Court of Tax Appeals
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REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CITY TREASURER OF MANILA,
Petitioner,

-versus-

CHINA BANKING CORPORATION,
Respondent.

C.T.A. AC NO. 20
(RTC Civil Case No. 03-107240)
(RTC Civil Case No. 04-108869)
(RTC Civil Case No. 04-109705)

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
MAY 0 4 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 195 of the Local Government Code*, when the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a

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written protest with the local treasurer contesting the assessment otherwise, the assessment shall become final and executory.

Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in administrative forum (*Teotico vs. Agda, 197 SCRA 675, 693; Paat vs. Court of Appeals, 266 SCRA 167*).

If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for judicial determination (*Aboitiz vs. Collector of Customs, 83 SCRA 265, 272; Abe-Abe vs. Manta, 90 SCRA 524-531*).

THE CASE

This is an appeal by the City Treasurer of Manila (hereafter "petitioner") from the Decision, dated June 27, 2005, rendered by the Regional Trial Court of Manila, Branch 21, in Civil Case Nos. 03-107240, 04-108869, and 04-109705, all entitled "China Banking

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Corporation vs. City Treasurer of Manila", the dispositive portion of which reads, as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) declaring the application of Sec. 21 of the City Revenue Code as VOID as constituting double taxation;
>
> 2) ordering defendant to refund to plaintiff the business taxes assessed and collected by respondent under Sec. 21 of the City Revenue Code;
>
> 3) without pronouncement as to costs.
>
> SO ORDERED."

and the Resolution dated September 30, 2005, denying the City Treasurer of Manila's Motion For Reconsideration, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the Motion For Reconsideration is hereby DENIED for lack of merit.
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> SO ORDERED."

THE FACTS

The facts of the case, as culled from the records, are as follows:

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Petitioner is the duly appointed City Treasurer of the City of Manila, with office address at City Treasurer's Office, City Hall, Manila.

China Banking Corporation (hereafter "respondent bank") is a universal banking corporation organized and operating under Philippine laws, with principal address at Chinabank Building, 8745 Paseo de Roxas Street, corner Villar Street, Makati City.

On April 15, 2003, October 16, 2003 and January 16 and 19, 2004, respondent bank's Downtown Center and Masangkay Branches paid under protest to petitioner City Treasurer of Manila additional business taxes, all in the same amounts of P1,130,978.14, except the January 16, 2004 payment in the amount of P88,948.94. Such payments were made pursuant to the City Treasurer's requirement to pay the local tax under *Section 21 of the Revenue Code of Manila*, in addition to the local gross receipts tax under *Section 19 of the same Code*.

Civil Case No. 03-107240

On July 18, 2003, respondent bank filed with the RTC of Manila, Branch 21, a complaint for Refund of Sum of Money against herein petitioner for the refund of the business tax in the amount of P1,123,522.25 it paid under protest on April 15, 2003. aw

On September 8, 2003, petitioner filed a "Motion To Dismiss", which the court a quo denied in its Order dated October 7, 2003.

On October 17, 2003, petitioner filed her answer to the complaint.

At the pre-trial, the parties agreed that they will just submit their respective memorandum. After the submission of the parties' memoranda, the case was deemed submitted for decision.

On June 27, 2005, the court a quo rendered the assailed joint decision.

Civil Case No. 04-108869

On January 16, 2004, respondent bank filed with the RTC of Manila, Branch 21, a complaint for Refund of Sum of Money against herein petitioner for the refund of the business tax in the amount of P1,123,522.25 it paid under protest on October 16, 2003.

On February 10, 2004, petitioner filed her answer to the complaint.

At the pre-trial, the parties agreed that they will just submit their respective memorandum. After the submission of the parties' memoranda, the case was deemed submitted for decision.

On June 27, 2005, the court a quo rendered the assailed joint decision.

Civil Case No. 04-109705

On April 16, 2004, respondent bank filed with the RTC of Manila, Branch 21, a complaint for Refund of Sum of Money against herein petitioner for the refund of the business tax in the amount of P1,130,978.14 it paid under protest on January 19, 2004.

On May 3, 2004, petitioner filed her answer to the complaint.

On July 16, 2004, petitioner filed a "Motion To Dismiss", which the court a quo denied in its Order dated August 27, 2004.

At the pre-trial, the parties agreed that they will just submit their respective memorandum. After the submission of the parties' memoranda, the case was deemed submitted for decision.

On June 27, 2005, the court a quo rendered the assailed joint decision.

Hence, the present appeal filed by petitioner City Treasurer of Manila raising the following:

ISSUES

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WHETHER OR NOT THE TRIAL COURT COMMITTED AN ERROR IN DENYING THE MOTION TO DISMISS.

II

WHETHER OR NOT PLAINTIFF-APPELLEE HAS COMMITTED FORUM SHOPPING.

III

WHETHER OR NOT THE TRIAL COURT COMMITTED AN ERROR IN HOLDING THAT SECTION 21 OF THE REVENUE CODE OF MANILA CONSTITUTES DOUBLE TAXATION.

IV

WHETHER OR NOT PLAINTIFF-APPELLEE IS ENTITLED TO A REFUND.

Decisive Issue

The decisive issue to be resolved is whether or not the trial court committed an error in denying the Motion To Dismiss.

THE RULING OF THE COURT

The appeal is meritorious.

Motion To Dismiss

The Motion to Dismiss is anchored on the following grounds:

1) lack of cause of action and the complaint was prematurely filed;

2) non-exhaustion of administrative remedies;

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3) lack of jurisdiction; and

4) forum shopping.

Lack of Cause of Action/
Non-Exhaustion of
Administrative Remedies

Record shows that respondent bank paid under protest the assessment under *Section 21*, invoking *Section 195 of the Local Government Code*, which provides:

> "SEC. 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

The law is very clear. The above provision provides for the procedure for protest against an assessment made by the local treasurer. A written protest is required specifically for the purpose of contesting the assessment made by the local treasurer.

Pursuant to the above provision, respondent bank should have filed a written protest within sixty (60) days from receipt of the notice of assessment. But, as the record shows, respondent bank merely paid the assessments under protest, but failed to file a formal written protest subsequent thereto. Having failed to comply with the aforequoted provision, the assessment had become final and executory.

Respondent bank's contention that for all the claims for tax refund made in the cases before the court a quo, it duly filed appropriate written protests, as evidenced by its letters dated April 15, 2003, October 16, 2003 and January 16, 2004, cannot be sustained.

The said letters dated April 15, 2003, October 16, 2003 and January 16, 2004 sent by respondent bank to the City Treasurer of Manila uniformly read as follows:

"15 April, 2003

Office of the City Treasurer
City of Manila
Ground Floor, City Hall
Manila

Gentlemen:

We refer to your assessment for Mayor's Permit & other regulatory fees for the year 2003, specifically the additional business tax of PESOS: ONE MILLION ONE HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED TWENTY TWO & 25/100 (P1,123,522.25) for the 2nd quarter which is 50% of 1% of the previous year's gross receipt. It is our position that we are not liable on the said additional local tax. And assuming that we are covered by Section 21 of the City Ordinance, we vehemently disagree with the aforesaid assessment on the ground that such constitute double taxation.

In the meantime to avoid penalties/surcharges and any threat of closure, we are remitting the aforesaid assessment **UNDER PROTEST** in the amount of PESOS: ONE MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED THIRTY FIVE & 60/100 (P1,797,635.60) under Manager's Check No. 0000080544.

Please issue the corresponding official receipt.

Very truly yours,
CHINA BANKING CORPORATION
Downtown Center Branch

By:

GLORIA T. ONG (sgd.)

Assistant Vice President
Accounting Department" (*Annex "1", Memorandum for Respondent)*

The above letter speaks for itself. A careful reading of the letter shows that the same merely informed the City Treasurer that respondent bank was paying under protest the additional business tax. Although respondent bank stated in the said letter its position that it is not liable on said additional business tax on the ground that the said assessment constitutes double taxation, still it is not the written protest contemplated by *Section 195 of the Local Government Code*. It did not state the legal basis of its protest from which the City Treasurer will rest her findings. Therefore, the said letters of respondent bank cannot be considered as the written protest contemplated under *Section 195 of the Local Government Code.*

Even assuming for the sake of argument that said letters as maybe considered as the written protest under *Section 195*, respondent bank did not appeal to the lower court the inaction of the City Treasurer on their protests, which judicial remedy should have been availed of by respondent bank. Instead, it filed with the RTC of Manila complaints for

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refund of sum of money. It is clear, therefore, that the action taken by the petitioner is in violation of *Section 195 of the Local Government Code*.

In C.T.A. E.B. No. 150, entitled *"China Banking Corporation vs. City Treasurer of Manila"*, involving this very same issue and the same parties in this Court, this Court *En Banc* in its decision promulgated on September 15, 2006, affirmed the decision, dated April 25, 2005, of the Regional Trial Court of Manila, Branch 27, in Civil Case Nos. 04-111537 and 177197-CV, dismissing the complaints for refund of sum of money filed by China Banking Corporation against the City Treasurer of Manila on grounds of lack of cause of action, prematurity and non-exhaustion of administrative remedies, and ruled as follows:

> "The foregoing issues can be summarized as: Whether or not the letters sent by petitioner to respondent may be considered as the written protest required by Section 195 of the Local Government Code and whether petitioner had capacity to sue.
>
> In as much as the crux of the controversy depends on the proper interpretation of Sections 195 and 196 of the Local Government Code of 1991, the Court deems it appropriate to quote the same, thus:
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> > '**Section 195. Protest of Assessment**. – When the local treasurer of his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the

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nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment, otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing.** If the local treasurer finds the protest to be wholly or partially meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partially correct, he shall deny the protest wholly or partially with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**"

"**Section 196. Claim for refund of Tax Credit. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer.** No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit. (*Emphasis supplied*)

In the instant case, the lower courts correctly held that petitioner's letters show that the same merely informed the City Treasurer that petitioner was paying under protest the additional local government tax. And that although petitioner indicated in the said letter its position that it is not

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liable on the said additional local tax and that the same constitutes double taxation, still it was not the written protest contemplated by Section 195 of Republic Act No. 7160. Since the same did not state the legal basis of its protest from which the City Treasurer will rest its findings. Therefore, these letters of petitioner purporting to be 'protests' cannot be considered as such, inasmuch as the same merely informed the respondent that it is paying under protest. They cannot be considered a formal demand for refund or a protest which the local treasurer is given the authority to resolve first, prior to the elevation thereof to a judicial forum.

Moreover, with regard to the March 5 and March 26, 2004 letters, even applying liberal construction in favor of the petitioner and assuming that said letters were the written protest contemplated by Section 195 of R.A No. 7160, petitioner did not come before the lower courts appealing any decision or non-action of the City Treasurer on their protest, to which judicial remedy may be availed of. Instead, petitioner filed with the Metropolitan Trial Court on April 26, 2004, a refund for a sum of money without awaiting the final decision of the Local Treasurer on the 'protest' or waiting for the lapse of the (60) day period given to the latter to decide the protest. Thus, the judicial claim was filed in violation of Section 195 of R.A No. 7160."

Having failed to comply with the requirements prescribed by *Section 195*, the complaint for refund was prematurely filed for failure to exhaust administrative remedies. Well settled is the rule that a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court *(Carale vs. Abarintos, 269 SCRA 142)*. If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for judicial determination (*Aboitiz vs. Collector of Customs, 83 SCRA 271; Abe-Abe vs. Manila, 90 SCRA 531*).

The Supreme Court, "xxx in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for lack of cause of action xxx." (*Soto vs. Jareno,* *G.R. No. 38962, September 15, 1986; Hodges vs. Mun. Board, L-18276, January 12, 1967; Paat vs. Court of Appeals, 266 SCRA 175*).

The doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. However, we are not amiss to reiterate that the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the

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respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention (*Quisumbing vs. Judge Gumban, G.R. No. 85156, February 5, 1991; Paat vs. Court of Appeals, supra).*

This case does not fall within the ambit of the above excepted cases.

Therefore, dismissal of the complaints for refund of sum of money for lack of cause of action in view of respondent bank's failure to exhaust administrative remedies should have been the proper course of action by the lower court instead of assuming jurisdiction over the cases and consequently rendering the questioned decision. Exhaustion of the remedies in the administrative forum, being a condition precedent prior to one's recourse to the courts and more importantly, being an element of respondent bank's right of action, is too significant to be waylaid by the

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lower court. Clearly, the lower court erred in denying the Motion To Dismiss.

For all the foregoing, this Court is left with no recourse, but to dismiss the complaints filed in RTC Civil Case Nos. 03-107240, 04-108869 and 04-109705 for lack of cause of action or failure to exhaust administrative remedies.

No Forum Shopping

However, We find merit in respondent bank's contention that there is no forum shopping. There is forum shopping when, in the two or more cases pending, there is identity of parties, rights or causes of action and reliefs sought (*International School, Inc. vs. Court of Appeals, 309 SCRA 480*). Forum Shopping exists where the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other (*Alejandrino vs. Court of Appeals, 295 SCRA 554*). For *litis pendentia* to exist the following requisites must be present:

1) Identity of parties, or at least such parties as those representing the same interests in both actions;
2) Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts;

3) Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the preceding case, regardless of which party is successful, would amount to *res judicata* in the other case *(Dasmariñas Village Association, Inc. vs. CA, 299 SCRA 604; Veluz vs. Court of Appeals, 345 SCRA 765).*

The cause of action in each of the three (3) cases filed by respondent bank is distinct from each other, involving different tax payments made by different branches of respondent bank on different occasions. Accordingly, respondent bank cannot be held guilty of forum shopping since the requisites of *litis pendentia* do not obtain.

Having already definitively disposed of the case through the resolution of the principal issue, We find no more need to pass upon the other issues raised in this case.

WHEREFORE, the Petition is **GRANTED**. The Decision dated June 27, 2005 and the Order dated September 30, 2005, of the RTC of Manila, Branch 21 in Civil Case Nos. 03-107240, 04-108869 and 04-109705 are hereby **SET ASIDE and REVERSED**; Civil Case Nos. 03-

107240, 04-108869 and 04-109705 are hereby **ORDERED DISMISSED** for lack of cause of action or failure to exhaust administrative remedies.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

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