, thus, precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.**" *(Emphases supplied)*

Considering that petitioner is questioning the action of the assessor in the assessment of its properties, the LBAA and the Central Board of Assessment Appeals (CBAA) correctly dismissed petitioner's appeal before the LBAA for its failure to perfect the same within 60 days from receipt of the notice of assessment, pursuant to Section 226 of the LGC, as amended.

OM

Factual findings of administrative bodies, which have acquired expertise in their field, are generally binding and conclusive upon the Court; we will not assume to interfere with the sensible exercise of the judgment of men especially trained in appraising property. Where the judicial mind is left in doubt, it is a sound policy to leave the assessment undisturbed.[3]

For petitioner's failure to perfect an appeal with the LBAA within sixty (60) days from receipt of the notice of assessment, the questioned assessment has become final, executory and demandable. The Court has therefore lost its jurisdiction to entertain the subject Petition for Review.

All told, I **VOTE** to **DISMISS** the Petition for Review filed by National Power Corporation in CTA EB Case No. 1025 for the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[3] Cagayan Robina Sugar Milling Co. V. Court of Appeals, G.R. No. 122451, October 12, 2000, 396 Phil. 830, 840 (2000).