REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SURFIELD DEVELOPMENT CORP.,
Petitioner,

- versus -

HON. CITY TREASURER AND HON. CITY ASSESSOR, MANDALUYONG CITY,
Respondents.

C.T.A. A.C. NO. 005

Members:

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

Promulgated:

JAN 05 2006

x - x

DECISION

CASANOVA, J.:

This is a Petition for Review before this Court filed on December 16, 2004, under Republic Act No. 9282, seeking the annulment or setting aside of the Decision rendered by Branch 212 of the Regional Trial Court of Mandaluyong City dated October 15, 2004, thereby dismissing the Petition for Mandamus filed by herein petitioner in the case entitled "Surfield Development Corporation vs. Hon. City Treasurer, Mandaluyong City and Hon. City Assessor, Mandaluyong City".

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

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at 2263 Pasong Tamo Extension, Makati City, Philippines. It is engaged in the business of real property development and it owns a parcel of land with improvements located at Mandaluyong City. On the other hand, respondents

City Treasurer and City Assessor of Mandaluyong City are impleaded in their official capacities as such with office address at the Office of the City Mayor, City Hall Compound, Mandaluyong City.

On the belief that the case of Suguitan vs. Marcelino (CA-G.R. SP No. 44155, December 22, 1997) nullified the Schedule of Zonal Values in the City of Mandaluyong, petitioner filed with the City Treasurer on March 28, 2001 its claim for refund for the alleged excess real estate tax payments it had paid for the years 1995 to 2000 in the amount of P8,048,368.44.

In a letter dated April 3, 2001, respondent City Treasurer replied that he could not act on petitioner's request "due to diverse opinions of the Supreme Court and the Court of Appeals in which one ruling uphold (sic) the validity of the council resolution while the other is adversed (sic) to the resolution".

On October 23, 2002, petitioner sent its last and final demand that respondent City Treasurer grant its claim for refund within five (5) days from his receipt of the demand letters.

In a letter dated November 5, 2002, the City Legal Department of Mandaluyong City denied petitioner's claim. Petitioner's motion for reconsideration thereof was likewise denied.

Thus, on the basis of the denial of its claim for refund, petitioner filed with the respondent City Treasurer, a Special Action for Mandamus on June 11, 2003 which was raffled to Branch 214 of the Regional Trial Court of Mandaluyong City and docketed as SCA No. MC 03-2142 to compel herein respondents to refund or issue a tax credit for the alleged excess real estate taxes it had paid during the years 1995 to 2000 in the amount of P8,048,368.44. Subsequently, an Amended Petition for Review was filed by petitioner to include the years 2001 to 2003 "because a further demand for a refund of taxes paid for the years 2001-2003 would be a futile exercise", thereby resulting to an increased claim of alleged excess real property taxes paid of P13,084,061.43.

On April 19, 2004, the case was re-raffled to Branch 212 of the Regional Trial Court of Mandaluyong City which rendered the assailed Decision on October 15, 2004 denying the Petition for Mandamus for lack of merit.

Hence, this petition with the following Assignment of Errors:

1. The lower court gravely erred in not finding the questioned ordinances void ab initio for violating PD 921;
2. The lower court gravely erred in not finding that the petitioner is entitled to a tax refund or credit;
3. The lower court gravely erred in not finding that the petitioner filed its claim for tax refund within the prescribed period;
4. The lower court gravely erred in not finding that the Doctrine of Exhaustion of Administrative Remedies does not apply in this case; and
5. The lower court gravely erred in not finding that a Petition for Mandamus is proper in this case.

Petitioner maintains that it is entitled to its claim for tax refund of excess real estate taxes on the ground that the real property tax ordinances, more particularly, Ordinance Nos. 119, S-1993 and 135, S-1994, issued by the City of Mandaluyong, are *void ab initio*, in view of the Supreme Court and the Court of Appeals' decisions in the cases of Ty vs. Trampe *(250 SCRA 500)*, Suguitan vs. Marcelino (*CA-G.R. SP No. 44155, December 22, 1997*) and Marcelino vs. Suguitan (*G.R. No. 141412, February 28, 2000*).

It is petitioner's submission that sometime in the year 1992 or 1993, respondent City Assessor of Mandaluyong City, all by himself and without participation from other city assessors in the Second Local Treasury and Assessment District, adopted a Schedule of Zonal Values for real properties in Mandaluyong City. Accordingly, in the case of Ty vs. Trampe, *supra,* the Supreme Court declared that a unilateral adoption of a schedule of zonal values by the City Assessor of Pasig City is null and void in violation of the provisions of Presidential Decree (P.D.) 921. In the preparation of a Schedule of Values of Real Properties in Metropolitan Manila, the Supreme Court held that the Local Government Code did not supersede nor dispense with the process as provided in Section 9 of P.D. 921. In this regard, there was a need to harmonize both the provisions of Republic Act (R.A.) 7160 and P.D. 921. Thus, the Supreme Court laid down therein the correct process to follow in the proper preparation of a schedule of values. And considering that this case is an *en banc* decision, and pursuant to the principle of *stare decisis et non quieta movere*, this Court is now bound by the doctrine established in the said case.

Likewise, petitioner argues that, in the case of Suguitan vs. Marcelino *(CA-G.R. SP No. 44155, December 22, 1997)*, the Court of Appeals resolved against the validity of Ordinance Nos. 119, S-1993 and 135, S-1994. Accordingly, there was nothing in the said Ordinances that would show that the schedule of market values was jointly prepared by the Assessors of the said cities and municipalities, thus:

> *"We have carefully examined the documentary evidence of the appellants, and searched in vain for proof of compliance with Section 9 of Presidential Decree No. 921. There is nothing in Ordinance 119, S-1993 and 135, S-1994 which shows that the Schedule of Base Unit Market Value in Section 5 of Ordinance No. 119, S-1993 was prepared jointly by the Assessors of the cities and municipalities comprising the Second District, conformably with Section 9 of Presidential Decree No. 921 and the procedure laid down by the Supreme Court in Ty vs. Trampe, supra."*

In disposing of the above case, the Court of Appeals held that:

> *"Clearly then, the court a quo committed a reversible error when it held that in this case there was compliance with Section 9 of Presidential Decree No. 921. We find that the Decision in Ty vs. Trampe, supra, which annulled the 1994 schedule of real property values in Pasig City applies as well to the schedule of market values for Mandaluyong City for the same assessment period, inasmuch as both cities belong to the same Local Treasury and Assessment District where there was no joint action taken by the Assessors concerned."*

Consequently, the case of Suguitan vs. Marcelino, *supra*, became final and executory on August 16, 2000 after the Supreme Court, in a Resolution dated February 28, 2000, resolved to deny respondent's Petition for Review on Certiorari, in the case entitled Marcelino vs. Suguitan, GR No. 141412.

On the same vein, petitioner is in disagreement with the lower court's reliance of the case of Figuerres vs. CA *(305 SCRA 206)*, for the same allegedly never established that the assailed Ordinance Nos. 119, S-1993 and 135, S-1994 complied with the provisions of P.D.

921. Accordingly, the Supreme Court did not rule nor made any pronouncement as to whether or not these assailed Ordinances were issued with the participation of the other city assessors in the Second Local Treasury and Assessment District in the adoption of the Schedule of Zonal Values for real properties in Mandaluyong City.

In addition, petitioner submits that this instant petition was filed within the two-year prescriptive period allowed by law within which to file its claim for tax credit or refund. Petitioner contends that, pursuant to Section 253 of the Local Government Code of 1991 (R.A. 7160), it has a period of two (2) years from the date it became entitled to the tax refund or credit within which to file its claim. In this case, when the Supreme Court upheld the nullity of the questioned ordinances, as found by the Court of Appeals, in a Resolution dated February 28, 2000, and the same having became final and executory on August 16, 2000, as evidenced by the Entry of Judgment of the Clerk of Court of the Supreme Court in the case of *Marcelino vs. Suguitan, supra*, it is on this latter date that petitioner became entitled to its claim for tax credit or refund. Therefore, the two-year prescriptive period within which to file its claim counting from August 16, 2000, petitioner's claim made on March 28, 2001 with the City Treasurer of Mandaluyong City was well within the prescribed period.

Lastly, petitioner asserts that the doctrine of exhaustion of administrative remedies does not apply to cases involving purely questions of law, to which it maintains that this instant case involves. Accordingly, the dispute relates not to the truth or falsehood of facts but rather, refers to the correct applicability of the law or jurisprudence to the case in dispute. In the recent case of **Information Technology Foundation of the Philippines, et. al. vs. Comelec, et. al., GR No. 159139, January 13, 2004**, the Supreme Court enumerated the following as exceptions to the doctrine of exhaustion of administrative remedies:

1. where there is a violation of due process;
2. **when the issue involved is purely a legal question**;
3. **when the administrative action is patently illegal amounting**

to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;
7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. **when the rule does not provide a plain, speedy and adequate remedy; and**
11. when there are circumstances indicating the urgency of judicial intervention.

(Emphasis supplied.)

Petitioner contests the lower court's argument that it took an "unwarranted shortcut" by not resorting to the legal remedies as provided under Sections 187, 226 and 252 of RA 7160 otherwise known as the Local Government Code of 1991. Apparently, petitioner cannot bypass the authority of the concerned administrative agencies and directly seeks redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Petitioner strongly disagrees.

Petitioner maintains that it had in fact filed its claim for refund or tax credit with the City Treasurer in accordance with Section 252 of R.A. 7160. Secondly, the remedies under Sections 187 and 226 are not plain, speedy and adequate remedies in the ordinary course of law for the petitioner. Thirdly, it would have been a waste of time to appeal to the Secretary of Justice, as well as, the Local Board of Assessment Appeals, to question the legality or validity of the questioned ordinances, when in fact, the Supreme Court, the highest tribunal of the land, and the Court of Appeals have already ruled on their nullity. Clearly then, there is no need for petitioner to exhaust administrative remedies, and the only proper remedy the petitioner can take is to file for a Petition for Mandamus, which the lower court had mistakenly dismissed.

On the other hand, respondents submit that this Court has no jurisdiction over the case. As pointed out by petitioner, this case involves purely questions of law. It is respondents' contention that with the elevation of this Court to the level of that of the Court of Appeals pursuant to R.A. 9282, all the rules which govern the Court of Appeals applies to this Court as well. Accordingly, this petition is in the nature of a first appeal to the Court of Tax Appeals from the decision rendered by the Regional Trial Court of Mandaluyong City in the exercise of its original jurisdiction. This appeal, therefore, partakes of an ordinary appeal under Rule 41 of the 1997 Rules of Civil Procedure. Consequently, under Section 2 of Rule 50 of the same Rules, "an appeal taken under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by the said court." This appeal, partaking of the nature of an ordinary appeal under Rule 41 of the same Rules, is modified only by the procedure and form which should be analogous to that of Rule 42. It is argued that Rule 42 refers to an appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction, which this case is not. Such being the case, this appeal is covered by the principles embodied in Rule 41 and Rule 50 of the 1997 Revised Rules of Civil Procedure.

Respondents further argues that petitioner's much-relied case of Ty vs. Trampe is not applicable in the case at bar, considering that in the said case, what was involved is the unilateral adoption of the Schedule of Zonal Values involving real properties located in Pasig City, thus, the City of Mandaluyong was never or even made a party thereto. It is stressed by respondents that the ruling in the case of Ty vs. Trampe does not automatically nullify the Schedule of Zonal or Market Values of real properties in Mandaluyong City, just because both the cities belong to the same Assessment District.

It is further alleged by the respondents that inspite of the fact that the Schedule of Zonal Values implemented by the City of Mandaluyong predated the decision in Ty vs. Trampe, there was still substantial compliance with the three steps as laid down in the said case, to wit:

1. There was Resolution 1-92 dated August 14, 1992 and the General Provisions on the Appraisal and Assessments of Building and other Structure which was prepared and adopted by the City and Municipal Assessors of the Second Assessment District consisting of Quezon City, San Juan, Pasig, Mandaluyong and Marikina;

2. Prior to August 14, 1992, the Metro Manila City and Municipal Assessors met on April 16, 1992 and discussed the general revision of the real property assessments and the preparation of the schedule of values, which is indicated in Resolution 1-92; and

3. On July 9, 1992, the City and Municipal Assessors of the Second Assessment District composed on Quezon City, San Juan, Pasig, Mandaluyong and Marikina convened and adopted the schedule of based unit market value for their district.

Subsequently, the schedule for values for the district contained and incorporated in Ordinance Nos. 119 S-1993 and 125 S-1994 were enacted and published in the newspaper of general circulation, Filipinas News (Annex "3", Affidavit of Publication, Answer/Comment), as a compliance with the requirements as laid down in the provisions of law.

Lastly, respondents are in agreement with petitioner's stand as to the applicability of the principle of *stare decisis et non quieta movere*. However, said principle should apply to cases involving the same issues. While there is no doubt that Ty vs. Trampe is a doctrinal ruling, nevertheless, respondents argue that, when petitioner filed its claim for refund, there was yet no ruling as to the nullity or constitutionality of the assailed Ordinances. The position of petitioner that the ruling in the case Ty vs. Trampe automatically nullified the assailed Ordinances is clearly misplaced.

With the above arguments and counter-arguments, the issues involved in this case may be summarized as follows:

1. Whether or not this Court has jurisdiction over the present petition;

2. Whether or not the lower court erred in not finding that the Petition for Mandamus was the proper remedy for petitioner;

3. Whether or not the ruling in the case of Ty vs. Trampe applies in the instant case;

4. Whether or not the assailed Ordinances 119 S-1993 and 135 S-1994 issued by the City of Mandaluyong were automatically nullified by the ruling in the case of Ty vs. Trampe; and

5. Whether or not petitioner is entitled to its claim for refund or credit or excess real estate taxes for the year 1995 to 2003.

As regards the first issue, under Section 7 (a)(3) and (a)(5) of Republic Act No. 9282, otherwise known as the Act Expanding the Jurisdiction of the Court of Tax Appeals, it is provided that:

Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. x x x
2. x x x
3. x x x
4. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.

Likewise, Section 11 of the same Act provides that:

Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Court may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiry of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to **decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure** with the CTA, which shall hear the case *en banc.*
x x x
(Emphasis and underscoring supplied.)

Pursuant to the law afore-quoted, the CTA has jurisdiction over decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals which appeal may be filed through a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

It must be emphasized that this Court is a court of special jurisdiction which is governed by the law which created it, as well as, the rules regarding procedural processes implemented by it. As such, it shall take cognizance of matters which are clearly within its jurisdiction. Undoubtedly, appeals of the decisions or rulings of the Regional Trial Court concerning real property taxes evidently do not fall within the jurisdiction of the CTA.

Moreover, Section 253 of the Local Government Code (R.A. 7160) provides for the legal procedures on claims for refund or issuance of tax credits for real property taxes which have been illegally or erroneously collected, thus:

> "SEC. 253. *Repayment of Excessive Collections.* -When an assessment of basic real property tax or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interest with the provincial or city treasurer within two (2) years form the date the taxpayer is entitled to such reduction or adjustment.
>
> The provincial or city treasurer shall decide the claim for refund or credit within sixty (60) days from receipt thereof. Incase the claim for refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of this Code."

Chapter 3, Title II, Book II of the Local Government Code (R.A. 7160) provides for the remedies which the aggrieved taxpayer may resort to. Under Section 226 thereof, it is provided that:

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

As pointed out by the lower court, petitioner is taking an unwarranted shortcut. The procedures laid down by law have not been properly followed by the petitioner. It must be stressed that claims for refund or issuance of tax credit certificates arising from the alleged illegality of the Schedule of Zonal Valuations adopted by the respondents must find recourse under pertinent provisions of the Local Government Code of 1991. Legal remedies, being made available for the taxpayer, may certainly be availed of. With the remedies available however, petitioner cannot hide under the guise of raising purely questions of law to circumvent the law on legal procedures. No matter how one looks at it, this case definitely involves a claim or credit of alleged excess real property taxes. Section 253 of the Local Government Code of 1991 lays down the legal procedures relative thereto. For failure of the petitioner to avail of the proper remedies allowed by law, this Court acquires no jurisdiction over the case.

The law provides for legal procedures to give chances to administrative bodies to reconsider its stand on the issues raised. Apparently, before the intervention of court is to be sought, it is a precondition that the aggrieved party must first avail of all the means afforded by the administrative processes. To quote the ruling of the lower court, *viz*:

> *"To the court's mind, the petitioner is taking an unwarranted short cut. It must be emphasized that petitioner's claim for tax refund/credit arose from the alleged illegality of the Schedule of Values adopted by respondents and incorporated in the assailed Ordinance No. 119, S-1993 of Mandaluyong City. Republic Act 7160, otherwise known as the Local Government Code of 1991 provides for legal remedies in cases where taxes are excessively assessed or collected by local government units. Under Section 187 of the said Code, it reads:*
>
> > "the procedure for approval of local tax ordinances and revenue measures xxx provided xxx provided, further, that any question on the constitutionality or legality of tax ordinances revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date or receipt of the appeal; Provided, however, that such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein: Provided, finally, that within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."
>
> *Under Section 226 of the aforecited Code, it provides:*

"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 xxx"

In Section 252, it states:

"(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 xxx, city treasurer xxx, who shall decide the protest within sixty (60) days from receipt.

(b) xxx

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protest 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 (60) 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."

Section 253 on the other hand provides:

"When an assessment of basic real property tax or any other tax levied under this title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interest with the xxx city treasurer within two (2) years form the date the taxpayer is entitled to such reduction or adjustment.

The City Treasurer shall decide the claim for refund or credit within sixty (60) days from receipt thereof. Incase the claim for refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II Book II of this Code."

Considering the foregoing, the petitioner cannot bypass the authority of the concerned administrative agencies and directly seeks redress from the court even on the pretext of raising a supposedly a pure question of law without violating the Doctrine of Exhaustion of Administrative remedy. Simply stated, before the petitioner could seek the intervention of the Court, it is a precondition as a rule that petitioner should first avail of all the means afforded by the administrative processes."

We see no reason to deviate from the above pronouncement of the lower court and uphold the same.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice