REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES Petitioner,	CTA EB No. 1392 (CBAA Case No. M-35) (LBAA Case No. 01-2013)
-versus-	Present:
CENTRAL BOARD OF ASSESSMENT APPEALS; LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF AGUSAN DEL SUR; STARLITA G. RUIZ, MUNICIPAL ASSESSOR SAN FRANCISCO, AGUSAN DEL SUR and CESAR T. RUFILA, JR., ACTING PROVINCIAL ASSESSOR OF AGUSAN DEL SUR. Respondents.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* Promulgated: SEP 05 2017 3:50 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1] before the Court *En Banc*, petitioner National Grid Corporation of the Philippines (NGCP) seeks to reverse and set aside the Decision dated February 27, 2015, which denied petitioner's claim for exemption from real property taxes and reclassified under special classes the subject real properties, and Resolution dated August 31, 2015, rendered by respondent Central

[1] *En Banc* Docket, pp. 1-26.

Board of Assessment Appeals (CBAA), which denied its plea for reconsideration.

THE PARTIES

Petitioner is the NGCP, a domestic corporation with principal office address at the NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.

Respondent CBAA is a public office with principal address at 7th Floor, EDPC Building, BSP Complex, Roxas Boulevard, Manila.

Respondent Local Board of Assessment Appeals (LBAA), Province of Agusan Del Sur is also a public office with principal address at Governor D.O. Plaza Government Center, Prosperidad, Agusan Del Sur.

Respondents Municipal Assessor of San Francisco, Agusan Del Sur Starlita G. Ruiz and Acting Provincial Assessor of Province of Agusan Del Sur Cesar T. Rufila, Jr., are impleaded in their official capacities. They hold office at the Office of Municipal Assessor, San Franciso, Agusan Del Sur and at the Office of the Provincial Assessor, Provincial Government Center, Patin-ay, Prosperidad, Agusan Del Sur, respectively.

THE FACTS AND THE PROCEEDINGS

On November 5, 2012, petitioner received a letter dated September 19, 2012 from the Provincial Assessment and Treasury Office, with attached copy of Tax Declarations[2] of the properties declared in the name of TRANSCO as owner and petitioner as the beneficial user, and the Summary of Assessment and Billing Statement of Real Property Tax Liability of NGCP to the Province of Agusan del Sur, for Calendar Years (CYs) 2011-2012, in the total amount of Five Million Eight Hundred Forty Three Thousand Six Hundred Thirty Two and 40/100 Pesos (₱5,843,632.40).

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[2] Annexes "C" to "DD", *ibid.,* pp. 33-60; Annexes "C" to "C-12" to the Petition for Review, *en banc* docket, pp. 86-98.

On December 27, 2012, petitioner filed with respondent LBAA of Agusan Del Sur, through registered mail, a Petition against respondents Municipal Assessor Ruiz and Acting Provincial Assessor Rufila, Jr.[3] assailing the letter dated September 19, 2012 and the assessment issued against it as contained in the Summary of Assessment and Billing Statement of Real Property Tax Liability for NGCP for CYs 2011-2012. The Petition was docketed as LBAA Case No. 01-2013.

On February 11, 2013, respondents Municipal Assessor Ruiz and Acting Provincial Assessor Rufila, Jr. filed a Motion to Dismiss[4] citing lack of jurisdiction on account of petitioner's failure to first pay the tax under protest, citing Section 252(a) of the Local Government Code (LGC). Petitioner filed its opposition[5] to the motion on March 15, 2013.

In a Resolution dated February 28, 2013[6], received by petitioner on March 15, 2013, the LBAA granted the cited Motion to Dismiss on jurisdictional ground. The resolution disposed as follows:

> "The Local Board cannot entertain this petition for it is without jurisdiction to do so. As correctly put by respondents citing Section 252(a) of R.A. 7160, no protest shall be entertained unless the taxpayer pays first his tax. There being no indication from the petition that the said legal requirement was complied by herein petitioner, this petition is hereby ordered Dismissed.
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> So resolved."

On April 15, 2013, petitioner filed a Notice of Appeal with Memorandum on Appeal with respondent CBAA[7], docketed as CBAA Case No. M-35.

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[3] Annex "E" to the Petition for Review, *en banc* docket, pp. 100-114.
[4] Annex "G" to the Petition for Review, *en banc* docket, p. 156.
[5] Annex "H" to the Petition for Review, *en banc* docket, pp. 157-162.
[6] Annex "I" to the Petition for Review, *en banc* docket, pp. 163-164.
[7] Annex "J" to the Petition for Review, *en banc* docket, pp. 165-213.

In the Decision dated February 27, 2015, received by petitioner on May 19, 2015, respondent CBAA partially granted petitioner's appeal, to wit:

> "WHEREFORE, in view of all the foregoing, this Board hereby renders judgment finding merit in the instant appeal insofar as the FIRST ASSIGNMENT OF ERROR is concerned and hereby rules:
>
> 1. THAT THE HEREIN APPEALED RESOLUTION of the Respondent LBAA dated February 18, 2013 be DECLARED NULL AND VOID, FOR BEING CONTRARY TO LAW;
>
> 2. That the relief prayed for by petitioner-appellant be partially DENIED INSOFAR AS THE PRINCIPAL PRAYER FOR EXEMPTION from Real Property Taxes on the subject properties relative to the foregoing disquisitions of this Board in the issue Nos. 2 and 4 as discussed above;
>
> 3. However, as to the alternative prayer for relief as discussed under No. 3 above, the same is hereby GRANTED, and hence the subject properties of the NGCP as listed in its ALTERNATIVE PRAYER FOR RELIEF should be CLASSIFIED under SPECIAL CLASSES OF REAL PROPERTY and should be subject to a uniform and equitable assessment level of 10%, to wit:
>
>   a) Warehouse
>   b) Guardhouse
>   c) Fence
>   d) Water Tank
>   e) Fuel Storage Tank
>   f) Sentry Tower
>   g) 6,030 and 2,250 square meters of land

SO ORDERED."

On April 23, 2015, petitioner filed a Motion for Partial Reconsideration of the Decision dated February 27, 2015[8].

On August 31, 2015, respondent CBAA issued a Resolution denying petitioner's Motion for Partial Reconsideration[9].

Hence, this Petition for Review filed by petitioner with the Court *En Banc* on December 2, 2015.

On January 29, 2016, the Court *En Banc* directed respondents to file their comments within ten (10) days from notice[10].

On April 27, 2016, the Court *En Banc* directed the parties to file their respective memoranda within thirty (30) days from receipt of the resolution[11].

On September 5, 2016, the case was submitted for decision[12] with petitioner's Memorandum filed on June 9, 2016[13] *sans* respondents' Memorandum[14].

THE ISSUES

I. Whether Petitioner NGCP is exempted from payment of real property tax on subject properties under Section 9 of R.A. No. 9511; and

II. Whether the subject real properties are exempted from payment of the real

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[8] Annex "K" to the Petition for Review, *en banc* docket, pp. 260-273.
[9] Folder 2 of CBAA Record, pp203-216.
[10] *En Banc* Docket, pp. 334-335.
[11] *En Banc* Docket, pp. 334-335.
[12] *En Banc* Docket, pp. 376-378.
[13] *En Banc* Docket, pp. 341-370.
[14] Per Records Verification Report of the Judicial Records Division dated August 22, 2016, *en banc* docket, p. 374.

property tax under the provisions of Section 234(c) of R.A. 7160.

Petitioner's arguments:

Petitioner argues that the subject machineries and equipment are by their very nature and purpose, necessary for the operation and maintenance of its power transmission business which is the subject matter of its franchise. As such, said properties should be declared exempt from the payment of real property tax (RPT) as provided in its franchise, specifically Section 9 of R.A. No. 9511.

Petitioner also contends that the Supreme Court's ruling in Digitel Communications Philippines, Inc. v. City of Batangas, *et. al.*, that Digitel is liable to pay real property tax, is not applicable to its case as their respective tax exemption provisions in their respective franchise are materially different from each other. Petitioner posits that its grant of tax exemption under Section 9 of R.A. No. 9511 has the "in lieu all taxes" and "exclusive to this franchise" provisos, while the Digitel's Charter only has the "exclusive of this franchise" proviso.

Lastly, petitioner believes that the subject machineries and equipment are exempt from payment of real property tax under Section 234(c) of R.A. 7160 or the LGC, in the same way as TRANSCO, prior to the transfer of the said subject properties to it as concessionaire. However, the petitioner does not claim that it is in the same category as TRANSCO, a government owned and controlled corporation (GOCC), or that it is relying mainly on the tax exemption privilege of TRANSCO as a GOCC. According to petitioner, it is claiming exemption from real property tax since the subject properties are being used in rendering essential public service of transmitting electricity to the general public. The properties assessed and classified as machinery and equipment are indispensable parts of the nationwide power transmission system or grid, without which, it cannot operate the transmission system and deliver electricity to the public, through its franchise and concession agreement with TRANSCO.

RULING OF THE COURT *EN BANC*

The primary issue for resolution is whether petitioner is correct in claiming exemption from payment of real property taxes on the subject properties under its franchise and Section 234(c) of R.A. 7160.

But to resolve the foregoing issue, the Court *En Banc* needs to discuss first the procedure to be observed when a taxpayer contests an assessment issued by an LGU. On this regard, Section 252 of the LGC of 1991 is instructive, to wit:

> "Section 252. *Payment under Protest.* -
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) xxxx
>
> (c) xxxx
>
> (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."

Corollarily, Chapter 3, Title Two, Book II of the LGC of 1991 provides for the procedural and substantive aspects of appeal before the LBAA and the CBAA, to wit:

> "CHAPTER 3 - ASSESSMENT APPEALS"

"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. -

(a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) xxxx

(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."

Sections 252 and 226 of the LGC of 1991 provide *successive* administrative remedies available to a taxpayer who assails the correctness of an assessment issued against such taxpayer. Hence, Section 226 of the LGC of 1991, which provides that any owner or person having legal interest in the property, who is aggrieved by or not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his/her/its property, may file an appeal to the LBAA within sixty (60) days from the date of receipt of the written notice of assessment (NOA), should be read in conjunction with Section 252 (d) of the same Code, 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[15].

The protest contemplated under Section 252 is required where reasonableness or correctness of the amount assessed is being impugned. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he/she/it is required to "first pay the tax" under protest, otherwise, the city or municipal treasurer will not act on the said protest.

On the other hand, if the taxpayer or the owner or person having legal interest in the property, questions the very authority and power of the assessor to impose the

[15] Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231.

assessment, or questions the authority and power of the treasurer to collect the tax, the matter becomes a legal question, which is properly cognizable by the proper trial court.

In other words, there can be two situations when a taxpayer or the owner or person with legal interest over the property, may question the assessment, *i.e.,* 1) question the reasonableness or correctness of the assessment or 2) question the legality or validity of the assessment.

In the first scenario, *i.e.*, the taxpayer or the person with legal interest over the property questions the reasonableness, correctness, or excessiveness of the assessment, the taxpayer must first pay under protest the assessed tax as mandated under Section 252(a) of the LGC of 1991. In the event that the protest is denied or not acted upon within 60 days from filing, the taxpayer or the person with legal interest over the property may then file an appeal with the LBAA, which has 120 days from the date of receipt of such appeal, to render a decision. When the taxpayer or the person with legal interest over the property or the assessor, as the case may be, remains unsatisfied with the decision of the LBAA, the taxpayer may elevate the case to the CBAA within 30 days from receipt of the adverse decision. If still aggrieved, the taxpayer or person with legal interest over the property, may seek judicial intervention before the CTA *En Banc* in accordance with Sections 7(a)(5) and 11 of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 2(e), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

For the second scenario, the question deals with the legality or validity of the assessment, *i.e.,* the authority and power of the assessor to impose the assessment, and of the treasurer to collect the real property tax, which is a question of law. In such case, the taxpayer or person with legal interest over the property, may appeal directly to the proper Regional Trial Court (RTC). Any appeal from the RTC's decision is appealable before the Division of the CTA.

In the case at bar, it is evident that petitioner questioned before the LBAA of Agusan Del Sur the correctness of the assessment issued against it by the Provincial Assessment and Treasury Office in the total amount of ₱5,843,632.40, when it filed a petition against respondents Municipal Assessor Ruiz and Acting Provincial Assessor Rufila, Jr. claiming exemption from payment of real property tax allegedly provided under its franchise and Section 234(c) of LGC of 1991.

However, as correctly observed by respondent LBAA, petitioner failed to first pay under protest the questioned assessment as required under Section 252(a) of the LGC of 1991. The payment of the tax under the questioned assessment is mandatory to vest LBAA with jurisdiction to entertain the petition. Thus, the Court agrees with respondent LBAA's Resolution of February 28, 2013, saying that it has no jurisdiction to entertain petitioner's appeal for failure to comply with the mandatory requirement under the LGC.

Consequently, the Court has no jurisdiction to entertain the present case for petitioner's failure to comply with the procedural requirement laid down under Section 252(a) of the LGC of 1991.

With the foregoing disquisition, the Court deems it unnecessary to address the other issues raised by the parties.

WHEREFORE, the Petition for Review filed by petitioner National Grid Corporation of the Philippines on December 2, 2015, is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice