REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

BENGUET ELECTRIC COOPERATIVE (BENECO), represented by GERARDO P. VERSOZA, General Manager,
Petitioner,

- versus -

THE MUNICIPALITY OF LA TRINIDAD BENGUET, and WILMA LINTAN, Municipal Treasurer,
Respondents.

CTA *EB* NO. 1091
(CTA AC NO. 85)
(Civil Case No. 11CV-2756)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, JJ.

Promulgated:

JAN 04 2017 3:30 p.m.

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RESOLUTION

BAUTISTA, J:

This resolves petitioner's Motion for Reconsideration, filed by registered mail on June 21, 2016, with respondent's Comment filed on October 12, 2016.

On May 6, 2016, the Court *En Banc* promulgated a Decision (the "Assailed Decision"), the dispositive portion of which states:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision of the Court in Division dated June 7, 2013 and Resolution dated October 9, 2013 are hereby **AFFIRMED.**
>
> **SO ORDERED.**

In its Motion for Reconsideration, petitioner avers that the Court *En Banc* erred in sustaining the Decision rendered by the Special Second Division.

Petitioner states that *Section 195 of the Local Government Code ("LGC")* deals with the correctness of the assessment; that a taxpayer that is dissatisfied with such assessment must elevate his protest to the Regional Trial Court ("RTC") within thirty (30) days, otherwise, the assessment shall be final and executory. Petitioner argues that this provision does not apply when what is assailed is the very legality of the assessment; that respondent's refusal to acknowledge the protest raised by the petitioner raised both a question of law that delves into the legality of the assessment for business tax, and grave abuse of discretion amounting to lack or excess of jurisdiction. Such a situation would now allow petitioner to avail of the remedy provided under *Section 2 Rule 65 of the Rules of Court.*

Petitioner argues that when respondent treasurer denied petitioner's protest of the assessment, she performed a quasi-judicial function; that the treasurer committed grave abuse of discretion amounting to lack of jurisdiction when she issued the notice of tax assessments and when she issued the notices of garnishment to petitioner's depositary banks; that it had no other plain, speedy and adequate remedy in the ordinary course of law since it was already at the mercy of respondent's decision to issue the notices of garnishment.

It also states that what it seeks to enjoin and nullify in the Petition for Review are the issuance of an assessment for business tax and the transfer of the garnished deposits to the custody of the respondents, which are alien from the assessment of business taxes which must be elevated to the court under *Section 195 of the LGC.*

Citing the case *Yamane vs. BA Lepanto Condominium*[1], petitioner claims that the thirty (30) day period of appeal mentioned in *Section*

[1] G.R. No. 154993, October 25, 2005, 474 SCRA 258.

195 of the LGC is not actually an appeal in the strictest sense of the word; that when an action is thus taken from the treasurer's denial of the taxpayer's protest to the court of competent jurisdiction, it is not considered as an appeal; that an appeal covers the correctness of the tax in terms of the amount, surcharges, interests or penalties, and not when what is being assailed is the legality of the assessment.

On the other hand, respondent counter-argues that issues raised in the Motion for Reconsideration were resolved by the Court *En Banc* in its Decision dated May 6, 2016; that there are no new issues raised to merit a favorable resolution. Respondent argues that the municipal treasurer was not performing a quasi-judicial function when it assessed petitioner's business tax and/or effectively denied its protest; that the special civil action for prohibition cannot be availed of as a substitute for lost appeal; and that petitioner could have assailed the validity of the assessments by filing an appeal with the RTC pursuant to *Section 195 of the LGC.*

After a careful review of the grounds raised in the Motion for Reconsideration and the corresponding Comment thereto, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Petitioner failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds the Motion for Reconsideration devoid of merit. Nevertheless, the Court will expound on some of the issues raised, if only to reinforce the discussion in the Assailed Decision.

Section 195 of the LGC states:

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

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> treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.[2]

Petitioner contends that respondent treasurer performed a quasi-judicial function when she decided to deny its protest that respondent treasurer committed grave abuse of discretion amounting to lack of jurisdiction when she issued the notice of tax assessments and when she issued the notices of garnishment to the petitioner's depositary banks; and that it has no other plain, speedy and adequate remedy in the ordinary course of law.

The Court *En Banc* does not agree. Respondent treasurer was not performing a *quasi judicial* function when she issued the notice of assessment. Quasi-judicial function refers to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.[3]

Section 195 of the LGC specifically grants the taxpayer a remedy. A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide the protest, from the moment of its filing.[4] The issues raised by petitioner is the proper subject of an appeal that should have been filed within the thirty (30) day period after receipt of the decision denying its protest.

Petitioner argues that Section 195 of the LGC is not actually a mode of appeal as defined by law but an original action which can be filed even beyond the thirty (30)-day period.

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[2] Emphasis ours.

[3] *Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig,* G.R. No. 167732, July 11, 2012, 676 SCRA 82.

[4] *Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig,* G.R. No. 167732, July 11, 2012, 676 SCRA 82.

The Court *En Banc* does not agree. *Section 195 of the LGC* clearly provides that the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise, the assessment becomes conclusive and unappealable. Hence, from this provision, it is clear that what said section gives the taxpayer is the remedy of appeal which has to be perfected within a certain period of time.

Basic is the rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[5] As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*.[6]

Thus, petitioner's resort to the wrong mode before the Regional Trial Court was fatal to its cause. To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules.[7] The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.[8] Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory.[9] Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error. The judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[10]

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[5] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, citing *Amores v. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29,2010, citing *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.
[6] *Id.*
[7] *Gregorio de Leon v. Hercules Agro Industrial Corporation, et. al.*, G.R. No. 183239, June 2, 2014.
[8] *Ibid.*
[9] *Boardwalk Business Ventures, Inc., v. Elvira A. Villareal, et. al.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468; *Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012, 676 SCRA 82..
[10] *Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012, 676 SCRA 82.

Among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence.[11] Thus, having failed to convince the court, the motion must necessarily fail.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion dated May 6, 2016)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[11] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* 32 SCRA 314, 317 (1970).