REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

LETICIA L. LIM, represented by JOSE ANTONIO V. JAMOSMOS, as Attorney-in-Fact, Petitioner,	**CTA EB NO. 2056** (CBAA CASE NO. V-42-2018)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
OFFICE OF THE CITY TREASURER OF DUMAGUETE CITY, represented by CRISTINA M. MERCED, in her official capacity as City Treasurer, and OFFICE OF THE CITY ASSESSOR OF DUMAGUETE CITY, represented by ROWELL P. BALBON, in his official capacity as City Assessor, Respondents.	***Promulgated:*** FEB 22 2022 3:55pm

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DECISION

UY, J.:

Before the Court *En Banc* is an *Amended Petition for Review (under Rule 43)*[1] filed *via* registered mail on November 7, 2019 by petitioner Leticia L. Lim, represented by Jose Antonio V. Jamosmos (or Jamosmos) as Attorney-in-Fact, seeking to annul and set aside the Resolution dated December 5, 2018 and March 8, 2019, issued by the Central Board of Assessment Appeals (CBAA) in CBAA Case No. V-42-2018 entitled "*Jose Antonio V. Jamosmos vs. The Local Board of Assessment Appeals of Dumaguete City and the City Treasurer and City Assessor of Dumaguete City*". The dispositive portions thereof read as follows:

[1] EB Docket, pp. 140 to 156.

<u>Resolution dated December 5, 2018:</u>

> "**WHEREFORE**, premises considered, the Motion is hereby denied for lack of merit.
>
> **SO ORDERED**."

<u>Resolution dated March 8, 2019:</u>

> "Premises considered, Petitioner-Appellant's FORMAL ENTRY OF APPEARANCE WITH MOTION FOR RECONSIDERATION of the Board's Resolution dated December 5, 2018 are ordered DENIED for LACK OF MERIT.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Leticia L. Lim is a Filipino and a resident of Cebu City; with office address at Bagacay, Dumaguete City.[2] She is represented herein by her Attorney-in-Fact, Jose Antonio V. Jamosmos.[3]

On the other hand, respondents City Treasurer of Dumaguete City, Cristina M. Merced and City Assessor of Dumaguete City, Rowell Balbon, are being sued in their official capacity. Their official address is at the City Hall Building, Dumaguete City, Negros Oriental.[4]

THE FACTS

The instant case involves a claim for refund by petitioner in the amount of ₱98,432.75, representing the real property taxes on a warehouse building declared under the name of a certain Cheng Lei Ti which was constructed on the land owned by petitioner.

[2] *Amended Petition for Review (under Rule 43)*, EB Docket, p. 140.
[3] *Special Power of Attorney*, EB Docket, pp. 157 to 158.
[4] *Amended Petition for Review (under Rule 43)*, EB Docket, p. 141.

On June 21, 1991, the City Assessor of Dumaguete City issued Tax Declaration (TD) No. 9-1266[5] in the name of Cheng Lei Ti covering the subject warehouse building constructed on Lot No. 3260, a land owned by spouses Edito Lim and petitioner Leticia L. Lim and located in Bagacay, Dumaguete.[6]

On December 28, 1993, the City of Assessor of Dumaguete City issued TD No. 93-009-1073[7] in the name of Cheng Lei Ti, cancelling TD No. 9-1266.

Thereafter on September 22, 2015, the City Treasurer of Dumaguete City issued a *Notice of Delinquency* to Cheng Lei Ti for the unpaid real property taxes on the subject warehouse building, but said *Notice* was served to the lessee of petitioner, Pepsi-Cola Products, Inc.[8]

On February 10, 2016, petitioner wrote a letter to the City Treasurer of Dumaguete City, requesting the waiver of penalties imposed on Cheng Lei Ti.[9] On February 22, 2016, petitioner received through her representative the *Notice of Delinquency*.[10]

On May 10, 2016, petitioner paid under protest the amount of ₱98,432.75, representing the real property tax liabilities of Cheng Lei Ti for the warehouse building under TD No. 93-009-1073, covering the years 1992 to 2016.[11]

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[5] CBAA Docket, p. 31.
[6] Par. 1, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 143; As found by the LBAA in the Resolution dated October 1, 2018, CBAA Docket, p. 5
[7] CBAA Docket, p. 33.
[8] Par. 3, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 144; As found by the LBAA in the Resolution dated October 1, 2018, CBAA Docket, p. 5
[9] Par. 4, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 144; As found by the LBAA in the Resolution dated October 1, 2018, CBAA Docket, p. 5
[10] Par. 5, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 144; As found by the LBAA in the Resolution dated October 1, 2018, CBAA Docket, p. 6.
[11] Par. 8, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 145; CBAA Docket, pp. 39 to 43.

On July 8, 2017, petitioner, through Jose Antonio V. Jamosmos, filed a *Petition*[12] before the Local Board of Assessment Appeals (LBAA) appealing the denial of her claim for refund or tax credit by the City Treasurer of Dumaguete City.[13]

On October 1, 2018, LBAA issued a Resolution dismissing petitioner's appeal.[14] The LBAA ruled that petitioner is required to declare the said property; and that TD No. 93-009-1073 was validly issued. The LBAA further ruled that the right of the government to collect real property taxes has not yet prescribed.

On October 31, 2018, petitioner's representative, Jamosmos, filed a *Motion for Extension of Time to File Appeal with the Central Board of Assessment* before the CBAA.[15]

On December 5, 2018, the CBAA issued the assailed Resolution[16] denying petitioner's *Motion* for lack of merit. The CBAA ruled that it cannot take jurisdiction of petitioner's appeal without the payment of docket fees. The CBAA likewise found that petitioner failed to comply with the requirement of proof of service of copies to the adverse party; and that the period to file the appeal with the Board had already lapsed.

On January 22, 2019, petitioner filed a *Formal Entry of Appearance with Motion for Reconsideration*[17] before the CBAA; while respondents filed their *Formal Entry of Appearance with Opposition to the Petitioner-Appellant Motion for Reconsideration*[18] on February 6, 2019.

On March 8, 2019, the CBAA issued the assailed Resolution[19] denying the *Formal Entry of Appearance with Motion for Reconsideration* for lack of merit.

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[12] CBAA Docket, pp. 47 to 50.
[13] Par. 12, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 145.
[14] Par. 17, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 146; CBAA Docket, pp. 4 to 9.
[15] CBAA Docket, pp. 1 to 2.
[16] EB Docket, pp. 25 to 27; CBAA Docket, pp. 12 to 14.
[17] EB Docket, pp. 28 to 42; CBAA Docket, pp. 16 to 30.
[18] EB Docket, pp. 100 to 105; CBAA Docket, pp. 101 to 106.
[19] EB Docket, pp. 108 to 124; CBAA Docket, pp. 109 to 125.

Aggrieved, petitioner filed a *Petition for Review (under Rule 43)*[20] before the Court *En Banc* docketed as CTA EB No. 2056, entitled "*Letty L. Lim, through her authorized representative, Jose Antonio V. Jamosmos, Petitioner, vs. Central Board of Assessment Appeals, Local Board of Assessment Appeals, the City Treasurer and the City Assessor of Dumaguete City, Respondent*".

In the Resolution[21] dated July 10, 2019, the Court *En Banc* noted the following:

(1) the *Special Power of Attorney* attached to the *Petition* shows that it is "Leticia L. Lim" who authorized Jose Antonio V. Jamosmos, and not "Letty L. Lim", as stated in the title of the *Petition*;
(2) a perusal of the assailed Resolutions[22] dated December 5, 2018 and March 8, 2019 issued by the CBAA shows that that name of "Leticia L. Lim" does not appear in the title of the said case; and
(3) petitioner impleaded the CBAA and LBAA, contrary to Section 6, Rule 43 of the 1997 Rules of Procedure, as amended.

In the same Resolution , the Court *En Banc* directed the Chairman of the CBAA or his duly authorized representative to elevate the entire original records of CBAA Case No. V-42-2018, within ten days from notice.

On August 1, 2019, the CBAA through Board Secretary II Anna Maria A. Oliva, transmitted to the Court *En Banc* the original record of CBAA Case No. V-42-2018, entitled "*Jose Antonio V. Jamosmos, Petitioner-Appellant, vs. The Local Board of Assessment Appeals of Dumaguete City, Appellee, and The City Treasurer and City Assessor of Dumaguete City, Respondents-Appellees*".[23]

In the Resolution[24] dated September 26, 2019, the Court *En Banc* noted that upon perusal of the records of CBAA Case No V-42-

[20] EB Docket, pp. 4 to 20.
[21] EB Docket, pp. 127 to 128.
[22] Entitled "*Jose Antonio V. Jamosmos, Petitioner-Appellant, vs. The Local Board of Assessment Appeals of Dumaguete City, Appellee, and The City Treasurer and City Assessor of Dumaguete City, Respondents-Appellants*",
[23] EB Docket, p. 129.
[24] EB Docket, pp. 132 to 134.

2018, it shows that that title of the said case only bears the name of "Jose Antonio V. Jamosmos" as petitioner, without indicating whether he filed the suit on behalf of a principal. Jamosmos, however, claims that he is the authorized representative of "Leticia L. Lim" in various documents found in the CBAA docket. Further, the Court *En Banc* reiterated the following observations: (1) the *Special Power of Attorney* attached to the *Petition* shows that it is "Leticia L. Lim" who authorized Jose Antonio V. Jamosmos, and not "Letty L. Lim", as stated in the title of the *Petition*; and (2) petitioner impleaded the CBAA and LBAA, contrary to Section 6, Rule 43 of the 1997 Rules of Procedure, as amended. Thus, the Court *En Banc* directed petitioner to take appropriate action relative to the observations of the Court, within five (5) days from notice.

On November 7, 2019, petitioner filed a *Motion to Admit Amended Petition for Review (under Rule 43)*[25], with attached *Amended Petition for Review (under Rule 43)*[26], entitled "***Leticia** L. Lim, **represented by** Jose Antonio V. Jamosmos, **as Attorney-in-Fact**, Petitioner, vs. **Office** of the City Treasurer **of Dumaguete City, represented by Cristina M. Merced, in her official capacity as City Treasurer**, and **Office** of the City Assessor **of Dumaguete City, represented by Rowell P. Balbon, in his official capacity as City Assessor**, Respondents*", in compliance with the Resolution dated September 26, 2019; and praying that the *Amended Petition for Review (under Rule 43)* be admitted.

In the Resolution[27] dated February 14, 2020, the Court *En Banc* granted petitioner's *Motion to Admit Amended Petition for Review (under Rule 43);* and admitted the instant *Amended Petition for Review (under Rule 43).* In the same Resolution, the Court directed respondents to file their comment, within ten (10) days from notice.

On July 7, 2020, respondents filed their *Comments to Amended Petition for Review*[28]. In the Minute Resolution dated September 14, 2020[29], the Court ordered respondents to submit additional nine (9) copies of the *Comments to Amended Petition for Review.*

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[25] EB Docket, pp. 136 to 139.
[26] EB Docket, pp. 140 to 156.
[27] EB Docket, pp. 267 to 269.
[28] EB Docket, pp. 272 to 280.
[29] EB Docket, p. 282.

On September 29, 2020, petitioner filed her *Reply to Comments*[30].

Considering that as of November 26, 2020, there was still no registry return receipt for the service of the Minute Resolution dated September 14, 2020, the Court *En Banc*, in the Resolution[31] dated December 14, 2020, directed the Postmaster of Dumaguete City to file a Postmaster's Return or Certifications, within 10 days from notice.

On January 4, 2021, the Court *En Banc* received respondent's *Compliance*[32] filed via registered mail on November 20, 2020, submitting additional nine copies of the *Comments to Amended Petition for Review.* The said *Compliance* was noted on January 6, 2021.[33]

In the Resolution[34] dated January 28, 2021, the Court *En Banc* noted petitioner's *Reply to Comments* filed on July 20, 2020; set aside the Resolution dated December 14, 2020 which ordered the Postmaster of Dumaguete City to file a Postmaster's return or Certification, for being moot; and submitted the instant case for decision.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues in the instant *Amended Petition, to wit*:

"**IV. STATEMENT OF ISSUES**

I. WHETHER OR NOT THERE IS GRAVE ABUSE OF DISCRETION WHEN THE PUBLIC RESPONDENT ISSUED THE RESOLUTION DATED 08 MARCH 2019, VIOLATING THE CONSTITUTIONAL RIGHTS OF THE PETITIONER.

[30] EB Docket, pp. 283 to 288.
[31] EB Docket, pp. 291 to 293.
[32] EB Docket, pp. 294 to 295.
[33] Minute Resolution dated January 6, 2021, EB Docket, p. 297.
[34] EB Docket, pp. 299 to 300.

II. WHETHER OR NOT THE PETITIONER SHOULD BE HELD LIABLE FOR THE TAXES OF A LESSEE-ASSESSED IN 1991."[35]

Petitioner's arguments:

Petitioner claims that she leased her land to Cheng Lei Ti who built a warehouse building without her knowledge and consent; that the evidence on record established that the City Treasurer sent to petitioner the *Notice of Delinquency* of Cheng of Lei Ti for the real property taxes relative to the warehouse building; and that she was charged to pay the delinquency of Cheng Lie Ti without prior notice.

According to petitioner, she should not be made liable for the real property taxes on the warehouse building of Cheng Lei Ti as she is merely the landowner of the lot where the warehouse building was constructed. Allegedly, the tax liability of Cheng Lei Ti for the warehouse building is separate and distinct from petitioner.

Petitioner likewise insists that the payment she made should not be construed as an admission of tax liability since they were paid under protest and were done under duress. Petitioner claims that she was compelled to settle the real property tax liabilities of Cheng Lei Ti. Otherwise, the business permit of her lessee, Pepsi Cola Co., will not be renewed by the City Treasurer.

Finally, petitioner argues that the period to collect the subject real property taxes has already prescribed.

Respondents' counter-arguments:

Respondents counter-argue that the instant *Amended Petition* was filed beyond the reglementary period under Section 3 of Rule IX Extraordinary Remedies of the *Consolidated and Revised Rules of Procedures before the LBAA and the CBAA.*

In addition, respondents contend that there was no denial of due process since petitioner was given the opportunity to advocate her cause or defend her interest before the LBAA.

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[35] EB Docket, p. 143.

Respondents likewise maintain that the petitioner is already the owner of Lot 3260 when the warehouse building was constructed thereon; and thus it is inconceivable that being the lot owner, petitioner had no knowledge of the building that existed on her property. Further, respondents aver that being the owner of the land, petitioner is presumed the owner of the building and should pay the delinquent real property tax of the said building.

Respondents also point out that petitioner in her letter dated February 10, 2016 already acknowledged her obligation when she expressed her decision to pay the tax delinquency; and that she voluntarily entered into a compromise agreement with the City of Dumaguete when she requested for the waiver of the penalties, which was thereafter granted in exchange for her payment of the real property tax.

As regards the issue on prescription, respondents assert that the collection of real property tax may be suspended when the owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located; and that the prescriptive period under Section 270 of the Local Government Code (LGC) of 1991 should not be interpreted as a means to shield the real property owner from the payment of delinquent tax when despite meaningful efforts exerted by the local government to collect, the tax remains unpaid.

THE COURT *EN BANC'S* RULING

The instant *Amended Petition for Review (under Rule 43)* is bereft of merit.

The CBAA did not commit grave abuse of discretion.

Records show that the CBAA issued the assailed Resolution dated December 5, 2018, denying petitioner's *Motion for Extension of Time to File Appeal with the Central Board of Assessment Appeal* due to petitioner's failure to comply with the conditions for perfecting an appeal under the *2016 Consolidated and Revised Rules of Procedure before the LBAA and CBAA* (or the "2016 Consolidated Rules").

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Thereafter, petitioner filed her *Motion for Reconsideration,* but the same was denied in the assailed Resolution dated March 8, 2019. In denying petitioner's *Motion for Reconsideration*, the CBAA reiterated petitioner's failure to comply with the requirements under the 2016 Consolidated Rules.

Thus, crucial for the Court's determination is whether the CBAA committed grave abuse of discretion in denying both petitioner's *Motion for Extension of Time* and *Motion for Reconsideration.*

The term "grave abuse of discretion" is defined as a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction, a blatant abuse of authority so grave and so severe as to deprive the court of its very power to dispense justice, or an exercise of power in an arbitrary and despotic manner, due to passion, prejudice or personal hostility, so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of the law.[36]

Further, in order to be qualified as "grave", the abuse of discretion must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[37] Such is not the case here.

An examination of the assailed Resolutions reveals that the basis for denying petitioner's *Motion for Extension of Time* and *Motion for Reconsideration,* is due to her failure to comply with the conditions required under the "2016 Consolidated Rules". Specifically, the CBAA found that petitioner failed to observe the following requirements: (1) failure to pay the docket fees; and (2) failure to file a timely appeal.

Pertinent provision of the 2016 Consolidated Rules states as follows:

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[36] *Bureau of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014.

[37] *Secretary of the Department of Finance vs. Court of Tax Appeals (Second Division) and Kutangbato Conventional Trading Multi-Purpose Cooperative*, G.R. No. 168137, August 7, 2013.

> "SEC. 2. ***Requisites for Perfection of Appeal*** – The appeal shall: (a) state the date the appellant received the appealed decision, resolution or final order; (b) be verified by the appellant himself; (c) be in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, and the relief prayed for; and (c) be accompanied by: (1) a certificate of non-forum shopping; **(2) proof of service upon the adverse party**; and **(3) proof of payment of the required legal fees laid down under Rule XI hereof.**
>
> The filing of an appeal without complying with all the requisites aforestated shall not be considered, however, it will not stop the running of the period for perfecting an appeal."

Based on the foregoing, the payment of docket fees is required in perfecting an appeal before the CBAA.

Indeed, the requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. [38]

Further, in the recent case of *Ligaya Ang, vs. Court of Appeals, and Warren T. Gutierrez, represented by his Attorney-in-Fact, Carmelita T. Gutierrez,*[39], the Supreme Court ruled that the Court of Appeals did not commit grave abuse of discretion in denying a litigant's motion for extension of time and in refusing to admit her petition for review for non-payment of the required docket fees, to wit:

> "All told, **<u>the CA did not commit grave abuse of discretion when it denied Ligaya's motion for extension of time and refused to admit her petition for review for non-payment of the required docket fees.</u>** It is only when persuasive reasons exist that the rules may be relaxed to spare a litigant of an injustice not

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[38] *Alonzo Gipa, et al., v. Southern Luzon Institute*, G.R. No. 177425, June 18, 2014.
[39] G.R. No. 238203, September 03, 2020.

commensurate with his failure to comply with the prescribed procedure."

As such, the Court *En Banc* finds that the denial of petitioner's *Motions* for her failure to pay the docket fees, did not amount to grave abuse of discretion on the part of the CBAA. Certainly, the Court *En Banc* cannot attribute grave abuse of discretion to the CBAA for merely following its own internal rules.

Likewise, records show that petitioner failed to timely file her appeal before the CBAA pursuant to the provisions of Section 229 (c) of the Local Government Code (LGC) of 1991, which provides the procedure in appealing the decision of the LBAA to the CBAA, to wit:

> *"SECTION 229. Action by the Local Board of Assessment Appeals. –*
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> xxx xxx xxx
>
> (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."**

Based on the foregoing, a party aggrieved by a decision of the LBAA has a period of thirty (30) days from receipt thereof to elevate its appeal before CBAA. However, instead of filing an appeal, petitioner filed a *Motion for Extension of time to File Appeal*, which was denied by the CBAA in the assailed Resolution dated December 5, 2018.

It must be noted that the grant or denial of a motion for extension of time is addressed to the sound discretion of the court.[40] Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.[41]

In the instant case, petitioner failed to establish that the denial of her *Motion* was tainted with grave abuse of discretion.

Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[42] The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[43]

Moreover, as will be discussed momentarily, even assuming *arguendo* that the CBAA erred in denying her appeal, petitioner's claim for refund will still not prosper since the City Treasurer of Dumaguete City is not obliged to refund the real property taxes paid by petitioner.

The City Treasurer of Dumaguete is not obliged to refund the real property taxes paid by petitioner.

Petitioner seeks the refund of ₱98,432.75 representing the payment she made under protest for the real property taxes assessed on a warehouse building declared under the name of Cheng Lei Ti. According to petitioner, she should not be made liable for the real property taxes on the warehouse building of Cheng Lei Ti as she is merely the landowner of the lot where the warehouse building was constructed. Hence, she is entitled to refund the real property tax paid on the subject warehouse building.

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[40] *Soledad Cañezo vs Concepcion Rojas*, G.R. No. 148788, November 23, 2007.
[41] *Milwaukee Industries Corporation vs Court of Tax Appeals and Commissioner of Internal Revenue, G.R.* No. 173815, November 24, 2010, citing *Go Uan, v. Galang*, 120 Phil. 1366, 1369 (1964).
[42] *China Banking Corporation vs. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015.
[43] *Ibid.*

We partially agree with petitioner.

It is well settled that in real estate taxation, the unpaid tax attaches to the property. The personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.[44]

Hence, for purposes of ascertaining who is personally liable for the real property taxes, the determination of who is the owner of the warehouse building is in order.

In the instant case, while it is undisputed that petitioner is the owner of the land where the subject warehouse building was erected, the record of the case is bereft of any indication that petitioner similarly owns the subject warehouse building.

As borne out by the records, the subject warehouse building was declared under the name of Cheng Lei Ti as shown in TD No. 93-009-1073[45]. Although as a rule, tax declarations are not conclusive evidence of ownership, they are proof that the holder has a claim of title over the property and serve as sufficient basis for inferring possession.[46]

Further, there is no showing that petitioner was in actual use of the said warehouse building during the period covered by the *Notice of Delinquency*. In fact, the said *Notice of Delinquency* was addressed to Cheng Lei Ti and not to petitioner. [47]

Based on the foregoing circumstances, it is therefore sufficient to conclude that Cheng Lei Ti is the owner of the warehouse building and not petitioner.

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[44] *HERARC Corporation, Realty, vs. The Provincial Treasurer of Batangas, et al.*, G.R. No. 210736, September 05, 2018.

[45] CBAA Docket, p. 33.

[46] *Republic of the Philippines vs Metro Index Realty and Development Corporation*, G.R. No. 198585, July 6, 2012.

[47] Par. 3, Statement of Facts and the Case, *Amended Petition for Review (under Rule 43)*, EB Docket, p. 144; Par. 13, Counter-Statement of Facts, Respondents' *Comments to Amended Petition for Review*, EB Docket, p. 275

As regards respondents' contention that petitioner, being the owner of the land, is presumed to be the owner of the warehouse building, the same is misplaced.

In the following cases, the Supreme Court has consistently recognized the separate ownership of the land and the building constructed thereon:

1. In *Rosario Victoria and Elma Pidlaoan, vs. Normita Jacob Pidlaoan, Herminigilda Pidlaoan and Eufemia Pidlaoan*[48], the Supreme Court held that mere construction of a house on
another's land does not create a co-ownership; and that a house and a lot are separately identifiable properties and can pertain to different owners.

2. In *Magdalena T. Villasi vs Filomeno Garcia, et al.*[49], the Supreme Court likewise recognized the separate ownership of the land from the building and ruled that the doctrine that the accessory follows the principal is not absolute.

3. In *Dr. Dioscoro Carbonilla vs. Marcielo Abiera*, the Supreme Court denied the claim of petitioner therein that, as the owner of the land, he is likewise the owner of the building erected thereon.

Applying the foregoing pronouncements to the instant case, it is evident that the land and the warehouse building are separately identifiable properties and may therefore pertain to different owners. Thus, there is no merit in respondent's assertion that petitioner, as the landowner, is likewise the owner of the subject warehouse building.

Further, as discussed earlier, the factual circumstances of this case sufficiently support the conclusion that Cheng Lei Ti is the owner of the subject warehouse building. Correspondingly, as the owner of the warehouse building, Cheng Lei Ti is the one liable for the real property taxes thereon, and not petitioner.

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[48] G.R. No. 196470, April 20, 2016.
[49] G.R. No. 190106, January 15, 2014

However, as to whether petitioner is entitled to refund the amount of ₱98,432.75 representing the payment she made for the real property taxes on the subject warehouse building, We rule in the negative.

In the case of *National Grid Corporation of the Philippines vs Ofelia M. Oliva, in her official capacity as the City Treasurer of Cebu,*[50] (or "**NGCP case**"), the Supreme Court elucidated on the remedy available to a person who paid the real property tax liabilities of another, *to wit*:

> "All parties are in agreement that NGCP paid real property taxes on the subject properties for the years 2001 to 2009. From 2001 to 2008, the subject properties were under the control and supervision of NPC/TRANSCO. It was only in 2009 that NGCP took control of the subject properties.
>
> xxx xxx xxx
>
> Taxes are not debts; **but NGCP's payment of NPC/TRANSCO's tax liabilities made NPC/TRANSCO indebted to NGCP**. Article 1236 of the Civil Code is applicable in the present situation: NGCP has an interest in the payment of NPC/TRANSCO's real property taxes from 2001 to 2008. NGCP will not be able to exercise its franchise should the local government auction the subject properties. The City Treasurer of Cebu City, on the other hand, is bound to accept NGCP's payment of the taxes due from NPC/TRANSCO. **NGCP's remedy then, is to demand, not from the City Treasurer of Cebu City, but from NPC/TRANSCO the amount of taxes which redounded to its benefit.** Article 1236 provides in part:
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>> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor." (Emphasis supplied.)

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[50] G.R. No. 213157 and 213558, August 10, 2016.

In the foregoing case, NGCP paid the full amount of real property taxes for the years 2001 to 2009. Thereafter, NGCP sought to refund the said taxes from the City Treasurer of Cebu City. In the said case, the Supreme Court ruled that NPC/TRANSCO is the one liable for the real property taxes for the years 2001 to 2008, and not NGCP. However, applying Article 1236 of the Civil Code, the Supreme Court ruled that while NGCP is not liable for the said taxes, its remedy is to demand the amount paid from NPC/TRANSCO, and not from the City Treasurer of Cebu City. According to the Supreme Court, NGCP's payment of NPC/TRANSCO's real property tax liabilities made NPC/TRANSCO indebted to NGCP.

In the instant case, petitioner being the owner of the land where the warehouse building was constructed has an interest in the payment of the real property taxes thereon; on the other hand, the City Treasurer of Dumaguete City is bound to accept petitioner's payment of the unpaid taxes due on the subject warehouse building.

Thus, guided by the pronouncement in the *NGCP case*, petitioner's payment of the real property taxes on the subject warehouse building made Cheng Lei Ti indebted to petitioner. Accordingly, the remedy of petitioner is to demand reimbursement from Cheng Lei Ti; and **not** to seek refund from the City Treasurer of Dumaguete City.

In view thereof, petitioner's claim for refund against respondent City Treasurer of Dumaguete City must fail.

The subject assessment for real property tax on the warehouse building had become final, executory and unappealable.

The Court further finds that the assessment for real property taxes had already become final, executory and unappealable.

Section 252 of the LGC of 1991 lays down the procedure in protesting the assessments of real property taxes 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

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> words "paid under protest". **The protest in writing must be filed within thirty (30) days from payment of the tax** to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt. (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned. (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability. (d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

Based on the foregoing, the taxpayer should first pay the tax due before his protest can be entertained. Within thirty (30) days from payment, the taxpayer must file a protest to the provincial, city treasurer or municipal treasurer, as the case may be.

In the instant case, while petitioner paid the real property taxes under protest on May 10, 2016, there is no showing that petitioner filed a timely protest with the City Treasurer of Dumaguete City within thirty days from said payment as required under Section 252 of the LGC of 1991. Notably, a reading of the instant *Amended Petition for Review* reveals that there is no indication therein that a written protest was ever filed by petitioner before the City Treasurer of Dumaguete City.

In the case of *Bay Resources Development Corporation vs Local Board of Assessment and the City Treasurer of Paranaque*[51], the Supreme Court in the Resolution dated June 6, 2018, held that the taxpayer can no longer assail the assessment for real property taxes in view of its failure to comply with the prescribed procedure under Section 252 of the LGC, to wit:

> "Despite these payments under protest, **BRADCO did not submit the written protests within 30 days**

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> **<u>from payment</u>**, as required under Section 252(a) of R.A. No. 7160. Xxx
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> xxx xxx xxx
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> In light of the non-compliance of BRADCO with the prescribed procedure, **it can no longer assail the assessment over its real property taxes. The local city treasurer of Paranaque City was not obliged to entertain BRADCO's claim for alleged overpaid taxes.**"

Thus, in view of petitioner's failure to file a written protest within the reglementary period, the subject assessment under the Notice of Delinquency, which triggered the payment under protest and the subsequent filing of the refund claim, had become final, executory and unappealable. Correspondingly, respondent City Treasurer of Dumaguete City cannot be obliged to refund the subject real property taxes.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice