REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MACTAN ELECTRIC COMPANY, INC.,
Petitioner,

-versus-

THE MUNICIPALITY OF CORDOVA, THE MUNICIPAL ASSESSOR OF CORDOVA, THE PROVINCE OF CEBU, and THE PROVINCIAL TREASURER OF CEBU,
Respondents.

CTA AC NO. 258

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

NOV 17 2023

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on December 21, 2021, by petitioner Mactan Electric Company, Inc. ("**MECO**" or "**Petitioner**")[1] against respondents, the Municipality of Cordova, the Municipal Assessor of Cordova, the Province of Cebu, and the Provincial Treasurer of Cebu ("**Respondents**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner assails the *Decision* of Branch 12 of the Regional Trial

[1] Docket – Vol. I, pp. 5-35.

[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* -- The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction

[4] A.M. No. 05-11-07-CTA.

Court of Cebu City ("**RTC**") dismissing its *Complaint* in Civil Case No. CEB-38689 entitled *MACTAN ELECTRIC COMPANY, INC., v. THE MUNICIPALITY OF CORDOVA, THE MUNICIPAL ASSESSOR OF CORDOVA, THE PROVINCE OF CEBU, and THE PROVINCIAL TREASURER OF CEBU* ("**assailed *Decision***")[5] and the *Order* denying its *Motion for Reconsideration* in the same case ("**assailed *Order***").[6]

THE PARTIES[7]

Petitioner MECO is a corporation duly organized and existing under Philippine laws with address at MECO Building, Sangi Road, Lapu-Lapu City, Cebu.

Respondent Municipality of Cordova is a local government unit of the Republic of the Philippines. It is one of the municipalities of the Province of Cebu, with principal address at the Municipal Hall, Cordova, Cebu.

Respondent Municipal Assessor of Cordova is of legal age and an appointive local official in the Municipality of Cordova,

Respondent Province of Cebu is a local government unit of the Republic of the Philippines, with principal address at the Cebu Capitol, Cebu City.

Respondent Provincial Treasurer of Cebu is of legal age and an appointive local official in the Province of Cebu.

THE FACTS

We quote the RTC's narration of facts:[8]

> 6. MECO has a Certificate of Franchise issued by the National Electrification Commission to operate an electric light and power service in the Municipality of Cordova and other areas.
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> 7. Sometime in 2008, MECO received a Notice of Assessment dated June 12, 2008, from the Municipality of Cordova, prepared by the Municipal Assessor of Cordova, informing MECO that "the real property(ies) indicated (therein)...are... assessed for the year 1992 in this... Municipality and

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[5] Assailed *Decision* penned by Judge Estela Alma A. Singco, Docket – Vol. I, pp. 37-74.
[6] *Id.*, p. 76.
[7] *Id.*, pars. 1-5.
[8] *Id.*, pars. 6-16.

ownership of which... are stated in (MECO's) name for taxation purposes, as well as for subsequent years until (MECO) is informed of any changed/s..." [*sic*]

8. Attached to the Notice of Assessment were Tax Declaration No. 14788, 14789, 14790, 14791, 14792, 14793, 14794, 14795, 14796, 14797, 14798, and 14799 for supposed real properties-classified as "commercial" with aggregate market value of P5,274,800 and assessed value of P4,219.760."

9. The Tax Declaration covered the electrical poles and distribution transformers of MECO in the Municipality of Cordova.

10. On October 13, 2011, MECO received a letter dated October 13, 2011, from the Provincial Treasurer of Cebu, informing MECO of supposed unpaid taxes in the total amount of Two Million Eight Hundred Forty-Two Thousand Four Hundred Thirty and 35/100 Pesos (2,842,430.35), allegedly representing "Tax Due Basic/SEF" and "Penalties" for the 'C Years Delinquent" which were from "1992 to 2011. Attached to the letter was "Computations on Real Property Tax Municipality of Cordova" for "transformers."

11. On March 16, 2012, MECO received a letter dated March 14, 2012 from the Provincial Treasurer, inviting MECO to a meeting with the Provincial Governor of Cebu on March 21, 2012 to discuss franchise and real property tax delinquency. MECO attended the meeting and there the Provincial Governor asked MECO and other companies to settle their unpaid real property taxes.

12. On March 28, 2012, MECO received a letter dated March 27, 2012 from the Provincial Treasurer, inviting MECO to another meeting with the Provincial Governor on March 30, 2012 to again discuss franchise and real property tax delinquency. MECO attended the meeting, and there the Provincial Governor stated that the purchase would auction the assets of those who have unpaid real property taxes [sic].

13. On April 3, 2012, a news article entitled, "Province: 'Delinquents' could lose assets due to unpaid tax" appeared in Sun.Star Cebu. The article reported that the Province of Cebu announced it would auction the assets of telecommunications and power utility firms that owe the Provincial Government real property taxes. The article quoted the Provincial Governor saying that MECO has unpaid taxes of about P3 million.

14. On April 11, 2012, a Notice of Delinquency in the Payment of Real Property Tax" was published by the Provincial Treasurer in Cebu Daily News. The notice listed MECO as

delinquent in the payment of real property taxes for its "[t]ransformers & posts" for the years" 1992-2012."

15. On April 12, 2012 a news article entitled, "Capitol sends notices to firms, sets auction of assets on July 2, appeared in Sun.Star Cebu, reporting that the Province of Cebu scheduled the auction of MECO's properties in 12 barangays in the Municipality of Cordova on July 2 this year.

16. On April 18, 2012, a second Notice of Delinquency in the Payment of Real Property Tax was published by the Provincial Treasurer in Cebu Daily News.

On April 30, 2012, petitioner filed a *Complaint*[9] praying for (1) the issuance of a writ of injunction and (2) the declaration that the Notice of Assessment dated June 12, 2008, and Tax Declaration Nos. 14788, 14789, 14790, 14791, 14792, 14793, 14794, 14795, 14796, 14797, 14798, and 14799 ("*subject Tax Declarations*") be declared null and void.

On January 28, 2020, the RTC promulgated a *Decision*[10] dismissing petitioner's *Complaint*. The dispositive portion reads:

> WHEREFORE, and the foregoing premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.
>
> Costs against the plaintiff.
>
> SO ORDERED.

Petitioner filed a *Motion for Reconsideration (Re: Decision dated January 28, 2020)*, which was denied by the RTC in its *Order* dated October 25, 2021.[11] The *fallo* reads:

> WHEREFORE, the Motion for Reconsideration of plaintiff is DENIED.
>
> SO ORDERED.

Undaunted, petitioner filed a *Petition for Review*[12] before this Court on December 21, 2021.

[9] Annex "C", Petition for Review, Docket – Vol. I, pp. 77-91.
[10] *Supra* at note 5.
[11] *Supra* at note 6.
[12] *Supra* at note 1.

On February 3, 2022, the Court promulgated a *Resolution* ordering the RTC to elevate the records of the case and respondents to file their comment to the *Petition for Review.*[13]

On May 2, 2022, respondents filed a *Motion to Admit (Comment on Petitioner's Petition for Review),* [14] which was granted in a *Resolution* dated May 25, 2022.[15]

On May 24, 2022, the Court received the *Letter of Transmittal* from the RTC with attached *RTC Records.*[16]

Pursuant to the Court's *Resolution* dated August 2, 2022,[17] petitioner filed a *Memorandum* on September 22, 2022,[18] while respondents filed a *Memorandum* posted on October 20, 2022.[19]

Following petitioner's *Manifestation* posted on October 28, 2022,[20] and receipt of respondent's *Memorandum*, the case was submitted for decision on October 14, 2022, and anew on November 11, 2022, and January 5, 2023.[21]

Hence, this *Decision.*

THE ISSUES

Petitioner assigned the following errors in its *Memorandum*:

> I.
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> THE REGIONAL TRIAL COURT SERIOUSLY ERRED IN NOT NULLIFYING THE NOTICE OF ASSESSMENT DATED JUNE 12, 2008, AND TAX DECLARATIONS [*SIC*] NO. [*SIC*] 14788, 14789, 14790, 14791, 14792, 14793, 14794, 14795, 14796, 14797, 14798, and 14799 PURSUANT TO THE SUPREME COURT RULING IN MANILA ELECTRIC COMPANY INC. v. THE CITY ASSESSOR AND CITY TREASURER OF LUCENA CITY (G.R. NO. 166102, AUGUST 5, 2015) WHICH PROVIDES THAT SECTIONS 224 AND 225 OF THE LOCAL GOVERNMENT CODE SPECIFICALLY REQUIRE THAT EVERY MACHINERY MUST BE INDIVIDUALLY APPRAISED AND ASSESSED DEPENDING ON ITS ACQUISITION COST,

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[13] Docket – Vol. I, pp. 422-423.
[14] *Id.*, pp. 424-425.
[15] *Id.*, pp. 437-438.
[16] *Id.*, p. 439.
[17] Docket – Vol. II, p. 453.
[18] *Id.*, pp. 458-498.
[19] *Id.*, unpaged.
[20] *Id.*, unpaged.
[21] *Id.*, unpaged.

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REMAINING ECONOMIC LIFE, ESTIMATED ECONOMIC LIFE, REPLACEMENT OR REPRODUCTION COST, AND DEPRECIATION.

II.

THE REGIONAL TRIAL COURT SERIOUSLY ERRED IN FINDING MECO LIABLE TO PAY REAL PROPERTY TAX ASSESSED FROM 1992 TO 2011 NOTWITHSTANDING THE TEN (10) YEAR LIMIT PROVIDED FOR BY SECTION 222 OF THE LOCAL GOVERNMENT CODE.

III.

THE REGIONAL TRIAL COURT SERIOUSLY ERRED IN RULING THAT MECO'S JUDICIAL ACTION WAS A WRONG REMEDY WHEN IT WAS A WELL-SETTLED EXCEPTION TO THE RULE THAT ADMINISTRATIVE REMEDIES MUST FIRST BE EXHAUSTED AS THE ISSUES SUBMITTED THEREIN WERE THE VALIDITY OF THE ASSESSMENTS AND THE VERY AUTHORITY AND POWER OF THE MUNICIPAL ASSESSOR TO ASSESS

PETITIONER'S ARGUMENTS

Echoing the ruling of the Supreme Court in *Manila Electric Company v. The City Assessor and City Treasurer of Lucena City (Meralco* case*)*,[22] petitioner argues that the assessment is null and void for not complying with the requirements of Sections 224 and 225 of the Local Government Code (**"LGC"**).[23] According to petitioner, every machinery must be individually appraised and assessed depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation.[24] Petitioner points out that the tax declarations in the *Meralco* case are similar to those issued against it.[25] There are likewise no entries for "Date of Operation," "Original Cost," and "Depreciation,"[26] and its electrical poles and transformers were merely lumped and valued together.[27] Petitioner alleges that this is attributable to the fact that there is no appraisal report,[28] which makes the values affixed and indicated in the tax declarations arbitrary and devoid of factual basis.[29] Petitioner posits that this violates

[22] G.R. No. 166102, August 5, 2015.
[23] *Petition for Review*, pars. 67-69, Docket – Vol. I, pp. 5-35.
[24] *Id.*, pars. 70-71.
[25] *Id.*, par. 72.
[26] *Id.*, par. 72.2.
[27] *Id.*, par. 72.6.
[28] *Id.*, par. 72.3.
[29] *Id.*, par. 72.5.

its right to due process,[30] particularly its right to proper notice.[31]

Petitioner likewise argues that even assuming that it is liable to pay the tax imposed on the subject properties, it should not be held liable for back taxes starting from 1992 when the LGC took effect[32] in accordance with Section 222 of the LGC, which provides a limit of not more than ten (10) years.[33] Petitioner avers that the tax declarations were prepared in 2007 and that the Notice of Assessment was issued in 2008.[34] Thus, according to petitioner, at the earliest, it should have only been assessed for back taxes "beginning 1997 or 1998."[35]

Anent its judicial remedy, petitioner alleges that it is questioning the very legality of the assessment made by respondents, and it did not concern itself with the reasonableness of the amount assessed. According to petitioner, it is questioning the authority of the Municipality of Cordova to make the assessment and to impose real property tax, which respondents allegedly were not empowered to do under Section 232 of the LGC.[36] Thus, according to petitioner, as an exception to the doctrine of exhaustion of administrative remedies, a judicial remedy may directly be resorted to when only a question of law is involved.[37]

RESPONDENTS' ARGUMENTS

In their *Comment*, respondents counter that nowhere in Sections 224 and 225 of the LGC did it provide that the assessment must indicate the actual date of operation of each pole and transformer, the original cost of each pole and transformer, and the actual depreciation of each pole and transformer. They argue that they complied with the mandate of the said provisions when the assessment was based on the fair market value of the subject properties. They further argue that it is petitioner who should provide this information to the assessor as it is petitioner who is knowledgeable with these, but petitioner failed to do so. Respondents thus argue that "petitioner is the one to blame."

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[30] *Id.*, par. 73.
[31] *Id.*, par. 76.
[32] *Id.*, par. 81.
[33] *Id.*, par. 82.
[34] *Id.*, par. 83.
[35] *Id.*, par. 84.
[36] *Id.*, par. 89.
[37] *Id.*, pars. 90 and 91.

Anent the issue of prescription, respondents contend that they were "constrained to apply" Section 204 of the LGC.

Respondents likewise claim that petitioner did not file an appeal to the Local Board of Assessment Appeals ("**LBAA**") of the province within sixty (60) days from the time it received the Notice of Assessment.

Respondents also ask the Court to uphold the presumption of regularity in the performance of duties of government officials.

THE COURT'S RULING

The instant *Petition for Review* is not impressed with merit.

The Court has jurisdiction over the present case.

Before the Court delves into the merits of the case, We shall first resolve whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(3) of Republic Act ("**RA**") No. 1125,[38] as amended by RA No. 9282,[39] provides:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> **(3) Decisions, orders, or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction** [*Emphasis and underscoring supplied.*]

The above provision is implemented by Section 3(a)(3), Rule 4 of the RRCTA,[40] to wit:

[38] An Act Creating the Court of Tax Appeals, June 16, 1954.
[39] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.
[40] A.M. No. 05-11-07-CTA, November 22, 2005.

> Section 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (3) **<u>Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction</u>** [*Emphasis and underscoring supplied.*]

Records show that petitioner received the assailed Order on November 24, 2021.[41] Under Section 3(a), Rule 8[42] of the RRCTA, petitioner had thirty (30) days from receipt of the denial of its *Motion for Reconsideration* on November 24, 2021, or until December 24, 2021, to file a *Petition for Review* before the CTA.

Petitioner posted its *Petition of Review* on December 21, 2021,[43] within the reglementary period.

Having settled that the *Petition* was timely filed, We likewise rule that the CTA has the requisite jurisdiction to take cognizance of this case under Section 3(a)(3), Rule 4[44] of RRCTA.

We now proceed to the merits of the case.

Petitioner failed to comply with the requirement of payment under protest in Section 252, in relation to Sections 226 and 229, of the Local Government Code.

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[41] Docket – Vol. I, p. 75.
[42] Section 3. Who May Appeal; Period to File Petition. — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[43] *Supra* at note 1.
[44] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

Section 252 of the LGC provides:

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) 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*]

Relatedly, Sections 226 and 229(c) of the LGC provides:

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 assessment, appeal to the Board of Assessment Appeals** of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SECTION 229. Action by the Local Board of Assessment Appeals.— (a) ... ...

(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** x---x

> **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**. [*Emphasis and underscoring supplied*]

Based on the foregoing provisions, the taxpayer must first pay the tax under protest and then file a protest with the Local Treasurer within thirty (30) days from the date of payment of tax. If the protest is denied or upon the lapse of the sixty (60)-day period for the Local Treasurer to decide on the protest, the taxpayer may appeal to the LBAA within sixty (60) days from the denial of the protest or the lapse of the sixty (60)-day period to decide. The LBAA has 120 days to decide the appeal. If the taxpayer is unsatisfied with the decision of the LBAA, the taxpayer may appeal before the Central Board of Assessment Appeals ("**CBAA**") within thirty (30) days from receipt of the LBAA's decision. The decision of the CBAA is appealable before the Court of Tax Appeals (CTA) *En Banc*.[45]

In the instant case, MECO admitted,[46] and the RTC found,[47] that in 2008, it received a *Notice of Assessment* dated June 12, 2008, with the subject Tax Declarations, from the Municipality of Cordova. Subsequently, on October 13, 2011, it received a *letter* of even date from respondent Provincial Treasurer of Cebu in relation to its supposed unpaid taxes of P2,842,430.35 from 1992 to 2011, with Computations on Real Property Tax Municipality of Cordova for the transformers. MECO also received two (2) letters dated March 14, 2012 and March 27, 2012 from respondent Provincial Treasurer, inviting MECO to meetings with the Governor of Cebu to discuss the franchise and real property tax delinquency, which it attended.

However, despite receipt of the *Notice of Assessment* in 2008 and the letter dated October 13, 2011, petitioner did not pay "under protest" the assessed real property taxes and filed a protest under Section 252 of the LGC. Moreover, no protest has been elevated to the LBAA and CBAA in accordance with Sections 226 and 229 of the LGC. Instead, on April 30, 2012, MECO filed a *Complaint* with the RTC seeking (a) the issuance of a Writ of Preliminary Injunction, (b) the nullification of the Notice of Assessment and the subject Tax Declarations, and (c) the issuance of final injunction, prompted by respondents'

[45] *City of Lapu-Lapu v. Philippine Economic Zone Authority and Province of Bataan, represented by Governor Enrique T. Garcia, Jr., et al., Philippine Economic Zone Authority*, G.R. No. 184203 and G.R. No. 187583, November 26, 2014.
[46] Petition for Review, pars. 14-16, Docket – Vol. I, pp. 5-35.
[47] Pars. 7 to 12, assailed *Decision*, Docket – Vol. I, pp. 37-74.

publication of the first and second *Notice of Delinquency in the Payment of Real Property Tax* in Cebu Daily News on April 11, 2012 and April 18, 2012, respectively.[48] Petitioner then deposited with the Office of the Clerk of Court of the RTC the supposed unpaid taxes of P2,842,430.35 upon Order of the court *a quo*.[49]

Thus, We rule that petitioner failed to comply with the administrative remedies outlined in Section 252 of the LGC in relation to Sections 226 and 229(c) of the same law.

Petitioner's Complaint before the RTC involves a question of fact; hence, the rule on exhaustion of administrative remedies should have been followed.

We shall now resolve the assigned errors, starting with the *third* assigned error. Petitioner contends that the RTC erred when it declared that MECO availed itself of the wrong remedy by directly resorting to judicial action. It claims that it questions the very legality of the assessment made by respondents; it did not concern itself with the reasonableness of the amount assessed; and that it questions the authority of the Municipality of Cordova to make the assessment and to impose the real property tax which allegedly is not empowered to do under Section 232 of the LGC.[50] Citing the exceptions to the doctrine of exhaustion of administrative remedies and the case of *Ty v. Hon. Trampe* (*Ty v. Trampe*),[51] where the Supreme Court held that a judicial remedy may be directly resorted to when only a *question of law* is involved, petitioner asserts that it is only proper to resort to the court, considering the urgent need for judicial intervention and there is no other plain, speedy and adequate remedy available to it.

The exhaustion of administrative remedies doctrine requires that before a party may seek intervention from the court, he or she should have already exhausted all the remedies at the administrative level. The LGC provides two (2) remedies

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[48] Petition for Review, pars. 17 and 19, Docket – Vol. I, pp. 5-35.
[49] *Id.*, pars. 26 and 29.
[50] *Id.*, par. 89.
[51] G.R. No. 117577, December 1, 1995, 321 PHIL 81-105.

in relation to real property tax assessments or tax ordinances. These are (1) *Sections 226 and 252* thereof, which allow a taxpayer to question the reasonableness of the amount assessed before the city treasurer and then appeal to the Local Board of Assessment Appeals; and (2) *Section 187* thereof, which allows an aggrieved taxpayer to question the validity or legality of a tax ordinance by duly filing an appeal before the Secretary of Justice before seeking judicial intervention.[52]

As discussed above, the administrative remedies under Sections 226 and 252 were not complied with in the present case. Petitioner did not "pay under protest" the assessed real property taxes and deliberately filed a *Complaint* before the RTC instead of just filing a protest to contest the assessment after paying the assessed amount "under protest."

However, the doctrine on exhaustion of administrative remedies is not an ironclad rule before judicial recourse may be taken; it also admits of exception. In *Light Rail Transit Authority v. City of Pasay* (*LRTA* case),[53] the Supreme Court laid down these exceptions, *viz.*:

> In general, where administrative remedies are available, petitions for the issuance of the extraordinary writs should not be granted by the courts in order to give the administrative body the opportunity to decide the matter by itself correctly, and to prevent unnecessary and premature resort to courts. However, **this principle of exhaustion of administrative remedies is not without exception**.
>
> **Jurisprudence would reveal that the Court has <u>set aside such rule</u>**: (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 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. [*Emphasis and underscoring supplied.*]

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[52] *Alliance of Quezon City Homeowners' Association, Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018.
[53] G.R. No. 211299, June 28, 2022.

In *National Power Corp. v. Municipal Government of Navotas* (*NPC* case),[54] the Supreme Court underscored that if the *only issue* involves a *question of law*, direct recourse to the RTC is warranted, *viz.*:

> Accordingly, **if the only issue is the legality or validity of the assessment — a question of law — direct recourse to the RTC is warranted**.
>
> ... ...
>
> As can be gleaned from the foregoing, the issue is clearly legal given that it involves an interpretation of the contract between the parties vis-à-vis the applicable laws, *i.e.*, which entity actually, directly and exclusively uses the subject machineries and equipment. The answer to such question would then determine whether petitioner is indeed exempt from payment of real property taxes. **Since the issue is a question of law, the jurisdiction was correctly lodged with the RTC.** [*Emphasis and underscoring supplied.*]

In *Metropolitan Waterworks and Sewerage System v. Central Board of Assessment Appeals* (*MWSS* case),[55] the Supreme Court emphasized that the rule on exhaustion of administrative remedies does not apply when the controversy does not involve *questions of fact* but only *of law*, reiterating the case of *Ty v. Trampe, viz.*:

> The CA palpably erred in dismissing MWSS's appeal solely on the ground of the alleged non-exhaustion of administrative remedies under the LGC. A careful reading of MWSS's arguments and allegations reveals that **it is neither challenging the reasonableness or correctness of the City Assessor's assessment nor asserting error on the part of the City Treasurer's computation of the assessed tax. Plainly, MWSS is assailing the authority of the city assessor and treasurer to assess and collect real property taxes against it**. The issue of whether a local government is authorized to assess and collect real property taxes from a government entity is a **pure question of law**, which is beyond the LBAA and CBAA's jurisdiction.
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> In the oft-cited case of *Ty v. Hon. Trampe*, the Court held that **the rule on exhaustion of administrative remedies does not apply when the controversy does not involve questions of fact but only of law**. The protest contemplated under Section 252 of the LGC is required when there is question as to the reasonableness or correctness of the

[54] G.R. No. 192300, November 24, 2014, 747 PHIL 744-761.
[55] G.R. No. 215955, January 13, 2021.

> amount assessed, while **an appeal to the LBAA under Section 226 is fruitful only where questions of fact are involved**. Accordingly, when the very authority and power of the assessor to impose the assessment, and of the treasurer to collect real property taxes are in question, the proper recourse is a judicial action.
>
> Thus, despite the alleged non-exhaustion of administrative remedies, we give due course to the instant Petition on the ground that the controversy only involves a **question of law**. [*Emphasis and underscoring supplied*]

The Supreme Court further ruled in *Ty v. Trampe* that when the issues involved are not *factual*, there is no reason to require exhaustion of administrative remedies, *viz.*:

> In other words, the Court gave due course to the petitions therein in spite of the fact that the petitioners had not *a priori*, exhausted administrative remedies by filing an appeal before said Board. Because there were **factual issues** raised in the Mathay, et al. cases, the Supreme Court constituted the **Central Board of Assessment Appeals** as a fact finding body to assist the Court in resolving said factual issues. **But in the instant proceedings, there are no such factual issues. Therefore, there is no reason to require petitioners to exhaust the administrative remedies provided in R.A. 7160 nor to mandate a referral by this Court to said Board.** [*Emphasis and underscoring supplied*]

Given the foregoing, We determine whether the circumstances of the instant case warrant the application of the *exceptions* to the doctrine of exhaustion of administrative remedies and whether petitioner is justified in directly resorting to the courts.

A perusal of petitioner's *Complaint*, in conjunction with the instant *Petition for Review,* reveals that it **involves a mixed question of fact and law**.

In *Republic of the Philippines v. Manuel M. Caraig,*[56] citing the case of *Leoncio v. De Vera,* [57] the Supreme Court differentiated a question of law from a question of fact in this wise:

[56] G.R. No. 197389, October 12, 2020.
[57] G.R. No. 176842 (Resolution), February 18, 2008.

> A **question of law** arises when there is doubt as to what the law is on a certain state of facts, while there is a **question of fact** when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.** Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. [*Emphases supplied*]

Petitioner's *Complaint* alleges the following causes of action: *first*, [the] Notice of Assessment and Tax Declarations are void; *second*, electrical poles and distribution transformers are *not* subject to real property tax; *third*, preliminary and final injunction.

For the second cause of action, petitioner alleges that the subject *electrical poles* are not buildings or constructions adhered to the soil; they are not immovable as they are moved from time to time and from one place to another without breaking the material or causing deterioration upon the object to which they are attached; and they are not machineries, receptacles, instruments or implements, and even if they were, they are not intended for industry or works on the land where they stand.[58] As regards the *distribution transformers*, petitioner alleges that they are not machinery; they do not have moving components, which is a characteristic essential to machineries; they are not attached or affixed on land or to another real property; their locations are not permanent as they are being moved from one place to another without breaking the material or causing deterioration upon the object to which they are attached.[59] Petitioner further alleges that the *electrical poles* and *distribution transformers* are not real properties subject to real property tax under the LGC and Civil Code; thus, the acts of respondents Municipality of Cordova and Municipal Assessor in levying real property tax and the Notice of Assessment and Tax Declarations issued should be declared null and void.[60]

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[58] Par. 28, *Complaint* in Civil Case No. CEB-38689, RTC-Cebu City, Branch 12, *supra* at note 9.
[59] Pars. 29 and 30, *id.*
[60] Pars. 31 to 33, *id.*

Moreover, in the *Pre-trial Order* dated February 11, 2015, the following issues were raised as regards electrical poles and distribution transformers:[61]

1. Whether or not plaintiff's electrical poles are personal property under Art. 416 of the Civil Code.
2. Whether or not plaintiff's electrical poles are real property subject to property tax.
3. Whether or not plaintiff's distribution transformers are real property subject to real property tax.
4. Whether or not the Municipality of Cordova has the power to levy real property tax under the Local Government Code.
5. Whether or not the Notice of Assessment dated June 12, 2008 and Tax Declarations ...are null and void.
6. Whether or not plaintiff is entitled to a final injunction perpetually restraining defendants from levying, assessing, and collecting real property taxes on its electrical poles and distribution transformers.

The resolution of the above issues rests not only on what the law, *i.e.*, Civil Code or Local Government Code, provides under the circumstances but requires a review and evaluation of the testimonial and documentary evidence presented by the parties.

Although the issues of whether electrical poles and distribution transformers are personal or real property, and whether they are exempt from or subject to real property tax, have already been settled with the promulgation by the Supreme Court of the *Meralco* case,[62] the fact remains that at the time of the filing of petitioner's *Complaint* before the RTC, such were still presented as issues. During the trial, the parties presented evidence, both documentary and testimonial, to prove their respective positions. Clearly, the circumstances obtained in this case and petitioner's claim that the subject electrical poles and distribution transformers are *exempt* from real property tax involve *questions of fact* that invite a review of the evidence presented, which should be resolved, at the very first instance, by the LBAA.

[61] Petition for Review, par. 40, Docket, Vol. I, pp. 5-35.; Memorandum for Petitioner, par. 31, Docket – Vol. II, unpaged.
[62] G.R. No. 166102, August 5, 2015.

In several cases,[63] most notably in *Olivares v. Marquez (Olivares),*[64] the Supreme Court has settled that a claim for exemption from payment of real property tax does not question the assessor's authority to assess and collect such taxes, but such 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.

This was echoed by the Supreme Court in *Camp John Hay Development Corp. v. Central Board of Assessment Appeals (Camp John Hay),*[65] where it was ruled 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 an argument, which may involve a **question of fact**, should be resolved, at the first instance, by the LBAA.

Similarly, in the case of *National Power Corporation v. The Provincial Treasurer of Benguet et al. (NPC),*[66] the Supreme Court ruled as follows:

> "... 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 same may be inferred in Section 206 of the LGC of 1991, to wit:
>
>> SEC. 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, articles of incorporation, by-laws, contracts,

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[63] *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010; *Camp John Hay Development Corporation v. Central Board of Assessment Appeals, et al.*, G.R. No. 169234, October 2, 2013; *National Power Corporation v. The Provincial Treasurer of Benguet, et al.*, G.R. No. 209303, November 14, 2016.
[64] *Dr. Pablo R. Olivares, et al. v. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004.
[65] G.R. No. 169234, October 2, 2013.
[66] G.R. No. 209303, November 14, 2016.

> affidavits, certifications and 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 dropped from the assessment roll.
>
> Section 206 of the LGC categorically provides that **every person by or for whom real property is declared, <u>who shall claim exemption from payment of real property taxes</u> imposed against said property, shall file with the provincial, city, or municipal assessor sufficient documentary evidence in support of such claim.** The burden of proving exemption from local taxation is upon whom the subject real property is declared. 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 taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim**. Thus, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon." [*Emphasis and underscoring supplied.*]

In the *Meralco* case, the Supreme Court held that the issue of whether electrical posts are not machinery subject to real property tax because MERALCO is not exclusively using said posts is a *factual issue, viz.:*

> MERALCO maintains that **its electric posts are not machinery subject to real property tax because said posts are not being exclusively used by MERALCO**; these are also being utilized by cable and telephone companies. This, however, is a **factual issue** which the Court cannot take cognizance of in the Petition at bar as it is not a trier of facts. Whether or not the electric posts of MERALCO are actually being used by other companies or industries is best left to the determination of the City Assessor or his deputy, who has been granted the authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991. [*Emphasis supplied*]

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Like the *Meralco* case, MECO claims that the electrical poles stand on public lots and easements,[67] hence, they are not exclusively used by MECO. As held in *Meralco*, such a claim is a *factual issue;* following the Supreme Court's ruling in *Olivares, Camp John Hay,* and *NPC,* a **question of fact** should be resolved, at the very first instance, by the LBAA.

Considering the foregoing jurisprudential pronouncements, We rule that petitioner should have first exhausted the administrative remedies in relation to real property tax assessments under Sections 252, 226, and 229 of the LGC, which allow a taxpayer to protest the assessment before the local treasurer after paying the tax "under protest" and to appeal to the LBAA and thereafter to the CBAA before resorting to the Court. Clearly, petitioner is not without "other plain, speedy, and adequate remedy" in the ordinary course of law.

Petitioner's failure to first pay the tax and exhaust the administrative remedies available to it rendered the subject tax assessment final and executory.

We now come to the *first* and *second* assigned errors.

As to the *first* assigned error, petitioner alleges that the Notice of Assessment and Tax Declarations are null and void for (a) failure to comply with Sections 224 and 225 of the LGC and (b) for violating MECO's right to due process. It also alleges that during the pendency of its case with the court *a quo*, the Supreme Court promulgated the *Meralco* case,[68] where it ruled that MERALCO's transformers, electric posts/poles, transmission lines, and insulators are *subject to real property taxes* given the enactment of the LGC; nonetheless, the Supreme Court nullified the tax declarations for failure to comply with Sections 224 and 225 that every machinery must be individually appraised and assessed depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation. It claims that the Tax Declarations nullified in *Meralco* case are similar to the subject Tax Declarations; that respondent

[67] Par. 24 of the *Complaint, supra* at note 9.
[68] *Ibid.*

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Municipal Assessor failed to comply with the procedure in Sections 224 and 225; that such failure violated its right to due process and right to proper notice; and that the Notice of Assessment and Tax Declarations issued based thereon must be nullified. It further claims that while the RTC applied the ruling in *Meralco,* it did not rule on petitioner's argument that the Notice of Assessment and Tax Declarations issued in violation of Sections 224 and 225 are null and void.[69]

Anent the *second* assigned error, petitioner contends that the assailed Decision and Order did not rule upon the argument that it should not be held liable for back taxes starting from 1992 when the LGC took effect. It also contends that it was assessed for real property taxes from 1992, but the subject electrical poles and distribution transformers were only declared for the first time in 2007 or 2008 since the Tax Declarations were prepared in 2007 and the Notice of Assessment was issued on June 12, 2008. Applying Section 222 of the LGC, it should have been assessed for back taxes beginning in 1997 or 1998, 10 years from the time the subject properties were declared, and not starting in 1992.[70]

We are not persuaded.

The *Meralco* case is not on all fours with the instant case. In the said case, Meralco first posted a surety bond, which the Supreme Court held as substantial compliance with the "payment under protest" requirement in Section 252 of the LGC, before filing its appeal to the LBAA of Lucena City to cancel and nullify the Notice of Assessment and declare the properties covered by Tax Declaration Nos. 019-6500 and 019-7394 exempt from real property tax. Not satisfied with the LBAA Decision, Meralco went to the CBAA on appeal, then to the Court of Appeals, and finally to the Supreme Court.

Here, petitioner received a *Notice of Assessment* with the subject *Tax Declarations* in 2008 and a *letter* from respondent Provincial Treasurer of Cebu informing it of the unpaid taxes of P2,842,430.35 from 1992 to 2011 on October 13, 2011. However, despite receipt of the said *Notice of Assessment, Tax Declarations,* and the *letter,* petitioner did not question or protest the assessment before the local treasurer under Section

[69] *Petition for Review*, pars 67 to 80, *supra* at note 1.
[70] *Id.*, pars. 81 to 87

252 and elevate the matter on appeal before the LBAA and CBAA under Sections 226 and 229. On April 30, 2012, which is three (3) years after petitioner's receipt of the *Notice of Assessment,* petitioner filed a *Complaint* with the RTC prompted by respondents' publication of a first and second *Notice of Delinquency in the Payment of Real Property Tax* in Cebu Daily News on April 11, 2012 and April 18, 2012, respectively.[71]

It must be stressed that in the *Meralco* case relied upon by petitioner, the Supreme Court emphasized that Section 252 of the LGC *mandates* that "no protest shall be entertained unless the taxpayer first pays the tax." It is a condition *sine qua non* before an appeal may be entertained. Moreover, even when the assessment of the real property is appealed, the real property tax due should be paid to and/or collected by the local government unit concerned, *viz.*:

> **Section 252** of the Local Government Code mandates that "**[n]o protest shall be entertained unless the taxpayer first pays the tax.**" It is settled that the requirement of "payment under protest" is a condition *sine qua non* before an appeal may be entertained. Section 231 of the same Code also dictates that "[a]ppeal on assessments of real property . . . 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." Clearly, under the Local Government Code, **even when the assessment of the real property is appealed, the real property tax due on the basis thereof should be paid to and/or collected by the local government unit concerned.**
>
> In the case at bar, the City Treasurer of Lucena, ... sought to collect from MERALCO the amount of P17,925,117.34 as real property taxes on its machineries, plus penalties, ... MERALCO appealed ... with the LBAA, but instead of paying the real property taxes and penalties due, it posted a surety bond in the amount of P17,925,117.34.
>
> By posting the surety bond, MERALCO may be considered to have substantially complied with Section 252 of the Local Government Code for the said bond already guarantees the payment to the Office of the City Treasurer of Lucena of the total amount of real property taxes and penalties due on Tax Declaration Nos. 019-6500 and 019-7394. ...
>
> Accordingly, the LBAA herein correctly took cognizance of and gave due course to the appeal of Tax Declaration Nos.

[71] Petition for Review, pars. 17 and 19, Docket – Vol. I, pp. 5-35.

019-6500 and 019-7394 filed by MERALCO. [*Emphasis and underscoring supplied*]

All told, while the Notice of Assessment and Tax Declarations may have been issued by respondents in violation of Sections 224 and 225 of the LGC, and petitioner may only be liable for back taxes beginning 1997 or 1998 and not beginning 1992, the Court is still constrained to deny the instant *Petition.* For petitioner's failure to <u>first pay the tax</u> and exhaust the administrative remedies available to it, the subject assessment has already attained finality.

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

Accordingly, the Decision dated January 28, 2020, and the Order dated October 25, 2021, rendered by the Regional Trial Court of Cebu City, Branch 12, in Civil Case No. CEB-38689 are **AFFIRMED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice