REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CHINA BANKING CORPORATION,
Petitioner,

-versus-

CITY TREASURER OF MANILA,
Respondent.

C.T.A. E.B. NO. 182
(RTC Civil Case No. 04-108990)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 27 2006

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 196 of the Local Government Code*, no case or proceeding shall be maintained in any court for the recovery of any tax, fee or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer.

Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief,

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but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court (*Carale vs. Abarintos, 269 SCRA 142*).

THE CASE

This is an appeal by China Banking Corporation (hereafter "petitioner") from the Decision, dated December 27, 2005, rendered by the Regional Trial Court of Manila, Branch 52, in Civil Case No. 04-108990, entitled "China Banking Corporation vs. City Treasurer of Manila", the dispositive portion of which reads as follows:

> "WHEREFORE, the instant appeal is hereby DISMISSED.
>
> SO ORDERED."

and the Resolution, dated April 11, 2006, denying petitioner's Motion For Reconsideration, the dispositive portion of which reads as follows:

> "WHEREFORE, for lack of cogent reason to disturb its earlier ruling, the Motion For Reconsideration is DENIED.
>
> SO ORDERED."

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THE FACTS

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

Petitioner is a universal banking corporation established, existing and organized under the laws of the Republic of the Philippines, with head office at 8745 Paseo de Roxas, corner Villar Street, Makati City.

As a universal bank, petitioner has duly established and operates several local branches all over the country, including one situated at 711-715 Sto. Cristo, corner Commercio St., Binondo, Manila, referred to as the Sto. Cristo Branch.

In January, 2003, the Sto. Cristo Branch informed the City Treasurer of Manila (hereafter "respondent") that it has earned a total income of P40,346,401.69 for year 2002 for purposes of computation and payment of local tax and other fees for the renewal of its local business license.

Upon such a report, respondent informed the Sto. Cristo Branch that the total amount due from it in taxes and fees payable to the city government is P330,649.78, which amount includes P108,935.28 as tax on petitioner as a bank, and P201,732.00 as tax pursuant to *Section 21 of the Manila City Ordinance No. 7988* (*Tax Ordinance*).

On January 17, 2003, petitioner's Sto. Cristo Branch paid under protest the amount of P201,732.00 arising from the assessment of the City Treasurer.

On the same date, petitioner sent a letter to respondent, protesting the additional tax assessed under *Section 21 of the Tax Ordinance*.

On January 21, 2003, respondent wrote petitioner acknowledging payment of the fees and taxes.

On April 21, 2003, due to the inaction of the respondent regarding its protest, petitioner filed a Complaint For Refund of Sum of Money with the Metropolitan Trial Court of Manila, Branch 7, docketed as Civil Case No. 175180-CV.

On June 5, 2003, summons, together with a copy of the complaint, was served on the petitioner. Instead of filing an answer, respondent filed a Motion To Dismiss anchored on the following grounds:

1) lack of cause of action and prematurity;

2) failure to exhaust administrative remedies;

3) lack of jurisdiction; and

4) forum shopping.

On August 1, 2003, petitioner filed its "Opposition".

On September 16, 2003, the Metropolitan Trial Court issued an Order granting the Motion To Dismiss and dismissing the complaint, without prejudice.

On October 22, 2003, petitioner filed a "Motion For Reconsideration", to which a "Comment/Opposition to the Motion For Reconsideration" was filed by respondent on November 10, 2003.

On November 14, 2003, the Metropolitan Trial Court denied the Motion For Reconsideration for lack of merit.

Petitioner appealed to the Regional Trial Court of Manila, Branch 52, docketed as Civil Case No. 04-108990.

On December 27, 2005, the Regional Trial Court rendered its Decision, dismissing the appeal.

On January 27, 2006, petitioner filed a "Motion For Reconsideration", which was denied for lack of merit on April 11, 2006.

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Hence, the present appeal filed by petitioner China Banking Corporation, raising the sole issue of:

ISSUE

WHETHER OR NOT THE COURT A QUO COMMITTED ERROR IN AFFIRMING THAT REPUBLIC ACT NO. 7160 REQUIRES A DISTINCT WRITTEN CLAIM FOR REFUND SEPARATE FROM THE WRITTEN PROTEST AS A CONDITION PRECEDENT TO AN ACTION FOR THE RECOVERY OF A TAX ERRONEOUSLY AND ILLEGALLY COLLECTED.

Petitioner's Theory

Petitioner contends that the law does not specify the form of the written claim for refund, or that it should be separate from the written protest. A reading of *Sections 195 and 196 of the Local Government Code* taken together would show that distinguishing the remedies provided therein has no basis. It is readily apparent that the protest under *Section 195* is the remedy of a taxpayer at the first instance before the local treasurer if it does not agree with an assessment. However, if the local treasurer denies the protest, or fails to act on the same, the taxpayer's next recourse is to institute the appropriate case or proceeding in court for the recovery of the tax paid under the contested assessment.

In such instance, *Section 196* merely requires that the taxpayer should make a claim for refund before it could maintain such action. Thus, the protest and the claim for refund are but components of the same remedy.

Petitioner further asserts that since the law does not require that a claim for refund must be filed in a separate document distinct from a protest, insisting that the claim for refund be filed in a separate letter when it is already contained in the letter indicating the protest would be a useless formality.

Respondent's Theory

On the other hand, respondent counterargues that before a case shall be filed in Court for the recovery of a local tax, fee or charge erroneously or illegally collected, the claimant must comply first with the legal requirement mandated by *Section 196 of R.A. 7160,* that is, to file a written claim for refund or credit with the local treasurer. Said requirement, however, was not complied with by the petitioner prior to the filing of the case in the trial court.

Respondent maintains that the petitioner is totally confused in the course of action it had taken against the respondent. Firstly, it paid under protest the taxes assessed against it. Its action is covered by *Section 195 of the Local Government Code* which explicitly states, among others, that, "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." Such action is contrary to the instant case which is a claim for refund of tax, which is covered by *Section 196 of said Code*. Secondly, petitioner failed to observe the conditions *sine qua non* before filing the instant case, as mandated by *Section 196*. Lastly, the condition precedent was mistakenly appreciated as "patently be playing into technicalities" when it is very clear that the law itself states that "No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer", hence, it is not only mandatory but also jurisdictional in nature.

<u>THE COURT *EN BANC'S* RULING</u>

The appeal is bereft of merit.

Section 196 of the Local Government Code provides:

> "Section 196. Claim for Refund of Tax Credit. No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

Pursuant to the aforequoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, to wit:

1) the taxpayer concerned must file a written claim for refund or credit with the local treasurer; and

2) the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

The law is very clear. A written claim for refund is required for the refund or tax credit. The prescriptive period to bring suit to claim refund or credit is two (2) years from date of payment or from date taxpayer is entitled to the refund or credit.

Petitioner's contention that the law does not preclude the possibility that the protest and claim for refund maybe filed in one document, as what petitioner has done and that its January 17, 2003 letter refers to both the payment under protest and the claim for refund cannot be sustained.

The said letter dated January 17, 2003 sent by petitioner to the City Treasurer of Manila reads:

> "January 17, 2003
>
> The City Treasurer of Manila
>
> Dear Ms. Toledo,
>
> We are hereby paying UNDER PROTEST alleged additional local government tax in the total amount of P330,649.78 under Manager's Check No. 62453 payable to 'The City Treasurer of Manila FAO China Banking Corporation – Sto. Cristo Branch'. It is our position that we are not liable on the said alleged additional local tax; and assuming that we are covered by Sec. 21 of the ordinance cited, such constitutes double taxation and must be struck down.
>
> Please be notified that we are presently instituting the appropriate legal actions to effect refund of any erroneous/excessive payment made hereby.
>
> Very truly yours,
>
> (SGD.) RAMON Y. DEE

Branch Manager
Sto. Cristo Branch" (*Annex "C" of Petition*)

The above letter speaks for itself. The wordings of the letter are explicit and unequivocal that petitioner merely notified the respondent that it is paying under protest the amount of P330,649.78 representing the alleged local government tax and that they are presently instituting the appropriate legal actions to effect refund of any erroneous/excessive payment made. It is not the written claim for refund as contemplated under *Section 196 of the Local Government Code*.

As prescribed under *Section 196 of the Local Government Code*, the appropriate legal action is to file a written claim for refund. Petitioner did not attempt to seek administrative relief, which was both available and sufficient. Nothing in the records convinces us that the petitioner ever thought of pursuing the available administrative remedy, which is to file a written claim for refund.

Having failed to comply with the requirements prescribed by *Section 196*, the complaint for refund was prematurely filed for failure to exhaust administrative remedies. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum (*Teotico vs. Agda, 197 SCRA 675, 693; Paat vs. Court of Appeals, 266 SCRA 167*).

If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for judicial determination (*Aboitiz vs. Collector of Customs, 83 SCRA 265, 272; Abe-Abe vs. Manta, 90 SCRA 524-531*).

As aptly ruled by the court a quo:

> "The Court finds the appeal bereft of merit.
> Section 196 of the Republic Act (RA) NO. 7160 (otherwise known as the Local Government Code) provides:
>
> '*Sec. 196.- Claim for Refund of Tax Credit. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. xxx*'
>
> Records show that plaintiff failed to file a claim for refund in accordance with the aforementioned section which is different from the required written protest which it filed

> under Section 195, also of R.A. No. 7160. Such requirement is not a mere technicality but a condition precedent to the filing of a case in court for recovery of any tax, fee or charge erroneously or illegally collected. On the other hand, a written protest is being filed specifically for the purpose of contesting the assessment made by the treasurer.
>
> Clearly, plaintiff failed in this wise. Hence, the Court is convinced that the court a quo correctly dismissed the instant case for failure to exhaust administrative remedies and prematurity."

All told, there is no error in the disquisition of judgment rendered by the court a quo, the same being in accord with the facts obtaining in the case and with the applicable law and jurisprudence.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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.

ERNESTO D. ACOSTA
Presiding Justice

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