REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, Petitioner,	C.T.A. EB No. 891 (CBAA CASE NO. L-72)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS *and* RINGPIS-LIBAN, *JJ.*
THE PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF ITOGON, BENGUET AND THE MUNICIPAL ASSESSOR OF ITOGON, BENGUET, Respondents.	Promulgated: SEP 12 2013 9:10 a.m.

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is a Petition for Review dated April 13, 2012 filed by petitioner National Power Corporation (NPC), assailing the (1) Decision dated July 28, 2011, which dismissed its appeal on the ground that it was filed out of time, and the (2) Order dated February 23, 2012, which denied reconsideration of the assailed Decision ruling further that payment under protest is required before a protest on disputed assessment may be filed, both rendered by the Central Board of Assessment Appeals (CBAA).

Petitioner alleges that it is a government-owned and controlled corporation created and existing by virtue of

Republic Act (R.A.) No. 6395, as amended, with principal office at NPC Office Building Complex, Quezon Avenue corner BIR Road, East Triangle, Diliman, Quezon City. It was created to undertake the development of power generation and production from hydroelectric or other sources. For its purpose, it may undertake the construction, operation and maintenance of power plants, dams, reservoirs, and other works. It presently operates and maintains the Binga Hydro-Electric Power Plant.

On the other hand, respondents Provincial Treasurer, Provincial Assessor, Municipal Treasurer and Municipal Assessor of Itogon, all of the province of Benguet, are the representatives of the said local government unit, which issued the subject assessment in their official capacities.

Petitioner claims that on March 17, 2006, it received a demand letter dated February 16, 2006 from OIC-Provincial Treasurer of Benguet requiring it to pay P62,645,668.80, representing tax delinquency for real property tax. The said demand letter stemmed from the assessment and issuance of Tax Declaration by the Municipal Assessor of Itogon, Benguet sometime in May 2000, assessing petitioner the amount of P62,645,668.80 real property tax for the following properties located within the Binga Hydro-Electric Power Plant, to wit:

Tax Declaration No.	Classification
99-006-01448	Home Economics Building
99-006-01457	Nursery School
99-006-01458	Elem. School Bldg.
99-006-01505	Power House
99-006-01506	Industrial Road
99-006-01516(N)	High School Building
99-007-02221	Equipment/Structure
99-008-01509	Machineries/Equipment

On April 20, 2006, petitioner filed a Petition dated April 10, 2006 [1] with the Local Board of Assessment Appeals (LBAA) challenging the legality of the assessment as well as

[1] LBAA Record pp. 5-9.

the authority of respondents to assess and collect real property taxes from it when it is a government-owned and controlled corporation engaged in the generation and transmission of electric power, hence, its properties were tax exempt pursuant to Section 234 (b) and (c) of R.A. No. 7160, otherwise known as the Local Government Code (LGC). According to petitioner, it filed requests for exemption through the letters dated September 3, 2000 and April 19, 2001, however, they were not acted upon by respondent Municipal Treasurer of Itogon, Benguet.

In their Answer/Position Paper dated June 30, 2006,[2] respondent Provincial Assessor of Benguet countered that petitioner's properties were not tax exempt since in the tax declarations they were classified as either "industrial" or for industrial use, or "machineries and equipment." Likewise no evidence were presented that the subject properties were being used for generation and transmission of electric power. Moreover, the appeal to the LBAA was filed out of time. Also the period to assess had not prescribed given that the subject demand letter issued in 2006 was for collection of delinquency taxes and not the initial assessment which was issued as early as 2003 but had not been settled by petitioner.

In an Order dated July 28, 2006,[3] the LBAA deferred all proceedings pursuant to Section 7, Rule V of the Rules of Procedure of the LBAA contingent upon petitioner's payment under protest of the assessed amount, or upon the filing of petitioner of a surety bond to cover the disputed amount of tax.

Petitioner moved to reconsider the Order saying that the requirement to pay under protest lacked legal basis. The motion was denied for lack of merit in the LBAA Resolution of October 3, 2006.[4]

The LBAA Order of July 28, 2006 was elevated to the CBAA through a Petition for Review dated November 16, 2006.[5] Petitioner claimed that payment under protest was

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[2] LBAA Record pp. 37-42.
[3] LBAA Record pp. 69-70.
[4] LBAA Record pp. 74-76.
[5] CBAA Record pp. 1-10

not required before it could challenge the assessment before the LBAA for it was not the numerical correctness or reasonableness of the assessment that was in issue but the authority of respondents to assess tax upon its tax exempt properties.

In its Answer,[6] respondents reiterated that the subject properties were taxable for their use as indicated in the tax declaration were not among those listed as legally tax exempt; that both its protest and claim for exemption were filed out of time; that respondents' power to assess had not prescribed as the demand letter was already for collection of tax delinquency and not the initial assessment; and that payment under protest was a necessary condition to a protest against the assessment issued by respondents pursuant to Section 252 of the LGC.

Acting on the appeal, the CBAA conducted meetings for purposes of amicable settlement.

On September 10, 2008,[7] the parties submitted the case for decision considering that amicable settlement was remote.

On July 28, 2011, the CBAA rendered the impugned Decision,[8] in this wise:

> IN VIEW THEREOF, the instant appeal is hereby dismissed for having been filed out of time. (Petitioner) is advised to proceed under Section 206 of R.A. 7160 (the Local Government Code of 1991) and take the necessary steps in support of its claim for exemption (sic) to be dropped from the assessment roll.
>
> SO ORDERED.

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[6] CBAA Record pp. 22-27
[7] Minutes of the hearing, CBAA docket pp. 115-116
[8] CBAA docket pp. 153-157

In the Order dated February 23, 2012,[9] the CBAA denied petitioner's prayer for reconsideration[10] stressing that the meetings and ocular inspection conducted during the pendency of the case were all pursuant to R.A. 9285.[11] The CBAA further ruled that it was incumbent upon petitioner to pay under protest the tax assessed before its appeal could be entertained by the LBAA as mandated in Section 252 of the LGC.

Hence, the instant Petition for Review before the Court *En Banc*.

Petitioner claims that the CBAA erred when it dismissed the appeal on ground of prescription since it was never raised as an issue by any of the parties in the LBAA proceedings.

Even assuming that prescription had set in and that the rules of procedure were not observed, they were purely technical grounds not sufficient to justify the dismissal of the appeal. According to petitioner, rules of procedure should not be applied in a very rigid and technical sense for they are adopted to help secure, not override, substantial justice. In the interest of justice, its case should be resolved on the merits especially considering that it is meritorious.

In rejecting the foregoing protestation, respondents point out that the petitioner received the LBAA Order requiring payment under protest on August 9, 2006. Thus, petitioner had thirty (30) days, or until September 9, 2006 to challenge the LBAA Order before the CBAA pursuant to Section 229 of the LGC. But instead of filing an appeal to the CBAA, petitioner sought a reconsideration of the LBAA Order which did not toll the running of the 30-day reglementary period to appeal. Thus, petitioner's appeal with the CBAA was filed beyond the prescribed 30-day period on November 22, 2006, precluding the CBAA from acquiring jurisdiction over the same. Since perfection of an appeal is both mandatory and jurisdictional, the CBAA did not err when it dismissed the appeal for having been filed

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[9] CBAA Record pp. 183-192.
[10] CBAA docket pp. 158-162.
[11] An act to institutionalize to use of an alternative dispute resolution system in the Philippines and to establish the office for alternative dispute resolution, and for other purposes.

out time. In the *interim,* the assailed LBAA Order became final and executory rendering it beyond the CBAA's competence.

Further, petitioner's contention that it merely followed the Rules of Court when it moved for a reconsideration is also not a valid ground for the late filing of its appeal with the CBAA. The Rules of Court may be invoked and applied in a suppletory manner as provided in Section 4 thereof only in the absence of a particular law on the matter, which is not obtaining in the case at bar. The LGC explicitly provides the manner by which an assessment may be protested as well as the period to appeal to the CBAA.

Finally, the CBAA allowed the parties to negotiate and muster an amicable settlement as required under R.A. No. 9285. It was only when the parties manifested that amicable settlement was no longer possible that the CBAA dismissed the appeal for having been filed out of time.

After the parties traded pleadings, the instant Petition was submitted for decision.[12]

The exchange of arguments poses two questions: The first - is payment under protest of the assessed real property tax required before an appeal may be entertained by the LBAA? The second - was petitioner's appeal to the CBAA to challenge the LBAA Order dated July 28, 2006[13] seasonably filed?

THE RULING OF THE COURT

It appears that the conflict between the parties all started sometime in May 2000, when respondent Municipal Assessor of Itogon, Benguet Province, declared for realty tax purposes petitioner's properties located at Binga Hydro-Electric Power Plant, Binga, Tinongdan, Itogon, Benguet Province pursuant to Section 204 of the LGC. Petitioner wrote two letters addressed to the Municipal Assessor of

[12] Resolution dated December 11, 2012.
[13] LBAA Record pp. 69-70.

Itogon, one dated September 3, 2000 and the other dated April 19, 2001, requesting exemption from realty tax citing Section 234 of the LGC as basis. Sometime in 2003, the initial assessment covering the subject properties was issued. On March 13, 2006, petitioner received from respondent Benguet Provincial Treasurer a Final Demand of Realty Tax Delinquency dated February 16, 2006 giving it fifteen (15) days to settle its tax deficiency of Php 62,645,668.80, including penalties, for the subject properties. Petitioner assailed the assessment with the LBAA on April 20, 2006. In the Order dated July 28, 2006, the LBAA ordered petitioner to first pay under protest the assessed amount or file a surety bond covering the disputed tax, all within the language of Section 252 of the LGC. Petitioner moved for the reconsideration of the Order but the same was denied on October 3, 2006. Petitioner elevated the matter to the CBAA through a Petition for Review dated November 16, 2006. The same was however dismissed via the assailed Decision of July 28, 2011 for having been filed out of time. In the Order dated February 23, 2012, petitioner's prayer for reconsideration was denied for lack of merit.

There is no dispute that the subject assessment pertains to real property tax to which petitioner lodged a protest basically anchored on its claim that its properties are tax exempt pursuant to Section 234 (b) and (c) of the LGC. However, an examination of the record reveals that petitioner failed to comply with requirements explicitly provided in Section 206 of the LGC, which reads as follows:

> 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, article of incorporation, bylaws, contracts, affidavits, certification 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.

Evidently, the two letters requesting exemption from payment of realty tax dated September 3, 2000 and April 19, 2001 addressed to respondent Municipal Assessor were filed way beyond the required thirty (30)-day period from the declaration of the subject properties for realty tax purposes in May 2000. There is also no showing that petitioner submitted together with the said formal requests sufficient documents in support of such claim. Significantly, in the proceedings below, respondents categorically stated that petitioner failed to prove its claimed tax exemption. This declaration remains undisputed to date. Precisely, the subject properties were listed as taxable in the assessment roll giving respondents the authority to issue the assailed assessment.

While petitioner may challenge respondents' assessment before the LBAA, Section 252 of the LGC requires that it first pay under protest the contested assessment before the LBAA may be able to entertain such protest. The full text of the provision reads as follows:

> 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.

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> (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 credits 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 Two, Book II of this Code.

As expressly provided under the foregoing provision, only after payment under protest but within 30 days from such compliance that petitioner may file a written protest. In the instant case, petitioner failed to pay under protest the contested assessment which is a condition *sine qua non* for the invocation of LBAA's appellate authority.

It has been categorically declared that payment under protest of the real property tax due is a pre-requisite before the LBAA can entertain any protest based on tax exemption. In the case of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, involving the same petitioner, the Supreme Court discussed the import of this requirement, in this wise:

> Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax. This may be inferred from Section 206 which states that:

> 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, 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.**

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. **Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest.** Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under

> Section 226 of the LGC without any effect. **No protest shall be entertained unless the taxpayer first pays the tax.**
>
> It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide *successive* administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "any owner or person having legal interest in the property who is not satisfied with *the action of the provincial, city, or municipal assessor in the assessment of his property* may x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.[14]

In an apparent attempt to cure the lapses on the part of petitioner, the LBAA issued the Order dated July 28, 2006,[15] in which it deferred all the proceedings pursuant to Section 7, Rule V of the Rules of Procedure of the LBAA and directed petitioner to pay under protest the assessed amount or file a surety bond to cover the contested assessment. But instead of complying with the directive, petitioner moved for its reconsideration which the LBAA denied in accordance with law on October 3, 2006.

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[14] National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, January 25, 2010.
[15] LBAA Record pp. 69-70.

In the meantime, the thirty (30)-day period prescribed under Section 229 (c) of the LGC within which to elevate the matter to the CBAA lapsed, depriving the CBAA of jurisdiction to determine the Petition for Review dated November 16, 2006. The pertinent portion of the provision states:

> SEC. 229. *Action by the Local Board of Assessment Appeals. –*
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> x x x.
>
> (c) The secretary of 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 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.

The record reveals that petitioner received the LBAA Order dated July 28, 2006 requiring payment under protest on August 9, 2006.[16] Thus, petitioner had thirty (30) days or until September 8, 2006, within which to appeal to the CBAA. However, petitioner filed its Petition for Review with the CBAA only on November 22, 2006, obviously beyond the reglementary period prescribed under the foregoing provision. Consequently, the LBAA Order dated July 28,

[16] See par. 14 of Appeal/Petition For Review dated November 16, 2006 filed by petitioner with the CBAA, p. 5 of CBAA Record.

(On Leave)

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(with Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

2006 became final and executory placing it beyond the authority of the CBAA to review. In fine, the CBAA committed no reversible error in dismissing the appeal before it for having been filed out of time.

Elementary is the rule that the perfection of an appeal within the period therefor is both mandatory and jurisdictional, and failure in this regard renders the decision final and executory.[17]

WHEREFORE, the Petition for Review dated April 13, 2012 filed by petitioner National Power Corporation, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[17] Fels Energy, Inc. vs. The Province of Batangas and the Office of the Provincial Assessor of Batangas, G.R. No. 168557, February 16, 2007; and National Power Corporation vs. Local Board of Assessment Appeals of Batangas, Lauro C. Andaya, In his capacity as the Assessor of the Province of Batangas, and The Province of Batangas Represented By Its Provincial Assessor, G.R. NO. 170628.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

THE PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF ITOGON, BENGUET AND THE MUNICIPAL ASSESSOR OF ITOGON, BENGUET,
Respondents.

CTA EB NO. 891
(CBAA CASE NO. L-72)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 12 2013 [handwritten signature] 9:10 a.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

With all due respect, I dissent in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino.

The *ponencia* affirms the Decision dated July 28, 2011 of the Central Board of Assessment Appeals (CBAA) dismissing the appeal filed by petitioner on the ground that it was filed out of time and the CBAA's Order dated February 23, 2012 which denied petitioner's motion for reconsideration of the assailed Decision, holding that payment under protest is required before a protest on disputed assessment may be filed. [initials]

Records reveal that petitioner's properties located at Binga Hydro-Electric Power Plant, Binga, Tinongdan, Itogon, Benguet Province ("subject properties") were listed as taxable in the assessment roll notwithstanding petitioner's claim that said properties are exempt from real property tax pursuant to Section 234 of the Local Government Code[1] (LGC) as stated in its two letters addressed to the Municipal Assessor of Itogon, Benguet dated September 3, 2000 and April 19, 2011. Apparently, since petitioner failed to comply with the requirements explicitly provided in Section 206 of the LGC,[2] the subject properties were listed as taxable in the assessment roll and a Notice of Assessment for real property tax was issued against petitioner covering the subject properties.

I am of the opinion that petitioner's failure to comply with Section 206 of the LGC does not necessarily re-classify the subject properties as "taxable" properties when they are otherwise exempt from real property tax. While Section 206 of the LGC states that if the required evidence (in support of the claim for tax exemption) is not submitted within the period prescribed therein, the property shall be listed as taxable in the assessment roll, it also categorically states that if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

In this regard, the Supreme Court declared that "**a real property owner's failure to comply with [Section] xxx 206 of the LGC does not necessarily xxx invalidate its legitimate claim for tax exemption**."[3] Thus, petitioner's failure to comply with the requirements under Section 206 of the LGC does not preclude petitioner from proving that its claim for real property tax exemption is legitimate.

As records would show, when petitioner received from respondent Benguet Provincial Treasurer the Final Demand of Realty Tax Delinquency dated February 16, 2006, petitioner questioned the same with the Local Board of Assessment Appeals (LBAA); specifically, petitioner questioned

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[1] Republic Act No. 7160.

[2] **Section 206.** *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, 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.

[3] National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G. R. No. 171586, January 25, 2010.

the legality or validity of the assessment itself and the authority of the respondents to assess and collect real property tax against the subject properties. As afore-stated, petitioner's failure to comply with the requirements under Section 206 of the LGC does not preclude it from proving before the LBAA that the subject properties are exempted from real property tax and that respondents have no authority to assess and collect real property tax against petitioner.

As events turned out, petitioner was not given the opportunity to prove before the LBAA that the subject properties are exempted from real property tax. Instead of deciding on its claim for real property tax exemption, the LBAA issued an Order dated July 28, 2006 deferring all proceedings pursuant to Section 7, Rule V of the LBAA Rules of Procedure[4] until the corresponding taxes due on the subject properties shall have been paid under protest or the petitioner shall have given surety bond. Petitioner accordingly filed a motion for reconsideration but the same was denied by the LBAA in a Resolution dated October 3, 2006.

The *ponencia* states that payment under protest of the real property tax due is a pre-requisite before the LBAA can entertain any protest. The *ponencia* cites the case of **National Power Corporation vs. Province of Quezon, et al.**[5] (*"NPC case"*), which in turn cites the case of **Dr. Pablo V. Olivarez, et al. vs. Mayor Joey Marquez, et al.**[6] (*"Olivarez case"*). I found the *NPC case* and *Olivarez case* inapplicable in the instant case. cm

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"RULE V
APPEAL TO THE LOCAL BOARD

Section 7. Effect of Appeal on Collection of Taxes. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:
(1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;
(2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and
(3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond."

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

[6] G.R. No. 155591, September 22, 2004.

In the *Olivarez case,* the Supreme Court found that the allegations in the petition purportedly questioning the assessor's authority to assess and collect the taxes were made in order to justify the filing of the petition with the RTC. Truth to tell, aside from raising the issue on the exemption of some properties from taxation for being used exclusively for educational purposes, petitioners therein also raised other questions of facts, to wit: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the LGC; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; and (4) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making improper, excessive and unlawful collection of taxes against the petitioners.

In the subsequent *NPC case*, the issues raised therein did not only pertain to the tax exemption of the machineries but also included the factual issue of who actually, directly, and exclusively used the machineries in the taxable periods in question.

On the other hand, in the instant case, petitioner is questioning the legality or validity of the real property tax assessment and the very authority of respondents to assess and collect real property tax against petitioner. Thus, I find that the applicable jurisprudence is the case of **Alejandro B. Ty and MVR Picture Tube Inc. vs. The Hon. Aurelio C. Trampe, et al.**,[7] (*"Ty case"*).

In the *Ty case,* the Supreme Court clarified that the protest contemplated under Section 252 of the LGC is needed when there is a question as to the reasonableness of the *amount assessed* but not when what is being questioned are the very authority and power of the assessor to impose the assessment and of the treasurer to collect the tax. Pertinent pronouncement of the Supreme Court in the afore-stated case is quoted hereunder:

> "In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . . ." It follows that appeals to this Board may be fruitful only where questions of fact are involved. **Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are**

[7] G.R. No. 117577, December 1, 1995.

> **questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of *any* increase.**" (Emphasis supplied)

Based on its position that the subject properties are exempted from real property tax, petitioner filed the petition before the LBAA not for the purpose of questioning the correctness or reasonableness of the amount of the assessment but to question the legality or validity of the real property tax assessment and the very authority of respondents to assess and collect real property tax on properties which petitioner claims as "tax-exempt" under the provisions of the LGC. Under this scenario, applying the *Ty case*, payment under protest as required under Section 252 of the LGC[8] is not necessary.

Anent the dismissal of petitioner's appeal by the CBAA for having been filed out of time, I humbly submit that the same was erroneous.

In dismissing the appeal of petitioner, the CBAA reasoned that Section 229(c) of the LGC[9] does not require petitioner to file a motion for reconsideration before the LBAA, and if it does, the same does not stop the running of the thirty-day period within which to file an appeal with the CBAA.

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[8] **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.

[9] **Section 229.** *Action by the Local Board of Assessment Appeals.* –
xxx xxx xxx
(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 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.

I beg to disagree.

The mere fact that Section 229 of the LGC does not mention the filing of a motion for reconsideration of the LBAA's decision does not make its filing prohibited. Absent such a prohibition, a motion for reconsideration of the LBAA's Order dated July 28, 2008 should be allowed. Petitioner should not be deprived of its right to appeal before the CBAA merely because it filed a motion for reconsideration with the LBAA, the filing of which was neither expressly prohibited nor allowed by Section 229 of the LGC. No less than the Supreme Court had ruled that it would be unfair to deprive parties of their right to appeal simply because they availed themselves of a procedure which was not expressly prohibited or allowed by the law or the rules. [10]

Needless to state, the filing of a motion for reconsideration of the LBAA's Order dated July 28, 2009 gave the LBAA another opportunity to review the petition filed by petitioner and determine if payment under protest is necessary considering the issue put forth by the latter. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum.[11]

The LBAA's Order dated July 28, 2006 was received by petitioner on August 9, 2006. Petitioner moved for a reconsideration of the aforementioned Order which was denied by the LBAA in a Resolution dated October 3, 2006. Petitioner received the Resolution dated October 3, 2006 on October 17, 2006. Consequently, petitioner had until November 17, 2006 within which to appeal to the CBAA. The appeal filed by petitioner with the CBAA by registered mail on November 16, 2006 was indeed filed on time.

On the basis of the foregoing, I vote to grant the Petition for Review filed by petitioner. Accordingly, the assailed Decision dated July 28, 2011 of the CBAA and its assailed Order dated February 23, 2012 should be set-aside. The case should be remanded to the CBAA for further proceedings.

ROMAN G. DEL ROSARIO
Presiding Justice

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[10] See Habaluyas Enterprises, Inc. and Pedro Habaluyas vs. Judge Maximo M. Japson, et al., G. R. No. 70895, May 30, 1986.
[11] Lilia Y. Gonzales vs. Court of Appeals, et al., G.R. No. 106028, 9 May 2001, 357 SCRA 599, 604.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

NATIONAL POWER CORPORATION, Petitioner,	**CTA EB NO. 891** **(CBAA Case No. L-72)**
-versus-	***Present:***
THE PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF ITOGON, BENGUET AND THEMUNICIPAL ASSESSOR OF ITOGON, BENGUET Respondents.	**DEL ROSARIO, *PJ,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS, *and*** **RINGPIS-LIBAN, *JJ.***
	Promulgated: SEP 12 2013 9:10 a.m.

X---X

CONCURRING and DISSENTING OPINION

RINGPIS-LIBAN, J.:

After having given this case considerable thought, I **CONCUR** with the outcome of the *ponencia* of the Honorable Associate Justice Esperanza R. Fabon-Victorino that the Petition for Review dated April 13, 2012 filed by petitioner National Power Corporation be **denied,** but **DISSENT** on the basis given.

The Decision dated July 28, 2011 of the Central Board of Assessment Appeals (CBAA) dismissing the appeal filed by the petitioner on the ground that it was filed out of time was affirmed by the *ponencia.* Similarly, the CBAA's Order dated February 23, 2013 which denied petitioner's motion for reconsideration of the assailed Decision holding that payment under protest is required before a protest on disputed assessment may be filed was also affirmed.

It is to be noted that the Petition dated April 10, 2006[1] filed by petitioner with the Local Board of Assessment Appeals (LBAA) challenged the legality of the assessment as well as the authority of respondents to assess and collect real property taxes on properties which petitioner claims to be tax-exempt[2].

Whether or not the properties subject of the disputed assessments indeed fell under the exemption clause had barely been threshed out when the LBAA deferred all proceedings in an Order dated July 28, 2006.[3] Pursuant to Section 7, Rule V of the Rules of Procedure of the LBAA, petitioner was ordered to pay under protest the assessed amount or file a surety bond to cover the disputed amount of the tax.

When petitioner moved to reconsider the Order saying that the requirement to pay under protest lacked legal basis, the motion was denied for lack of merit.[4] Petitioner then elevated the Order dated July 28, 2006 to the CBAA by way of "Appeal/Petition for Review"[5]. The CBAA, in turn, issued the impugned Decision dated July 28, 2011[6] **dismissing petitioner's appeal for having been filed out of time** and advising them to take the necessary steps in support of its claim for exemption pursuant to Section 206 of R.A. 7160 so that the purportedly exempt properties would be dropped from the assessment roll.

It is at this point where I humbly beg to differ.

In my opinion, the Order dated July 28, 2006 that was appealed to the CBAA was a mere interlocutory order that could not be the proper subject of an appeal. As such, the CBAA should have dismissed it not for having been filed out of time, but because of **"[t]he fact that the order or judgment appealed from is not appealable"** under Section 1 (i), Rule 50 of the Rules of Court[7] which gives the grounds of dismissal of an appeal.

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[1] LBAA Record, pp. 5-9.
[2] Pursuant to Section 234(b) and (c) of R.A. No. 7160, *The Local Government Code.*
[3] LBAA Record, pp. 69-70.
[4] LBAA Resolution dated October 3, 2006.
[5] CBAA Record, pp. 1-19.
[6] CBAA docket, pp. 153-157.
[7] Rules of Court, RULE 50 - DISMISSAL OF APPEAL
Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;
(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;
(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 4 of Rule 41;
(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in section 4 of Rule 44;
(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;
(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

This should be read in conjunction with Rule 41, Section 1 which enumerates what could not be the subject of an appeal, thus:

"Section 1. *Subject of appeal.* - An appeal may be taken from a **judgment or final order that completely disposes of the case**, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65." *(Emphasis and underlining ours.)*

On whether or not the Order dated July 28, 2006 issued by the LBAA is an interlocutory or a final order, we are guided by the Supreme Court's pronouncements in ***Calderon v. Roxas***[8], to wit:

"This Court has laid down the distinction between interlocutory and final orders, as follows:

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) The fact that the order or judgment appealed from is not appealable. *(Emphasis supplied.)*

[8] G.R. No. 185595, January 09, 2013.

x x x A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

x x x x

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**[9] [Emphasis supplied]"

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[9] *Ibid,* citing Investments, Inc. v. Court of Appeals, G.R. No. L-60036, January 27, 1987, 147 SCRA 334, 339-341.

As previously pointed out, the issues raised in the Petition[10] filed by the petitioner challenged, one, the legality of the assessment; and two, the authority of respondents to assess and collect real property taxes from it given that it is a government-owned and controlled corporation engaged in the generation and transmission of electric power and that its properties were supposedly tax-exempt.

The Order by the LBAA dated July 28, 2006 deferring proceedings until such time that petitioner complied with the "Payment Under Protest" provisions of Sec. 252 of the Local Government Code (LGC)[11] by no means decided the controversy or determined the rights and liabilities of the parties concerned. In fact, Subsections (b) and (c) thereof, intimate that this payment is merely temporary pending the outcome of the case, thus:

> "SEC. 252. Payment Under Protest. - x x x (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. x x x" (Emphasis ours)

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.[12] An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. In contrast, a judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action.[13] By these standards, it is clear that the Order dated July 28, 2006 is an interlocutory order and hence, not appealable. The CBAA, therefore, should have dismissed the appeal on those grounds and

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[10] Petition dated April 10, 2006, *Supra* at Note 1.

[11] R.A. 7160, SEC. 252. Payment Under Protest. - (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan 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.

[12] *Supra* at Note 8, citing United Overseas Bank (formerly Westmont Bank) v. Ros, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 343-344, citing Ramiscal, Jr. v. Sandiganbayan, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 177.

[13] *Ibid*, citing Republic v. Sandiganbayan, (Fourth Division), G.R. No. 152375, December 13, 2011, 662 SCRA 152, 177.

not on the basis of prescription. **At that point in time, the remedy of an appeal was <u>not yet available</u> to petitioner.**

On a point of discussion, while the Consolidated and Revised Rules of Procedures before the LBAA and the CBAA adopted July 9, 2013 now provide for the qualifier *"final"* in the phrase *"decisions, resolutions and orders"* that may be appealed to the CBAA[14], at the time petitioner filed its appeal, this was not the case.

At that time, Section 1, Rule VIII of the LBAA Rules of Procedure stated:

> "RULE VIII - APPEALS TO THE CENTRAL BOARD
>
> Section 1. *Period of Appeal; Where to Appeal; How Appeal Taken.* – Any party aggrieved by the **decision, order or resolution** of the Local Board may appeal to the Central Board within the period and in the manner prescribed under Rule IV of the Rules of Procedure before the Central Board of Assessment Appeals." (Emphasis ours)

In CBAA Case No. L-67, ***First Gas Power Corporation vs. Office of the Provincial Assessor of Batangas Province***[15], the CBAA expounded on how it construed what kind of decisions, orders and resolutions that could be appealed to it, thus:

> "Sections 1 and 2, RULE IV OF THE RULES OF PROCEDURE BEFORE THE CENTRAL BOARD OF ASSESSMENT APPEALS (the CBAA RULES), provide:
>
> "Section 1 – *What may be appealed* – **All decisions, resolutions, and orders** of Local Boards in cases involving (1)contested assessments of real properties, (2) claims for refund of taxes overpaid and claims for tax credits, and (3) protests against levies may be appealed to the Central Board of Assessment appeals as prescribed herein."
>
> "Section 2 – *Who may appeal, when to appeal.* – Any party in a case before the Local Board who feels aggrieved by **the decision, resolution or order** of the said Local Board may, within thirty (30) days from and after receipt of the said decision, resolution or order, appeal to the Central Board."

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[14] Consolidated and Revised Rules of Procedures before the Local Boards of Assessment Appeal and the Central Board of Assessment Appeal. RULE VI, SEC. 4. *Jurisdiction of the Central Board* – The Central Board shall have exclusive jurisdiction to hear and decide all appeals from the decisions, resolutions and final orders of the Local Boards.

[15] CBAA Case No. L-67, December 12, 2006.

> **The RULE provides for "All Orders" – without exception: whether Final or Interlocutory, may be appealed to the CBAA by any party who feels "aggrieved by the x x x order of said Local Board.**" (Emphasis ours)[16]

The CBAA further justified this stance by citing the penultimate paragraph of Sec. 230 of the LGC which gave the CBAA the power to adopt its own rules and regulations.[17]

However, the Supreme Court had occasion to give its own interpretation of a similarly worded rule in the SEC Rules of Procedure in ***Yamaoka vs. Pescarich Manufacturing Corporation (Formerly Yamaoka Nippon Corporation)***[18]. In that case, at issue was the construction of Section 1, Rule XV of the New Rules of the Securities and Exchange Commission (SEC) which provided:

> "Rule XV
> Appeal
>
> Section 1. Appeal from the Resolution, Ruling or Order of the Hearing Officer. - **Any decision, ruling or order** of the Hearing Officer may be appealed by the aggrieved party to the Commission sitting En Banc within fifteen (15) days from receipt by the appellant of notice of such resolution, ruling or order." (Emphasis ours)

Does this rule apply only to final orders issued by the Hearing Officer or to interlocutory orders as well? This was the question answered by that case wherein Yamaoka (petitioner therein) filed a petition for the recovery of control and management of Pescarich Manufacturing Corporation (Pescarich). The Hearing Officer denied petitioner's application for a writ of preliminary injunction and the appointment of a management committee. Petitioner questioned this via a petition for certiorari to the SEC En Banc which it granted. The Court of Appeals, however, reversed the SEC En Banc's decision saying that petitioner should have instead availed himself of the remedy of appeal. The Court of Appeals reasoned further:

> "Respondent's contention that the said order is 'interlocutory' and, hence, unappealable, is obviously untenable

[16] *Ibid.*
[17] R.A. 7160, Sec. 230. *Central Board of Assessment Appeals* - x x x The Central Board of Assessment Appeals, in the performance of its powers and duties, may establish and organize staffs, offices, units, prescribe the titles, functions and duties of their members and adopt its own rules and regulations.
[18] G. R. No. 146079, July 20, 2001. Kanemitsu Yamaoka, Petitioner, vs. Pescarich Manufacturing Corporation (Formerly Yamaoka Nippon Corporation), Tetsuo Adachi, Eiji Kawai And Maria Lynn Gesmundo, Respondents.

> because Section 1. RULE XV does not distinguish between a final or interlocutory order of the SEC Hearing Officer. Suffice it to state, the phrase 'any decision, ruling or order' is so self-explanatory and wide enough as to encompass decisions, rulings and orders whether final or interlocutory in nature."[19]

Upon elevation of the case to the Supreme Court, it ruled that certiorari is a proper remedy to question an interlocutory order of an SEC Hearing Officer before the SEC En Banc because the SEC rules did not prohibit certiorari as a remedy against interlocutory orders.

> "Section 1, Rule XV, which does not distinguish between final and interlocutory acts of the Hearing Officer, should not be treated in isolation but read along with the other provisions of the Rules. To construe certiorari as a prohibited remedy in every proper case because of the omission of the word "final" in Section 1, Rule XV and of the entire rule on certiorari in the new Rules would render Section 8, Rule XIV and Section 10, Rule X superfluous.
>
> x x x
>
> Furthermore, to uphold the interpretation of the Court of Appeals allowing appeals even from decisions, ruling or orders of the Hearing Officer that have not attained finality would not promote the expeditious disposition of the main case. In Go vs. Court of Appeals[20], aptly cited by petitioner, the Court adverted to the hazards of interlocutory appeals:
>
> xxx. It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that "the proper remedy in such cases is an ordinary appeal from an adverse judgment on the merits, incorporating in said appeal the grounds for assailing the interlocutory orders. Allowing appeals from interlocutory orders would result in the `sorry spectacle' of a case being subject of a counterproductive ping-pong to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings. However, where the assailed order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow certiorari as a mode of redress.
>
> Clearly, therefore, allowing appeals from interlocutory orders would not "assist the parties in obtaining just, speedy and

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[19] *Ibid.*
[20] *Id. citing* 297 SCRA 574 (1998).

inexpensive determination of every action or claim brought before the Commission."[21]

As the new SEC Rules no longer contain any specific provisions governing petitions for certiorari, the SEC correctly applied the Rules of Court "in a suppletory manner," consistent with Section 4, Rule I of its New Rules."

The same situation obtains in the case at bar wherein suppletory application of the Rules of Court in the absence of any applicable provision is prescribed both by the Rules of Procedure of the CBAA at the time the petition was filed and the Consolidated and Revised Rules of Procedure of the LBAA and the CBAA that govern at the present time.

Based on the foregoing, it is clear that, instead of an appeal, petitioner should have filed a special civil action for either Certiorari or Prohibition in accordance with Rule 65 of the Rules of Court. Rule 65, Sections 1 and 2 state:

"Section 1. *Petition for certiorari.*- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x

Sec. 2. *Petition for prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. x x x"[22]

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[21] *Id. citing* New Rules of Procedure of the Securities and Exchange commission, Rule I, Section 3.
[22] Revised Rules of Court, 1997 Rules of Civil Procedure, Special Civil Actions, Rule 65, Sections 1 and 2.

It should be remembered that it is the LBAA Order of July 28, 2006 deferring proceedings until such time that petitioner makes "payment under protest" that is being questioned. In effect, petitioner is saying that the LBAA has no authority to require it to comply with the provisions of Sec. 252 of the LGC before it could challenge the assessment, or, in the alternative, to prohibit the LBAA from deferring proceedings until payment under protest is made. With respect to the purpose of the writs, certiorari is intended to correct an act performed by the respondent, while prohibition is intended to prevent the commission or carrying out of an act.[23]

In my opinion, therefore, the CBAA correctly dismissed the Appeal, but for the foregoing reasons and not because it was filed out of time. Consequently, while the remedy of the special writs of certiorari and/or prohibition may be lost to petitioner for incorrectly pursuing the wrong remedy, it may still avail of an ordinary appeal from an adverse judgment by the LBAA on the merits, incorporating in said appeal the grounds for assailing the interlocutory orders at the appropriate time.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[23] Regalado, Florenz D., Remedial Law Compendium, Vol. 1, 10th Ed., p. 794