REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

CALIFORNIA MANUFACTURING COMPANY, INC.,
Petitioner,

C.T.A. AC NO. 4

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

THE CITY OF LAS PIÑAS, and the HON. RIZAL Y. DEL ROSARIO, CITY TREASURER,
Respondents.

Promulgated:

SEP 2 8 2005

x - x

DECISION

CASANOVA, C., J.:

This is a Petition for Review seeking the reversal of the Orders dated March 4 and August 6, 2004 issued by the Regional Trial Court of Las Piñas City, Branch 202, in Civil Case No. LP-03-0234 entitled *"California Manufacturing Company, Inc. vs. The City of Las Piñas and Hon. Rizal Y. Del Rosario, City Treasurer"*, the dispositive portions of which respectively read as follows:

> "WHEREFORE, premises considered, the Motion to Dismiss filed by the respondents is hereby GRANTED. Accordingly, the petition is hereby DISMISSED for lack of jurisdiction."

> "WHEREFORE, premises considered, the Omnibus Motion (To Order dated March 4, 2004) filed on May 7, 2004 by the petitioner is hereby DENIED for want of merit."

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

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business at Km. 18 East Service Road, South Superhighway, Parañaque City. On the other hand, respondent City of Las Piñas is a local government unit created by

207

law and respondent Hon. Rizal Y. Del Rosario is the duly appointed City Treasurer of Las Piñas City, empowered to perform the duties of said office, including, *inter alia*, the collection of all local taxes, fees and charges, and the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. Both are holding office at the City Hall of Las Piñas.

Petitioner is engaged in the business of manufacturing and selling various food products, such as pasta, peanut butter, pickles, *sinigang* powder, hot pot, spaghetti meat sauce, Knorr cubes™, chinese soups and cream soups. It operates a manufacturing plant in Las Piñas City.

In a letter dated June 9, 2003, respondent City Treasurer Rizal Y. Del Rosario, informed petitioner that it had local business tax deficiency on non-essential commodities and deficiency real property tax in the total amount of P73,045,634.47.[1]

Upon receipt of the notice of assessment for deficiency business and real property taxes, petitioner's financial accountant, Mr. Norman Raquel, attended a conference on June 23, 2003 with respondent City Treasurer and the examiners of the City of Las Piñas. During the conference, petitioner personally served a letter dated June 23, 2003 to respondent City Treasurer requesting ample time to consider the validity of the assessment and asking for specific rulings and ordinances supporting the claim.[2]

Respondent City Treasurer issued a reply also dated June 23, 2003, informing petitioner that its request to consider the validity of the assessment has been granted and gave petitioner only up to July 15, 2003 to settle the tax deficiency.[3]

In a letter dated August 27, 2003, respondent City Treasurer noted that petitioner has not yet settled its tax deficiency, and thus gave petitioner five (5) days from the receipt of such letter to settle its tax obligation.[4]

Petitioner filed on September 1, 2003, what it calls a *supplemental protest* against the assessment for deficiency local business tax.[5] And on September 12, 2003, petitioner received a letter dated September 10, 2003 from respondents denying the protest.[6]

On October 16, 2003, petitioner filed a petition before the Regional Trial Court ("RTC" for brevity) protesting the assessment for deficiency local business taxes, penalties and interest for the

---

[1] *Annex J, Petition for Review, Records, page 85*
[2] *Annex K, Petition for Review, Records, page 86*
[3] *Annex N, Petition for Review, Records, page 91*
[4] *Annex O, Petition for Review, Records, page 92*
[5] *Annex P, Petition for Review, Records, page 93*
[6] *Annex Q, Petition for Review, Records, page 103*

208

period 1999 up to the taxable quarter ending June 30, 2003 in the total amount of P15,283,815.79 and seeking the cancellation of the said assessment.[7]

On October 27, 2003, herein respondents filed a Motion to Dismiss anchored on the following: *first*, petitioner has no legal capacity to sue since the person who signed the verification on the petition is not an authorized officer; and *second*, the RTC has no jurisdiction because the assessment has attained finality due to the lack of timely protest.[8]

Petitioner, on November 7, 2003, filed an "Omnibus Motion to Strike-Off Defendants' Motion to Dismiss and Declare Defendants In Default." Petitioner claimed that under the law, Atty. Rañola has no legal capacity to represent the respondents. As a consequence, petitioner concluded that the Motion to Dismiss filed by Atty. Rañola is a scrap of paper not entitled to any official imprimatur which should be stricken off the records.[9] An Opposition *Ad Cautelam* (To Motion to Dismiss) was filed also by petitioner on the same date, arguing that respondent's ground for dismissal has no basis in law and in fact as it has legal capacity to sue because the person who signed the Verification and Affidavit of Non-Forum Shopping is duly authorized by the corporation, as evidenced by the Secretary's Certificate. Likewise, petitioner contended that the court *a quo* has jurisdiction over the petition there being a timely protest filed since respondent City Treasurer's letter of June 9, 2003 was not an assessment.[10]

On March 4, 2004, the trial court granted the Motion to Dismiss filed by herein respondents through Atty. Prudencio A. Rañola, Jr, on the ground that it had no jurisdiction over the subject matter. Pertinent portion of the said order is hereunder reproduced for easy reference:

> "Under the said law,[11] a taxpayer may contest an assessment by a local treasurer or his duly authorized representative within sixty (60) days after the notice of assessment is given him by filing a written protest with the local treasurer. It can be gleaned from the records that the City Treasurer made a letter on June 9, 2003 assessing that petitioner CMC, Inc. had a tax deficiency in the total amount of Seventy Three Million Forty Five Thousand Six Hundred Thirty Four Pesos and 47/100 (P73,045,634.47) for taxable years 1999 to 2003. This notice of assessment for deficiency tax was actually received by petitioner CMC, Inc. on June 10, 2003. Given the above-cited provision, **petitioner should have filed the protest before the deadline, which is August 9, 2003 or sixty (60) days from the notice of assessment. Since the letter protesting the assessment was filed on September 1 and 2, 2003 or approximately eighty three (83) days after the assessment, it is the conclusion of this Court that the protest was filed way beyond the reglementary period of 60 days** as

---

[7] *Annex C, Records, pages 38-49*
[8] *Annex D, Record, pages 50-54*
[9] *Annex E, Records, pages 55-58*
[10] *Annex F, Records, pages 59-64*
[11] *Referring to Section 195 of the Local Government Code*

209

> provided for by Section 195 of the Local Government Code. Hence, the ***assessment became final and executory***."[12] *(Emphasis and underscoring supplied)*

On May 13, 2004, petitioner filed an Omnibus Motion praying for the reconsideration of the Order dated March 4, 2004 and for the issuance of another Order striking out respondents' Motion to Dismiss and declaring respondents in default or in the alternative, denying respondents' Motion to Dismiss for lack of merit and the petition given due course; or in the alternative, schedule a hearing for the introduction of petitioner's evidence to prove the 60-day period to file protest against the assessment is fully complied with.

In the Omnibus Motion, petitioner reiterated its claim that under the law, Atty. Rañola has no legal capacity to represent respondents because he is not the City Legal Officer and is not a member of the City Legal Office and thus, the Motion to Dismiss filed by Atty. Rañola is a scrap of paper, not entitled to any official imprimatur and should be stricken off the records citing *Ramos v. Court of Appeals*[13]. According to petitioner, the useless scrap of paper did not stop the running of the 15-day reglementary period for tendering their responsive pleading and respondents should be declared in default. Petitioner further argued that the June 9, 2003 letter of the respondents was not an assessment because it is bereft of any statement as to the nature of the tax, fee or charge, the amount of deficiency, the surcharge or interests and penalties. And that assuming *arguendo* that the City Treasurer's June 9, 2003 letter was an assessment, it follows that petitioner's request for ample time partook of the nature of a preliminary protest that tolled the running of the 60-day period to file a protest. That, if the respondents considered the assessment to be final and unappealable, it would have been natural for the respondents to cite such ground in the denial of the protest.[14]

An Opposition to Petitioner's Omnibus Motion was filed by respondent on May 17, 2004 contending that the case of *Ramos vs. Court of Appeals (supra),* relied upon by the petitioner, does not apply because respondent City is not represented by a private law firm but a Tax Consultant who happens to be a member of the bar and handles the case *pro-bono*, hence, the city is "not burdened with additional expenses." Respondents also cited the case of *Mariveles Shipyard Corporation vs. Court of Appeals*[15] where it was held that in case of corporations, the physical act of signing may be

---

[12] *Records page 30*
[13] *108 SCRA 728 [1981]*
[14] *Annex G, Petition for Review, Records, pages 65-74*
[15] *415 SCRA 573 [2003]*

210

performed on behalf of the corporate entity only by specifically authorized individual for the simple reason that corporations, as artificial persons cannot personally do the task themselves.[16]

On June 30, 2004 petitioner filed its "Reply To Opposition to Petitioner's Omnibus Motion"[17] stating that:

First, the Order dated March 4, 2004 failed to resolve petitioner's Omnibus Motion dated November 5, 2003 contrary to procedural norm for the orderly and necessary disposition of all matters pending for consideration.

Second, the authority of Atty. Rañola under City Resolution No. 1456-02 issued by the City Council of Las Piñas should be taken in consonance with the provisions of Republic Act No. 7160 and that the legal and statutory provision specifically prohibits representation of a local government unit by a private lawyer whether by a law firm or a single practitioner for fee or *gratis et amore.* Assuming that there is no prohibition against the city government from engaging the services of a lawyer other than the city legal officer, Atty. Rañola can only represent the respondents if the latter were parties adverse to the provincial government or against another component city or municipality.

Third, respondents' reliance on *Mariveles Shipyard v. Court of Appeals* (*supra*) is misplaced since the facts of the said case are not in four square with the instant case.

Fourth, the letter issued by respondents dated June 9, 2003 is, under the law, not a proper assessment, since it failed to clearly state the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Petitioner filed a preliminary protest on June 23, 2004 which together with the exhaustive protest, tolled the running of the prescriptive period.

Fifth, respondents' subsequent actions indicated their acknowledgement that their assessment was erroneous and without basis. Due to the erroneous assessment, the respondents issued new notices of realty tax which petitioner paid and settled. Therefore, it is unjust for respondent's error to be condoned by the court *a quo* by upholding the same erroneous assessment as final and unappealable.

On August 6, 2004, the Omnibus Motion was denied for want of merit. The Regional Trial Court ruled that:

I. Petitioner has legal capacity to sue since the authority of the person who signed the verification and affidavit of non-forum shopping was sufficiently shown by

---

[16] *Annex H, Petition for Review, Records, pages 76-79*
[17] *Annex I, Records, pages 80-84*

211

a Corporate Resolution dated October 9, 2003 and attested to by a Secretary's Certificate.

II. That there is no law prohibiting the city government from engaging the services of a lawyer other than the city legal officer and that Atty. Rañola was authorized to act as counsel for the city, as embodied in a City Council Resolution. Thus, the motion to dismiss is no longer a mere scrap of paper.

III. It is affirming its pronouncement that it has no jurisdiction over the subject matter because the assessment has become final due to the lack of a timely protest.[18]

Hence, this Petition filed on September 28, 2004 on the following grounds:

I

THE LOWER COURT GRAVELY ERRED IN TAKING COGNIZANCE OF THE MOTION TO DISMISS AND IN FAILING TO DECLARE THE RESPONDENTS IN DEFAULT AS THE RESPONDENTS' COUNSEL OF RECORD IS NOT AUTHORIZED TO REPRESENT THE RESPONDENTS.

II

THE LOWER COURT ERRED IN HOLDING THAT PETITIONER'S PROTEST WAS NOT TIMELY FILED.

III

THE LOWER COURT ERRED IN ISSUING AN *OBITER* ON THE ALLEGED REAL PROPERTY TAX ASSESSMENT BECAUSE SUCH MATTER WAS NEVER PLEADED NOR ALLEGED NOR PRAYED IN THE PETITION FILED WITH THE REGIONAL TRIAL COURT.

The respondents filed their Comments and Motion for Execution pending appeal on November 4, 2004. In a resolution promulgated on January 4, 2005, this Court gave due course to the Petition and required the parties to file their respective memorandum within fifteen (15) days from notice thereof, after such period the case is deemed submitted for decision.

On February 4, 2005 the Motion for Extension of Time to File Memorandum (with Entry of Appearance) posted by respondents' co-counsel on February 2, 2005 was granted and the entry of

---

[18] *Annex B, Petition for Review, Records, pages 31-37*

appearance filed by Atty. Zardi Melito D. Abellera from the Office for Legal Services of Las Piñas City was noted by this Court.

With the filing of petitioner and respondents' memoranda on February 11, 2005 and February 16, 2005, respectively, the case was submitted for decision on February 24, 2005.

The issues for resolution of this Court are the following:

(1) Whether respondents' counsel of record has authority to represent the respondents;

(2) Whether the protest of petitioner was timely filed, thus, the court *a quo* has jurisdiction over the case; and

(3) Whether the ruling on deficiency real property tax assessment was proper.

Anent the first issue, the court *a quo* ruled that Atty. Prudencio A. Rañola, Jr. has authority to represent the respondents considering that there is no law prohibiting the city government from engaging the service of any lawyer other than the city legal officer. We will not disturb this finding of the lower court absence any abuse of discretion on its part. Moreover, the authority of Atty. Rañola, Jr. emanated from City Resolution No. 1456-02 issued by the City Council of Las Piñas. However, this Court would like to invite the attention of the City Treasurer of Las Piñas of the provision of Section 481, Article 11, Title V of the Local Government Code *(R.A. No. 7160)* requiring for the appointment of a legal officer with the functions, among others:

> "To represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, that, in actions or proceedings where a component or municipality is party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party."

Even prior to the present Local Government Code, employment of a private counsel was already prohibited. Section 3 of the Local Autonomy Act (R.A. No. 2264) provides that "the municipal attorney, as the head of the legal division or office of the municipality, shall act as legal counsel of the municipality and perform such duties and exercise such powers as may be assigned to him by the council".

The Supreme Court already explained the rationale of representation by government lawyer in court cases. To quote:

> "Evidently, the lawmaker in requiring that the municipality should be represented in its court cases by a government lawyer like its municipal attorney and the provincial fiscal intended that the municipality should not be burdened with the expenses of hiring a private lawyer. The lawmaker also assumed that the interests of the municipality would be best protected if a government lawyer handles its litigations.

213

It is to be expected that the municipal attorney and the fiscal would be faithful and dedicated to the municipality's interests and that, as civil service employees, they could be held accountable for any misconduct or dereliction of duty."[19]

Thus, with the above pronouncement, the City Treasurer and the City Council of Las Piñas shall be accountable for any liability that may be incurred by virtue of his hiring a private counsel. Nevertheless, the entire proceedings of this case cannot be invalidated. Records clearly show that even without the assistance of the private counsel, Atty. Rañola, Jr., the assessments already became final and executory, which leads Us to the discussion of the second issue.

Petitioner insists that the lower court has jurisdiction over the case considering that the protest was timely filed. Jurisdiction of a court over the subject matter of an action is conferred only by the Constitution or the law and the Rules of Court yield to substantive law. Jurisdiction cannot be fixed by agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties; neither can it be conferred by the acquiescence of the court.[20] Jurisdiction must exist as a matter of law.[21] And the court can *motu propio* dismiss a case which is outside its jurisdiction *(Sec. 1, Rule 9)*."[22]

Section 195 of the Local Government Code 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 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.** xxx *(Emphasis and underlining supplied)*

Section 226 of the same Code reads:

> SEC. 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 tax declarations and such affidavits or documents submitted in support of the appeal. *(Emphasis Ours)*

The afore-quoted provisions of law clearly mandate that within sixty (60) days from receipt of the assessment, the aggrieved taxpayer may file a protest with the local treasurer in case of local tax assessments and with the Local Board of Assessment Appeals in case of real property tax assessments.

---

[19] Ramos vs. Court of Appeals, 180 SCRA 728
[20] *De Jesus et. al. vs. Garcia, 19 SCRA 554 [1967]; Calimlim, et al. vs. Ramirez,.118 SCRA 399 [1982]*
[21] *People vs. Casiano, 1 SCRA 478 [1961]*
[22] *Remedial Law Compendium, Justice Florenz Regalad, Seventh Revised Ed., 1999 Volume I, page 11*

In the case at bar, it can be gathered that the City Treasurer of Las Piñas wrote a letter on June 9, 2003[23] and received by the petitioner on June 10, 2003, assessing petitioner of tax deficiency in the total amount of P73,045,634.47, to wit:

> We would like to inform you that based on LOA#2003-03 dated February 7, 2003 under the names of Mr. EDMUNDO B. LARA and Mr. JOSE BONAPARTE R. MAMUTUK the calculated tax deficiency of California Manufacturing Corporation-Las Piñas Branch amounted to SEVENTY THREE MILLION FORTY FIVE THOUSAND SIX HUNDRED THIRTY FOUR PESOS & 47/100 P73,045,634.47. **Please see attached audit report.**
>
> Please settle this account at the soonest possible time to avoid further accumulation of the penalties." *(Emphasis supplied)*

The alleged tax deficiency of petitioner comprised of the following:

Nature of Tax		Total Tax Due (1999-2003)
a) **Local Business Tax**		
Total Personnel	PhP 460,000.00	
Total Delivery Vehicle Fee	460,000.00	
Total License on Trade Deals and Display Allowance	2,948,978.78	
Total License Tax Due as Non-Essential Commodities	11,393,637.01	**15,283,815.79**
b) **Real Property Tax**		
Total Realty Tax on Machineries	49,350,896.70	
Total Realty Tax on Buildings	8,430,921.98	**57,781,818.68**
TOTAL		**PhP73,045,634.47**[24]

Based on the foregoing, petitioner had sixty (60) days from June 10, 2003 or until August 9, 2003, within which to protest the above assessment. However, petitioner argues that the above letter is not an assessment for it failed to state the nature of the tax, fee or charge, the amount of deficiency, the surcharge or interests and penalties. According to the petitioner, the letter of respondent City Treasurer dated August 27, 2003 should be the one considered as the assessment notice.

We do not agree with the petitioner. As correctly stated by the court *a quo*, said letter of August 27, 2003 was a mere demand letter, demanding the unsettled tax deficiency of petitioner. To quote:

---

[23] Annex J, Petition for Review, Records, page 85
[24] *Annex L-2, Petition for Review*

215

> "Relative to our notice of assessment/demand letter dated June 9, 2003 which you received last June 10, 2003 in the amount of SEVENTY THREE MILLION FORTY FIVE THOUSAND SIX HUNDRED THIRTY FOUR PESOS AND 47/1000 (P73,045,634.47), our records show that as of even date, you have not as yet settled aforementioned tax deficiency despite demands made by this office.
>
> In this regard, we are giving you five (5) days from receipt of this notice to settle the same or much to our regret, we will be forced to apply the full extent of the law as provided in City Ordinance No. 104-92, as amended, to protect the interest of this city.
>
> Please be guided accordingly."

Contrary to petitioner's assertion, it plainly appears from the above letter that it is not an assessment notice as in fact it made mention of an assessment notice/demand letter dated June 9, 2003. Therefore, the sixty (60)-day period should be reckoned from June 10, 2003, the date petitioner received the said assessment/demand letter.

In fine, the requirement for an assessment notice to be valid is a statement of the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Yet, petitioner argues that the letter of June 9, 2003 is not an assessment as it failed to state the nature of the tax, fee or charge, the amount of deficiency, the surcharge or interests and penalties.

Again, We disagree with the petitioner. There were attachments to the letter of June 9, 2003 as earlier quoted. Further, the petitioner admitted in its Petition for Review filed with the RTC that it received the notice of the assessment for deficiency local business tax and real property tax on 10 June 2003.[25] Still further, in the same petition, the petitioner was able to detail the composition of the deficiency tax assessment based on the table audit sent by the respondents[26] and it was able to counter argue point by point the assessment made by the respondents[27], hence, only belying its claim that the letter of June 9, 2003 did not contain the nature of the tax, fee or charge, the amount of deficiency, the surcharge or interests and penalties.

In view thereof, it is indubitable that indeed the letter of June 9, 2003 received by the petitioner on June 10, 2003 was the assessment notice referred to by law which should be protested within sixty (60) days or until August 9, 2003. Petitioner filed its protest relative to local business tax assessment only on September 1, 2003 or eighty-three (83) days from the date of receipt of the said assessment notice. Clearly, it was beyond the period allowed by law as already found by the lower

---

[25] *Petition for Review, Civil Case No. LP-03-0234, par. 19*
[26] *Id., par. 10*
[27] *Id., par. 11 and subsections*

214

court. And as provided for by Section 195 of the Local Government Code, the lack of a timely protest makes the assessment final and executory.

Petitioner nevertheless maintains that its June 23, 2003 letter be considered as a preliminary protest, moreso as a protest that can toll the running of the period to question an assessment due to the absence of facts and law upon which it is based.

We are not swayed. Said letter reads:

> "In reference to your letter dated June 9, 2003, we would like to request ample time to carefully consider the validity involved in the determination of the aforesaid liabilities. We also hope that you can give us specific rulings or ordinances supporting your claim."

Thus, petitioner merely requested for ample time to consider the validity of the assessment and asked for specific rulings and ordinances which became the basis of the assessment. However, specific rulings or ordinances are not required to make an assessment valid. The Supreme Court ruled that the contest or dispute should be substantiated and a mere letter of a taxpayer for a reconsideration of an assessment or a letter devoid of any substantiation of facts or law cannot be considered as one that validly disputes an assessment.[28] Thus, such letter could not have tolled the running of the period to file a protest.

Petitioner further argues that the respondent's Reply also dated June 23, 2003, which granted petitioner's request for ample time to consider the validity of the assessment, is an indicium that respondents considered the assessment as disputed or duly protested. This claim is without any basis. The said letter reads:

> "Anent your letter dated June 23, 2003, please be informed that your request for ample time to carefully consider the validity of our assessment has been granted.
>
> However, we are giving you up to July 15, 2003 to settle the tax deficiency in the amount of xxx or much to our regret, we will be forced to apply the full extent of the law as provided in City Ordinance No. 104-92, as amended, to protect the interest of this City."

The letter merely granted petitioner's request for time to review the assessment. It was not an acknowledgment that the assessment was duly disputed or protested. At most, the said correspondence merely extended the period within which petitioner can settle its tax liabilities without being held liable for penalties and charges for late payment which was up to July 15, 2003.

---

[28] *Vitug, Compendium of Tax Law and Jurisprudence, 3rd Ed., page 266, quoting Dayrit vs. Cruz, L-39910, 26 September, 1988*

217

Petitioner cites the case of *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., et. al.,*[29] where the Highest Tribunal ruled that: "Although the protest letters prepared by SGV & Co. in behalf of private respondent did not categorically state or use the words "reinvestigation" and "reconsideration," the same are to be treated as letters of reinvestigation and reconsideration."

The *Wyeth* case does not fall squarely here. In that case, the prescriptive period to collect the deficiency taxes was interrupted because of the timely protest. The letters of *Wyeth* were treated as protests despite the lack of the words "reinvestigation" or "reconsideration" because of their tenor. *Wyeth* requested the cancellation and withdrawal of the assessments for lack of legal and factual basis. This is aside from the fact that *Wyeth*, through its President and General Manager, admitted that it sought reconsideration of the tax assessments as shown in its letter, *viz:*

> "We submit this letter as a follow-up to our protest filed with your office, through our tax advisers, Sycip, Gorres, Velayo & Co., on January 20 and February 10, 1975 regarding alleged deficiency on withholding tax at source of P3,178,994.15 and on percentage tax of P60,855.21, including interest and surcharges, *on which we are seeking reconsideration." (Italics supplied)*

True, that a protest letter need not contain the word "reconsideration' or "reinvestigation" but the same letter can be regarded as a protest if the taxpayer questions the assessment, and asks that the assessments against him be cancelled because he believes he is not liable thereto. Still, it should contain substantiation of facts and laws upon which it is based.

In the instant case however, there was no such valid and timely protest on the part of petitioner. Thus, the assessments became final and executory as provided for by Section 195 of the Local Government Code.[30] The RTC is correct in ruling that it has no jurisdiction over the subject matter of the case and the dismissal of the petition was proper.

As regards the last issue, petitioner claims that the Regional Trial Court erred when it issued an obiter on the alleged real property tax assessment because such matter was never pleaded nor alleged nor prayed in the petition filed before it. Petitioner further alleges that the real property tax issue was rendered *functus officio* and beyond the jurisdiction of the lower court to decide upon.

Indeed, the petition for review filed before the lower court prayed only for the cancellation and withdrawal of deficiency local business tax amounting to P15,283,815.79 covering the period 1999-2003. Nonetheless, it does not mean that the lower court erred when it issued an *obiter* on the

---

[29] *202 SCRA 125 [1991]*

[30] *xxx "Within sixty (60) days from 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. xxx"*

alleged real property tax assessment. Because contrary to petitioner's claim, petitioner made allegations relative to the real property assessment and its protest thereto. In paragraph 17 of its petition for review, petitioner alleged that it filed a protest on the real property tax assessment with the City Treasurer on September 2, 2003 and in fact attached thereto said protest.[31] Petitioner also alleged therein that the respondent City Treasurer addressed both protests of petitioner in a letter dated September 10, 2003 denying both the protests on deficiency business tax and real property tax in the total amount of P73,045,634.47.[32] Likewise, in paragraph 9 thereof, petitioner admitted that in a letter dated June 9, 2003 received by petitioner on June 10, 2003, the respondent City Treasurer informed petitioner that it had a tax deficiency in the total amount of P73,045,634.47 for the taxable years 1999-2003.

Thus, on the above allegations/admissions of petitioner itself, the counting of the sixty (60)-day period should be reckoned from June 10, 2003. The filing of its protest on the real property tax assessment with the City Treasurer on September 2, 2003 was definitely beyond the period allowed by law. Moreover, the appeal should be with the Local Board of Assessment Appeals. As clearly held by the court *a quo*[33]:

> "Anent the point that the instant petition only pertains to the protest of the local business tax in the amount of P15,283,815.79 and not the alleged real property deficiency tax of P57,781,818.68, the Court notes that petitioner is correct in stating that the protest of real property tax is governed by the provisions of Title Two, Book Two of R.A. 7160. Under Section 226 thereof, "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 the 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.
>
> Notwithstanding the foregoing argument, **the Court is still intent to uphold the previous Order considering that this only strengthens the fact that this Court has no jurisdiction over the subject matter not only by virtue of the finality of the assessment but also petitioner's failure to exercise its remedy under Section 226 of R.A. 7160 with regard to the real property tax assessment.** xxx" *(Emphasis Ours)*

Petitioner furthermore posits that the amount of the controversy became PhP15,283,815.79 because it had allegedly settled its real property tax liabilities.

We are not convinced. Granting that the respondents issued new notices or reminders dated February 4, 2004 on petitioner's real properties, the same does not alter the fact that the assessment

---

[31] *Petition for Review, Civil Case No. LP-03-0234*
[32] *Ibid., par. 18*
[33] *Order, August 6, 2004, Civil Case No. LP-03-0234*

219

against petitioner in the total amount of PhP73,045,634.47 already became final, executory and demandable. The payments made by petitioner merely cover its tax liabilities as shown on the said February 4, 2004 notices. There is no showing that the amounts indicated on the new notices are for the same properties covered by the prior final assessment. There is also no proof that the respondents made a mistake in its previous assessment nor is there an indication that respondent amended and altered its previous real property tax assessment to roughly about only Seven Million Pesos (Php7,000,000.00) as covered by the new notices dated February 4, 2004 from the final assessment on deficiency real property tax in the total amount of Fifty Seven Million Seven Hundred Eighty One Thousand Eight Hundred Eighteen Pesos & 68/100 (PhP57,781,818.68).

Lastly, the Regional Trial Court did not condone the mistake of respondents, if there was any, by declaring the assessment final and executory. It merely stated the fact that the assessment against petitioner became final due to the lack of a timely protest against it. It bears stressing that by mere lapse of the sixty (60) day period to file a protest, without one being filed, makes the assessment final and demandable.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Orders of March 4, 2004 and August 6, 2004 of the Regional Trial Court of Las Piñas City, Branch 202 are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

221