Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ISABEL B. SANTOS, *Petitioner,*	**CTA EB NO. 1103** (CBAA Case No. L-122)
-versus-	Present:
THE LOCAL BOARD OF ASSESSMENT APPEALS OF VALENZUELA CITY AND GUALBERTO B. BERNAS IV, IN HIS CAPACITY AS THE CITY TREASURER OF VALENZUELA CITY, CENTRAL BOARD OF ASSESSMENT APPEALS HONORABLE OFELIA A. MARQUEZ, CHAIRMAN; ROBERTO D. GEOTINA, MEMBER; CAMILO L. MONTENEGRO, MEMBER, *Respondents.*	DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ. Promulgated: JAN 29 2016 3:10 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated September 4, 2015 of this Court en banc, the pertinent portion of which states:

> "***WHEREFORE,*** *premises considered, the Petition for Review is hereby* ***DISMISSED****.*
>
> ***SO ORDERED****."*

Petitioner seeks reconsideration on the following grounds:

"I.

THE HONORABLE CTA SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE PRESENT PETITION FAILS TO STATE CAUSE OF ACTION.

II.

THE HONORABLE CTA SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN FINDING PETITIONER'S FAILURE TO COMPLY WITH SECTION 252 OF THE LOCAL GOVERNMENT CODE OF 1991 EFFECTIVELY DEPRIVES IT OF JURISDICTION OVER THE PETITION."

Petitioner argued that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. Thus, the failure to state a cause of action should have been raised before the Local Board of Assessment Appeals and can no longer be passed upon by the Court of Tax Appeals. Furthermore, petitioner claims under the principle of estoppel by laches, the instant case can no longer be dismissed on jurisdictional ground.

In the Comment [1] filed on December 7, 2015, respondent City Treasurer averred that:

1. Petitioner is questioning the reclassification of her properties from residential to commercial but failed to appeal the same within 60 days pursuant to Section 226 of the Local Government Code of 1991, thus, the assessment has become final;

2. Assuming that petitioner is questioning the correctness of the assessment, the fact remains that petitioner failed to pay the assessment under protest which is not in

[1] En Banc Docket, pp.490-494.

accordance with Section 252 of the Local Government Code of 1991.

We resolve to deny the motion.

If the taxpayer questions the correctness of the assessment, he should first comply with Section 252 of Local Government Code of 1991, *i.e.,* the requirement of payment under protest. No protest shall be entertained unless the taxpayer first pays the tax. **Failure to comply with the requisite payment under protest violates a mandatory provision of Section 252 of the Local Government Code of 1991. Failure to prove such requirement renders his administrative protest without any effect.** In the instant case, petitioner failed to comply. The non-payment of the assessment was raised by the respondent in their Joint Comment/Opposition (Petition dated 30 November 2010)[2] filed before the Local Board of Assessment Appeals. Thus, we reiterate our ruling as follows:

> *"A careful scrutiny of the records of the case reveals that petitioner anchors her protest before the City Treasurer of Valenzuela, and her subsequent appeals to the LBAA and CBAA, based on the provisions of Section 252 of Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991.*[3] *Nevertheless, on appeal before the Court En Banc, petitioner, through counsel, takes an inconsistent position that her action is rooted in the reclassification of her real properties from commercial to residential pursuant to Section 226, not 252, of RA No. 7160. Petitioner opines that she is not required to first pay the tax before filing her protest.*[4]
>
> *Sections 226 and 252 of RA No. 7160 read:*
>
> *Section 226. Local Board of Assessment Appeals. - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of*

[2] CBAA Docket, Folder 3, pp. 38-63
[3] Par. 1.2 of petitioner's Petition before the LBAA; CBAA Docket, Folder 3, p. 2.
[4] *En Banc* Docket, p. 299.

> *assessment, appeal to the Board of Assessment Appeals of the provincial 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. 252. Payment Under Protest. - (a)* ***No protest shall be entertained unless the taxpayer first pays the tax.*** *There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.*
>
> *(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.*
>
> *(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax 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. [Emphasis supplied.]*

In ***National Power Corporation v. Province of Quezon, et al.***,[5] *the Supreme Court clarified that Sections 252 and 226 of LGC provide successive administrative remedies to a taxpayer who questions the correctness of an assessment in this wise:*

> *"By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty*

[5] G.R. No. 171586, January 25, 2010.

> *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.***
>
> ***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 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 x x x appeal to the Board of Assessment Appeals x x x,* ***should be read in conjunction with Section 252 (d),*** *which states that in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The action referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessors act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed." [Emphasis supplied.]*

Simply stated, if the taxpayer questions the correctness of the assessment, he should first comply with Section 252 of LGC, i.e., the requirement of payment under protest. Failure to prove such requirement renders his administrative protest under Section 226 of the LGC *without any effect. To emphasize, no protest shall be entertained unless the taxpayer first pays the tax.*

In the instant case, it is undisputed that petitioner questions the correctness of the reclassification from "residential" to "commercial" lots of her two (2) co-owned properties, covered by TD Nos. C-017-014417 and C-017-014418 made by the City Assessor of Valenzuela. By reason of such reclassification, petitioner similarly questions the correctness of the alleged deficiency realty tax assessments of the subject properties incurred from years 1999 to 2009 prepared by the City Treasurer of Valenzuela. Consequently, it is incumbent upon petitioner to comply with the requirement of payment under protest pursuant to Section 252 of the LGC.

xxx xxx xxx.

Accordingly, petitioner's failure to comply with the requisite payment under protest violates a mandatory provision of Section 252 of the LGC. It therefore violates the doctrine of exhaustion of administrative remedies and renders the present petition premature and thus without a cause of action, xxx."

In sum, we found that no substantial argument was raised to merit reconsideration of our Decision promulgated on September 4, 2015.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I maintain my Separate Concurring Opinion.)
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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