REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

CTA *EB* NO. 1459
(CBAA Case No. M-39)

-versus-

CENTRAL BOARD OF ASSESSMENT APPEALS; LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF SOUTH COTABATO; ENGR. ROBERT DEANON, in his official capacity as the OIC-Provincial Assessor of South Cotabato and HERBERT C. JUGADOR, in his capacity as Municipal Assessor of Tupi, South Cotabato,
Respondents.

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 27 2018 3:10pm

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DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is a Petition for Review[1] filed on May 25, 2016 by petitioner National Grid Corporation of the Philippines (NGCP), seeking for the reversal of the Decision dated June 30, 2015 and Resolution dated February 5, 2016 issued by the Central Board of Assessment Appeals (CBAA) entitled, *"National Grid Corporation of the Philippines (NGCP) vs. Local Board*

[1] En Banc (EB) Docket, pp. 1-29.

of Assessment Appeals, Province of South Cotabato and Engr. Robert Deanon, in his official capacity as the OIC-Provincial Assessor of South Cotabato and Herbert C. Jugador, in his official capacity as the Municipal Assessor of Tupi, South Cotabato", (CBAA Case No. M-39*),* pursuant to the provisions of Section 11 of Republic Act (RA) 1125[2] and Section 2 (e), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). We quote below the dispositive portions of the Decision and Resolution of the CBAA, thus:

Decision dated June 30, 2015

"Hence, since the period for filing an appeal under Section 226 had already elapsed and the Petitioner-Appellant was unable to comply with the "payment under protest" condition under Section 252, Respondent-Appellee was correct in dismissing the petition for lack of jurisdiction. Consequently, this Board cannot delve into nor can we adjudicate on the merits the issue of the Petitioner-Appellant's claim of non-taxability on the premise of tax exemption from the payment of real property (sic).

WHEREFORE, the petition is hereby DENIED for lack of merit. The Decision of the Respondent LBAA is AFFIRMED.

SO ORDERED."

Resolution dated February 5, 2016

"Notwithstanding the timely filing of this appeal, Section 252 is still the governing provision anchored on the abovecited case. To reiterate, herein petitioner's failure to pay either in cash or surety, warrants dismissal of this appeal without prejudice to the refiling of the same after compliance with the condition.

Considering the foregoing premises, the petitioner has failed to present new or substantial arguments to warrant the reversal of the Board's previous decision.

WHEREFORE, this instant Motion for Reconsideration is hereby DENIED.

[2] An Act Creating the Court of Tax Appeals, June 16, 1954, as amended.

SO ORDERED.

THE PARTIES

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

Section 1 of RA No. 9511 or *"An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying and Transmitting Electricity through High Voltage Back-Bone System of Inter-Connected Transmission Lines, Substations and Related Facilities, And For Other Purposes"*, grants petitioner the franchise to operate, manage and maintain and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bobe system of interconnected transmission lines, substations and related facilities.

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

Respondent Local Board of Assessment Appeals (LBAA), is also a public office located at Koronadal City, South Cotabato.

Respondents OIC-Provincial Assessor of South Cotabato Engineer Robert Deanon and Municipal Assessor of Tupi, South Cotabato are impleaded in their official capacities.

THE FACTS

On August 22, 2012, Petitioner NGCP received Notices of Assessment (NOAs)[3] dated August 17, 2012 and signed by the Municipal Assessor of Tupi, South Cotabato, Mr. Herbert C. Jugador, including the corresponding Tax

[3] Paragraph 12 of the Petition for Review filed with this Court, EB docket, page 5.

Declarations[4], covering its properties located in various barangays in the municipality of Tupi, South Cotabato.

In its Petition filed with the LBAA on October 22, 2012, NGCP expressly stated that it received Real Property Tax Billing from the Municipal Treasurer of Tupi, South Cotabato with attached NOAs[5]. In said Petition filed with the LBAA, petitioner NGCP prayed that the aforementioned NOAs and Tax Declarations be declared null and void and that the subject real properties be classified as exempt from real property tax (RPT).

On July 18, 2013, petitioner received the Resolution of the LBAA dated June 27, 2013 dismissing the Petition based on jurisdictional grounds, i.e., petitioner failed to first pay the tax under protest before filing an appeal with their office. The LBAA cited Section 252 (a) of RA No. 7160 or the Local Government Code of 1991 (LGC of 1991) and Section 3 of the Rules and Procedure for Appeals filed before the LBAA. The dispositive portion of the Resolution dated June 27, 2013 is quoted as follows:

> The Board believes that there is no inconsistency in the above two provisions. Any taxpayer can appeal the action of the provincial, city or municipal assessor which he is not satisfied with but has to pay the taxes due the government before his appeal could be entertained. In this case petitioner admittedly failed to pay the taxes. Therefore this Board cannot entertain its appeal."
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> The other issues can be tackled only after the petitioner has accordingly paid the taxes under protest.
>
> Accordingly, this case is hereby dismissed without prejudice as this Board has no jurisdiction over it.
>
> SO ORDERED".

In the same Resolution of the LBAA dated June 27, 2013[6], the LBAA noted that petitioner NGCP admitted that it indeed received the tax billing from the Municipal Treasurer's Office and we quote, thus:

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[4] Annex "D" and series, attached to the Petition for Review, EB Docket, pp. 56-61.
[5] Annex E and series, paragraph 9 of Petition for review filed by NGCP with the LBAA on October 22, 2012, EB Docket, pp. 64.
[6] Annex F and series, attached to the Petition for Review, EB Docket, first paragraph, page 103.

> "Petitioner later admitted that, indeed it received the tax billing from the Municipal Treasurer's Office but maintains that since its (sic) filing this protest pursuant to Section 226, not 252 of the Local Government Code, payment is not a requisite for the Board to take cognizance of its petition.

On August 2, 2013, petitioner filed a Motion for Reconsideration[7] of said Resolution of the LBAA with the argument that payment of taxes under protest is not a condition precedent before the LBAA could take cognizance of the Petition appealing the assessments issued by the municipal assessor of Tupi, South Cotabato. Petitioner maintains that there is no specific provision in the LGC which clearly and categorically requires a taxpayer to first pay the tax before it can file an appeal with the LBAA.

On October 28, 2014, petitioner received the resolution of the LBAA denying its Motion for Reconsideration dated October 13, 2014[8] . The LBAA firmly asserts that Section 252 of the LGC directs the taxpayer to first pay the tax due before its protest can be entertained.

On November 26, 2014, petitioner filed a Memorandum on Appeal[9] with the CBAA docketed as CBAA Case No. M-39. CBAA then directed the respondents Provincial Assessor and Municipal Assessor to submit their Answers or Comments to the Memorandum on Appeal filed by petitioner.

On February 24, 2015, petitioner received the Comment[10] of the Provincial and Municipal Assessors of South Cotabato praying for the dismissal of the Memorandum on Appeal for lack of jurisdiction and on the ground that petitioner is not exempt from the payment of RPT.

On September 3, 2015, petitioner received the Decision of the CBAA dated June 30, 2015 denying its Memorandum on Appeal. We quote portions of the ruling of the CBAA as follows:

> "In light of the above premises, the Board believes and so holds: cpm

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[7] Annex "G". attached to the Petition for Review, EB Docket, pp. 105-114.
[8] Annex "H", attached to the Petition for Review, EB Docket, pp. 115-117.
[9] Annex "I", attached to the Petition for Review, EB Docket, pp. 118-142.
[10] Annex "J", attached to the Petition for Review, EB Docket, pp. 145-153.

> 1. That the instant appeal involves a protest under Section 252 against the Tax Billing by the Respondent Municipal Treasurer and not an appeal under Section 226 of the LGC;
>
> 2. That payment of taxes is a condition precedent before the subject protest or petition shall be filed or entertained before the LBAA in questioning the validity of the subject tax billing and/or assessment. Failure to pay before the appeal warrants the dismissal of the appeal.
>
> While the Petitioner-Appellant may be correct in its statement that non-payment of the tax under protest by the appellant does not deprive the LBAA of jurisdiction to hear the appeal pursuant to the Consolidated and Revised Rules of Procedure before the LBAA and the CBAA, the same cannot be applied to this instant petition.
>
> The records show that Petitioner-Appellant NGCP filed its appeal before the Respondent-Appellee LBAA on October 22, 2014 which is apparently sixty-one (61) days after Petitioner's receipt of the Notice of Assessment on August 22, 2014. Noticeably, therefore the petition before the LBAA was filed beyond the prescribed period. That being the case, Petitioner-Appellant NGCP cannot legally invoke Section 226 of the Local Government Code.
>
> Considering the fact that the sixty (60) day period to file an appeal to the LBAA from the date of receipt of the written notice of assessment has already lapsed, herein Petitioner-Appellant NGCP may pursue its position and avail of the administrative remedies under Section 252 of the LGC otherwise know as RA 7160."

On September 16, 2015, petitioner filed a Motion for Reconsideration of said Decision dated June 30, 2015.

On April 26, 2016, petitioner received the Resolution of the CBAA dated February 5, 2016 denying the Motion for Reconsideration and affirming the Decision dated June 30, 2015, pertinent portions are quoted hereunder, to wit:

> "Hence, the petitioner failed to comply with the procedural steps prescribed by law, this warrants the dismissal of this case without prejudice to the refiling of the same after compliance with the condition sine qua non of payment under protest. It is only then that the Boards will delve into the merits of the petition."

On May 25, 2016, petitioner filed the instant Petition for Review with the Court *En Banc*.

In a Resolution dated July 28, 2016, the Court *En Banc* directed petitioner to show proof of the date of receipt of the assailed Decision and Resolution of the CBAA to which petitioner complied on August 18, 2016. Thereafter, the Court *En Banc* in a Resolution dated September 5, 2016 directed the respondents CBAA and LBAA as well as the Provincial Assessor of South Cotabato and the Municipal Assessor of Tupi, South Cotabato to file their Comment to the Petition for Review within ten (10) days from receipt thereof.

On October 11, 2016, respondents filed a Motion for Extension of Time to File Comment requesting for an additional fifteen (15) days from October 10, 2016 to October 25, 2016.

In a Resolution dated November 4, 2016, the Court *En Banc* directed the respondents to attach proof of the date of filing of the Motion for Extension of Time to File Comment, meanwhile deferring the resolution of the said motion.

On October 25, 2016, respondents filed another Motion for Extension of Time to File Comment requesting for another twenty (20) days from October 25, 2016 or until November 14, 2016 within which to file their Comment. This was followed by another Motion for Extension of Time to File Comment filed by respondents on November 14, 2016 asking for an extended period of ten (10) days or until November 29, 2016 within which to file their Comment.

On November 29, 2016, the Court *En Banc* noted that their directive to show proof of date of filing of respondent's first motion embodied in the Court's Resolution dated November 4, 2016, was left unheeded. The Court *En Banc* then ordered the respondents to comply with said directive to show proof of the date of filing and to file their Comment within a non-extendible period of ten (10) days from receipt thereof.

On December 9, 2016, respondents filed their Comment to the Petition for Review.

On December 21, 2016, expressing its exasperation on respondents' failure to obey its directive to show proof of date of filing of the first Motion for Extension to File Comment, the Court *En Banc* ordered that the Comment filed by respondents be considered as if it has not been filed and be stricken off from the records. This Resolution also ordered the parties to submit their respective memoranda within thirty days from receipt thereof.

On December 27, 2016, respondents filed their Compliance finally showing proof of the date of filing of their first Motion for Extension of Time to File Comment attaching therewith the postal registry receipt with the corresponding Certification from the Philippine Postal Office certifying that said motion was mailed on October 25, 2016.

In a Resolution dated January 23, 2017, the Court *En Banc* reiterated its order that the Comment of respondents be stricken off from the records of the case and likewise reiterated that the parties submit their respective memoranda as directed in the Court's Resolution dated December 21, 2016.

On February 7, 2017, petitioner filed its Memorandum while respondents filed their Memorandum on March 1, 2017 via registered mail.

In a Resolution dated May 15, 2017, the instant case was deemed submitted for decision.

THE ISSUES

As culled from the arguments of both parties and the assailed decision of the CBAA, we find that the issues for resolution are as follows:

1. Whether an appeal or petition filed before the LBAA should be preceded by payment of the RPT under

protest, otherwise, the appeal or petition shall be dismissed; and

2. Whether petitioner is exempt from the payment of RPT on subject properties under Section 9 of RA No. 9511 and Section 234 (c) of RA 7160 or the LGC of 1991.

Petitioner's arguments

Petitioner disputes the ruling in the assailed decision of the CBAA that a protest against the assessment for RPT with the LBAA must be preceded by payment of the assessed RPT. It cites Rule IV of the Appeals to the LBAA and the CBAA which took effect on September 1, 2013, quoted as follows:

"Rule IV

Section 1. Who may appeal to the Local Boards. – Any owner or person having legal interest in the subject property (a) who is not satisfied in the assessment of his property, or (b) who is not satisfied with the action or inaction of the treasurer on his claim for refund or credit of taxes paid under protest, or (c) who is not satisfied with the action or inaction of the treasurer on his claim for refund or credit of taxes paid but found to be illegal or erroneous by competent authority, may appeal to the LBAA of the province or city or municipality within the metropolitan Manila Area, where the subject property is located.

Section 2. When to Appeal to the Local Boards – Appeals to the Local Boards- Appeals to the LBAA shall be filed with the said Boards within the periods prescribed as follows:

a. If the subject matter of the appeal is the perceived error or errors in the assessment of the property concerned, the appeal to the LBAA – with the concerned assessor as the respondent – shall be filed within sixty (60) days from the receipt of the written notice of assessment from the assessor;

b. If the subject matter of the appeal is the denial by the treasurer of a claim for refund under Section 252 of RA 7160, without questioning the assessment made by the assessor.

i. the appeal shall be filed with the LBAA – with the treasurer as the respondent- within sixty days after appellant's receipt of the written notice from the treasurer denying the claim, if such denial is made by the treasurer within sixty (60) days after the treasurer's receipt of the claim for refund or credit.

ii. If the treasurer fails to act on the claim within sixty (60) days from receipt thereof, the appeal shall be filed with the LBAA within sixty (60) days after the lapse of sixty (60) days from the date the claim was filed with the treasurer:

xxx xxx xxx

Section 6. *Effect of Appeal on Collection of Taxes.* – In accordance with the provisions of Section 231 of R.A. 7160, an appeal on assessment of real property made under the provisions of Title Two, Book II of R.A. 7160 shall, in no case suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, or municipal assessor in the Metropolitan Manila Area, as the case may be. However, payment of the said taxes by appellant, under protest or otherwise, is not a condition precedent to the hearing of the appeal by the Local Board concerned."

Petitioner further maintains that the filing of an appeal with the LBAA is governed by the provisions of Section 226 and not Section 252 of the LGC because it emanated from the action of the provincial and municipal assessors in their assessments of RPT on the machineries in the name of petitioner. Petitioner, thus concludes that under Section 226 of the LGC, payment under protest is not required before one can elevate an appeal to the LBAA, what is required however, is that the appeal must be filed within thirty (30) days from receipt of the written notice of assessment issued by the assessor.

Petitioner also takes issue with the ruling of the assailed decision of the CBAA that the Appeal/Petition it filed with the LBAA was made beyond the 60-day period.

Petitioner remained adamant that it did file the appeal with the LBAA within the prescribed 60-day period from receipt of the NOAs. The decision of the CBAA states that petitioner NGCP filed its appeal with the LBAA only on October 22, 2014 which is sixty one (61) days after petitioner received the NOA on August 22, 2014.

As to the substance of its main argument, petitioner submits that its legislative franchise specifically RA No.

9511, clearly grants tax incentives which include exemption from all taxes on properties used in connection with its franchise. As such, petitioner should be declared exempt from RPT as provided in said franchise, specifically Section 9 thereof.

As an added legal support to its claim for exemption, petitioner cites Section 234 (c) of the LGC of 1991 which provides as follows:

> "Section 234. *Exemptions for Real Property Tax.* – The following are exempted from payment of the real property tax:
>
> xxx xxx xxx
>
> (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power, xxx."

Respondents' arguments

Since respondent's Comment to the Petition for Review was ordered by the Court *En Banc* to be stricken off from the records of the case [11], we relied on the arguments propounded by the respondents in their Memorandum filed on March 1, 2017 via registered mail.

Respondents believe that payment of RPT under protest is required before a taxpayer may appeal to the LBAA an assessment issued by a Municipal, City or Provincial Assessor. They cite as their basis, the provisions of Section 226 of the LGC of 1991 and the ruling of the Supreme Court in the case of *Camp John Hay Development Corporation vs. CBAA*[12] where it was claimed to have ruled categorically that payment under protest is a condition *sine qua non* before a protest or an appeal questioning the assessment of real property tax may be entertained by the LBAA. Even assuming without admitting that payment under protest is not required, still, respondents aver that petitioner did not make any protest on the tax billings

[11] Resolution dated December 21, 2016, En Banc Docket, pp. 276-277.
[12] G.R. No. 169234 dated October 2, 2013.

issued by the Municipal Treasurer thus making the same correct and valid.[13]

On the argument that petitioner is exempt from the payment of RPT based on the relevant provisions of its franchise and the LGC of 1991, respondents rely on the ruling of the Supreme Court in the case of *National Power Corporation vs. Province of Quezon*[14] where the High Court laid down the conditions or elements before the tax exemption under Section 234 (c) of the LGC of 1991 may apply, portions of which are hereinafter quoted :

> "xxx to successfully claim exemption under Section 234 (c) of the LGC, the claimant must prove two elements:
>
> a. The machineries and equipment are actually, directly and exclusively used by the local water districts and government-owned or controlled corporations; and
>
> b. The local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power."

Respondents asseverate that petitioner cannot claim exemption from the payment of RPT because the above-mentioned elements are not present in the instant case. Firstly, respondents claim that petitioner is not a government-owned and controlled corporation (GOCC) but is a private corporation although the subject machineries are actually, directly, and exclusively used for the transmission of electricity. Secondly, respondents do not believe that the subject machineries are used for the generation **and** transmission of electric power but **only** for transmission of power. The more important theory of respondents center on their premise that petitioner is not engaged in the generation of electric power but merely uses the assets of the National Transmission Corporation (TRANSCO) to transmit electric power. *cmv*

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[13] Respondent's Memorandum, EB Docket, pp. 347-362.
[14] G.R. No. 171586 dated July 15, 2009.

THE RULING OF THE COURT EN BANC

The foremost issue to be tackled in this case is the proper procedure to be followed by a taxpayer when it contests an assessment of RPT which is issued by a local government unit (LGU) through its Municipal or Provincial Assessor.

In this particular case, petitioner received six (6) NOAs on August 22, 2012 all signed by Mr. Herbert Jugador, the Municipal Assessor of the municipality of Tupi, South Cotabato.[15]

Instead of paying under protest and actually filing a protest with the municipal assessor of Tupi, South Cotabato, petitioner directly filed a Petition before the LBAA on October 22, 2012. In its Petition for Review with the Court *En Banc* and its subsequent Memorandum, petitioner maintains that the Petition filed with the LBAA is an appeal from the action of the Provincial and Municipal Assessors in the assessment of the machineries in its name and is not an appeal from the action or decision of the Provincial Treasurer on a written protest for the collection of RPT. Petitioner then concludes that the requirement of payment under protest applies only to appeals taken under Section 252 of the LGC of 1991 and not to appeals directly made with the LBAA under Section 226 of the same Code.

Let us analyze the following applicable provisions of the LGC of 1991 for purposes of our legal discourse.

> "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) xxx

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[15] Annex "D" and series, attached to the Petition for Review, EB Docket, pp. 56-61.

(c) xxx

(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."

The remedies referred to in subsection (d) of Section 252 of the LGC of 1991 "as provided in Chapter 3, Title Two, Book II of this Code" are found in the following legal provisions:

"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 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 in support of the appeal."

xxx xxx xxx

"Section 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) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property 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 CBAA, as herein provided. The decision of the CBAA shall be final and executory.

> "Section 231. Effect of Appeal on the Payment of Real Property Tax. – Appeal on 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."

Petitioner makes a distinction between appeals made under Section 252 and appeals made pursuant to Section 226 of the LGC of 1991. It theorizes that it is only the appeal made under Section 252 that requires payment under protest while an appeal made under Section 226 need only be filed within the sixty -day period in order to be cognizable by the LBAA without need to "pay under protest".

Petitioner's contention misses the point.

An astute analysis of the aforementioned provisions of the LGC of 1991 would reveal that the remedies provided therein are not distinct but successive. Sections 252 and 226 of the LGC of 1991 must not be read alternatively but in harmony with each other, thus Section 226 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 its property, may file an appeal with the LBAA within sixty days from date of receipt of the NOA/s and in the event that the protest is denied, the taxpayer may avail of the remedies provided in Chapter 3, Title II, Book II of the LGC of 1991, pursuant to its Section 252 (d). cpm

This Court echoes the clarification made by the Supreme Court in the case of *Napocor vs. Province of Quezon, et.al,*[16] where it ruled as follows:

> "It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. 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 interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of the property may xxx appeal to the Board of Assessment Appeals xxx should be read in conjunction with Section 252 (d) which states that in the event that the protest is denied xxx, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of the LGC xxx. The action referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessors act of denying the protest filed pursuant to Section 252. xxx" (emphasis supplied)

Corollary to the procedural issue is the proper fora where appeals of this nature may be lodged. In the *Napocor* case, the Supreme Court made a clarifying distinction between two types of protest against an assessment for RPT issued by the LGU as follows:

> **"The protest contemplated under Section 252 is required where there is a question as to the *reasonableness or correctness* of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to "first pay the tax" under protest.** Otherwise, the city or municipal treasurer will not act on his protest. Ty however was 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 were not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase. Moreover, Ty was raising a legal question that is properly cognizable by the trial court; no issues of fact were involved.
>
> xxx xxx xxx
>
> By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the

[16] G.R. No. 171596 dated January 25, 2010.

> above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. **Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest.** Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax." (Emphasis supplied).

From the foregoing ruling of the Supreme Court in the *Napocor* case, a taxpayer who wishes to protest an RPT assessment, may do so in either of the following ways: 1) file a protest which questions or challenges the **reasonableness or correctness** of the assessment; or (2) file a protest which questions the legality or validity of the assessment. If a taxpayer's protest questions the correctness or reasonableness of an assessment, Section 252 of the LGC of 1991 mandates that such protest must be preceded by payment of the assessed RPT.

The remedy of protest under the said Section 252 contemplates of a situation where the reasonableness or correctness of the amount assessed is being challenged. In this case, the taxpayer is required to "first pay the tax", then file a protest, otherwise, the city or municipal treasurer will not act on said protest. If the protest is denied or not acted upon within 60 days from filing, the taxpayer or the person having legal interest over the property may then file an appeal with the LBAA, which has 120 days from date of receipt of such appeal to render a decision. If the taxpayer is unsatisfied with the decision of the LBAA, the taxpayer may elevate an appeal with the CBAA within thirty (30) days from receipt of the decision of the LBAA. If the CBAA still renders an adverse decision, the aggrieved taxpayer may avail the judicial remedy and elevate an appeal with the Court of Tax Appeals (CTA) in accordance with Section 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 RRCTA.

On the other hand, if the taxpayer or the person having legal interest in the property questions the authority and power of the assessor to impose or issue the assessment, the matter becomes a legal question, which is properly cognizable by the proper court which in this case is the Regional Trial Court (RTC).

In another case involving the National Power Corporation,[17] the Supreme Court reiterated the need to distinguish between two types of protests against an RPT assessment because such distinction would be determinative of which body has jurisdiction and we quote:

> "In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Section 229 (b) that the "proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts...." **It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again 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 a 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 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 the increase in the tax but attacks the very validity of any increase."
>
> **Accordingly, if the only issue is the legality or validity of the assessment – a question of law- direct recourse to the RTC is warranted."** (Emphasis supplied)

It is vital then to classify the nature of the protest filed by petitioner with the LBAA. In its Petition filed with the LBAA on October 22, 2012[18], petitioner presented the following arguments in support of its appeal, thus:

1. The machineries or the properties subject of the assessment are owned by TRANSCO and are thus exempt from the payment of RPT;

2. NGCP (herein petitioner) is exempt from the payment of RPT under its franchise (R.A. 9511).

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[17] *National Power of Corporation vs. Municipal Government of Navotas,, et.al.*, G.R. No. 192300, November 24, 2014.
[18] Annex E, attached to the Petition for Review, EB Docket, pp. 62- 70.

Petitioner then asks the LBAA to render a decision declaring the NOAs to be null and void and **to declare the subject real properties to be classified as exempt from RPT**.

It is evident from the above arguments that petitioner was questioning the correctness of the assessment issued by the municipal assessor of Tupi, South Cotabato as it claims exemption from the payment of RPT. In the case of *John Hay Development Corporation vs. CBAA, et.al.*[19]*(Camp John Hay),* the Supreme Court ruled that a claim for tax exemption raises a question of reasonableness or correctness of an assessment which requires compliance with Section 252 of the LGC of 1991 and we quote the following pertinent portions:

> "All told, We go back to what was at the outset stated, that is, that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such argument may involve a question of fact that should be resolved at the first instance by the LBAA."

The aforequoted ruling of the Supreme Court in the *Camp John Hay* case was later affirmed in the case of *Napocor vs. The Provincial Treasurer of Benguet, et. al.*[20] which we quote below:

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

In the instant case, the petitioner questions the Decision and the Resolution of the CBAA before the Court *En Banc* and prays that it be declared exempt from the payment of RPT under its franchise, RA No. 9511. Time and again, this Court has made a distinction between two types of protests that may be appealable either to the LBAA or to

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[19] G.R. No. 169234 dated October 2, 2013.
[20] G.R. No. 209303 dated November 14, 2016.

the RTC, thus a claim for tax exemption, whether full or partial, is not considered to be a protest which questions the authority of the local assessor to assess RPT, but merely raises a question of the reasonableness or correctness of the assessment which is a question of fact appealable to the LBAA.[21]

It is important to understand how a claim for exemption from RPT partakes of the nature of a question of fact instead of a question of law to further clarify the aforequoted Supreme Court and CTA En Banc decisions.

Section 206 of the LGC of 1991 provides for a process upon which a taxpayer may claim exemption of certain real property from RPT and we quote:

> "Section 206. *Proof of Exemption of Real Property from Taxation.* – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, article of incorporation, bylaws, contracts, affidavits, certifications ad mortgage deeds and similar documents.
>
> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be proven to be tax exempt, the same shall be dropped from the assessment roll."

It is clear from the foregoing provision, that exemption of certain real property from RPT is not automatic even by virtue of a legislative franchise but involves a process by which the provincial, city or municipal assessor evaluates various documents submitted by the taxpayer to prove entitlement to said exemption. The process of evaluation entails an examination/investigation of facts as may be determined by the documents submitted such that the claim for exemption from RPT then devolves into a question of fact, i.e., whether or not the documents submitted by the

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[21] *National Grid Corporation of the Philippines vs. Municipality of Labrador Pangasinan*, CTA EB No. 1373, April 27, 2017; *Materno Ato, in his capacity as the Officer-in-Charge at the Provincial Assessor's Office of Ilocos Sur et.al.*, CTA EB No. 1390. April 26, 2017; *National Grid Corporation of the Philippines vs. CBAA, et. al.*, CTA EB No. 1392, September 5, 2017.

taxpayer is sufficient to prove exemption from RPT. It is incumbent on the part of herein petitioner to follow this process as explicitly required by the cited provision of the LGC of 1991. The LBAA, on the other hand, should resolve the question of exemption guided by the same provisions.

The records of the case failed to show whether petitioner complied with the foregoing provision. Furthermore, it filed an appeal with the LBAA without paying the RPT as assessed by the municipal assessor of Tupi, South Cotabato in violation of the provisions of Section 252 of the LGC of 1991 which requires that before a protest may be entertained, the tax should have first been paid and such payment shall be held in trust by the treasurer concerned.

From the foregoing, we affirm the LBAA Resolution dated June 27, 2013 declaring that the petitioner failed to first pay the assessments as required under Section 252 (a) of the LGC and that its appeal to the LBAA was premature.

Having ruled that the petitioner failed to follow the proper procedure in filing a protest with the LBAA, we therefore see no reason to delve upon the other issues raised in the Petition for Review.

WHEREFORE, the instant Petition for Review filed by petitioner NGCP on May 25, 2016 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
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