REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PROVINCIAL GOVERNMENT OF CAGAYAN, REP. EMILIA L. IRINGAN, In her Official Capacity as the Provincial Treasurer of the Province of Cagayan, Plaintiff,	**CTA OC No. 018**
	Members:
- versus -	**DEL ROSARIO,** ***Chairperson*** **UY,** ***and*** **MINDARO-GRULLA, *JJ.***
NATIONAL GRID CORPORATION OF THE PHILIPPINES, Defendant.	**Promulgated:** SEP 29 2014 4:10 pm

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RESOLUTION

UY, *J.*:

For resolution is the **"MOTION TO DISMISS"**[1] filed on July 21, 2014 by defendant National Grid Corporation of the Philippines (NGCP), praying for the dismissal of the instant case on grounds that (a) the complaint states no cause of action against the defendant NGCP; (b) lack of jurisdiction over the nature of the action; and (c) *lis pendens* or pendency of another action between the same parties for the same cause and violation against the rule on forum shopping.

Plaintiff filed its **"COMMENT/OPPOSITION (ON MOTION TO DISMISS)"**[2] thereon, through registered mail, on August 11, 2014.

According to movant-defendant, plaintiff in the case at bar, alleged in the Complaint (paragraph 11) that as per the latest

[1] Docket, pp. 251 to 260.
[2] Docket, pp. 297 to 304.

Statement of Real Property Tax Collection (Assessment) dated 2 September 2013, defendant NGCP should pay its real property tax for the years 2009 until 2013 in the amount of FIFTEEN MILLION SIX HUNDRED FIFTY FIVE THOUSAND SIX HUNDRED FORTY PESOS **(P 15,655,640.00)** plus legal interest from the issuance of the said assessment and prayed to this Honorable Court to order the payment of the said amount with interests. However, defendant points out that nowhere is it alleged in the Complaint that said Assessment (Billing Statement) has been furnished to and received by defendant NGCP and that demand to pay has been previously made for its payment, and therefore, defendant NGCP reiterates that it did not receive the Assessment (Billing Statement) from the plaintiff. In fact, defendant was allegedly made aware of such Assessment (Billing Statement) only through the copy attached to the instant Complaint as Annex "A".[3]

Moreover, defendant contends that nowhere is it also alleged in the Complaint that the Assessment, whether the Notice of Assessment dated 03 October 2011 or the Assessment (Billing Statement) dated 2 September 2013, has already become **final and executory**, a requirement under Republic Act No. 9282 and the Revised Rules of the CTA for this Court to acquire jurisdiction in tax collection cases. Thus, the absence of such allegations in the Complaint and want of proof that defendant NGCP was formally furnished with a copy of said Assessment (Billing Statement) allegedly render the Complaint defective as it states no cause of action against defendant NGCP.

On the grounds of lack of jurisdiction and *litis pendentia*, defendant submits that this Court has no jurisdiction over the instant case because the Assessment made by the Provincial Assessor dated October 3, 2011 and the Billing Statement issued by Provincial Treasurer dated September 2, 2013 have not yet become final and executory, the former having been timely appealed before the Local Board of Assessment Appeals (LBAA) while the latter was not received by defendant. And because of this pending appeal, the instant complaint was prematurely filed. Further, defendant maintains that there is a clear violation of the rules on forum-shopping in this case and that *litis pendentia* exists between the appeal pending before the LBAA and the instant case considering that there is identity of the parties, identity of rights or causes of action and identity of reliefs prayed for.

In its comment, plaintiff counters that the basis of the instant collection case is not the Billing Statement dated September 2, 2013 issued by the Provincial Treasurer but the Assessment issued by the

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[3] Motion to Dismiss, paragraphs 3 and 4, pp. 2-3, Docket, pp. ____

Provincial Assessor, which defendant properly appealed before the LBAA; that the Assessment made by the local assessor has attained finality because defendant failed to pay the real property tax under protest as provided in Section 252 of the Local Government Code (LGC); that Section 231 of the LGC presumes the assessment of the assessor as deemed final and executory for the local government unit to enforce the collection of the tax; and that *litis pendentia* and forum shopping do not apply in this case because the principal issues involved in the two cases are entirely different.

THE COURT'S RULING

We find merit in the instant motion.

Admittedly, the latest statement of the real property tax against defendant, whether assessment or billing statement, dated September 2, 2013 in the amount of FIFTEEN MILLION SIX HUNDRED FIFTY FIVE THOUSAND SIX HUNDRED FORTY PESOS (P 15,655,640.00) plus legal interest, was not previously served upon, nor received by defendant NGCP, except through the instant complaint.

It is likewise admitted by plaintiff that the Notice of Assessment dated October 3, 2011 issued by the provincial assessor was timely contested by defendant through the filing of appropriate appeal, before the Local Board of Assessments Appeal or LBAA of the Province of Cagayan pursuant to Section 226 of the Local Government Code, which provides:

> "Section 226. ***Local Board of Assessment Appeals.*** – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with the copies of the tax declarations and such affidavits or documents submitted in support of the appeal."

Considering that an appeal has been timely filed by defendant before the LBAA of the Province of Cagayan, this Court has no jurisdiction to take cognizance of the instant collection case. It is this Court's considered view that said assessment cannot be considered as final and executory for purposes of initiating a tax collection case before this Court because questions on the correctness of the assessment, as well as defendant's liability on the merits, is yet to be resolved by the LBAA.

Plaintiff, however, contends that the subject assessment has attained finality because defendant failed to pay the real property tax under protest as required by Section 252 of the LGC. In support thereof, plaintiff cites the case of *Camp John Hay vs. Central Board Assessment Appeals.*[4] Plaintiff further argues that Section 231 of the LGC "presumes" the assessment made by the local assessor as deemed "final and executory" for the local government unit to enforce collection of tax.

We are not persuaded.

There is nothing in the *Camp John Hay* case or in Section 252 of the LGC which categorically states that the failure to pay real property tax before an appeal is made with the LBAA will render an assessment final and executory and the right of the local government unit to collect the taxes due before this Court becomes absolute. To be sure, what the said case merely upheld is the requirement for a taxpayer questioning the correctness of an assessment to pay the real property taxes due before a protest or an appeal may be entertained. And in said case, after finding that the taxpayer therein was required under the premises to first pay the real property taxes due before his appeal with the LBAA may be entertained, the Supreme Court remanded the case to the LBAA for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties.

Now, as regards plaintiff's assertion in the instant case that defendant NGCP should have paid the assessed real property tax under protest before its appeal on the assessment may be entertained by the LBAA, as in the afore-quoted jurisprudence, this Court is not empowered to make the said directive. The issue on whether defendant NGCP is required to pay the real property tax under protest is a matter within the primary jurisdiction of the LBAA of the Province of Cagayan, where said appeal is pending.

Jurisprudence dictates that, in general, before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first

[4] G.R. No. 169234, October 2, 2013.

giving such administrative agency the opportunity to dispose of the same after due deliberation.[5]

Corollary thereto, under the doctrine of primary jurisdiction, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[6]

Finally, as regards plaintiff's contention that Section 231 of LGC presumes an assessment issued by the local assessor as deemed "final and executory" and thus well within the jurisdiction of the Court, it bears to reiterate that this Court can only take cognizance of matters clearly within its jurisdiction[7], it cannot be presumed or implied.

Considering that this Court has no jurisdiction to entertain the instant Complaint, the other issues raised by both parties need not be resolved by this Court.

WHEREFORE, in light of the foregoing considerations, defendant's Motion to Dismiss is hereby **GRANTED**. The instant case is hereby **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[5] *Addition Hills Mandaluyong Civic & Social Organization, Inc. vs. Megaworld Properties & Holdings , Inc. et al.,* G.R. No. 175039, April 18, 2012 citing Republic vs. Lacap G.R. No. 158253, March 2, 2007, 517 SCRA 255.
[6] Supra.
[7] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, supra.