REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL POWER CORPORATION,
Petitioner,

C.T.A. AC No. 37
(CIVIL CASE NO. 4658-MN)

-versus-

MUNICIPAL GOVERNMENT OF NAVOTAS, SANGGUNIANG BAYAN OF NAVOTAS, AND MANUEL T. ENRIQUEZ, IN HIS CAPACITY AS MUNICIPAL TREASURER OF NAVOTAS,
Respondents.

Present:
Castañeda, Jr., Chairperson
Uy,
Enriquez, JJ.

Promulgated:
JUL 1 8 2008
1:50 p.m.

x- x

DECISION

CASTAÑEDA, JR., J.:

THE CASE

Before Us is a petition for review seeking the reversal of the Decision dated March 23, 2007 issued by the Regional Trial Court ("RTC") of Malabon City, Branch 74 which dismissed the case, docketed as Civil Case No. 4658-MN, due to lack of jurisdiction.

THE FACTS

National Power Corporation ("petitioner") is a government owned and controlled corporation organized and existing under and by virtue of Republic Act ("R.A.") No. 6395, as amended, with its principal address located at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City.

On the other hand, the Municipal Government of Navotas ("respondent"), a local government unit vested with the authority to assess and collect real property taxes under R.A. 7160, or also known as "the 1991 Local Government Code", may be served with summons and court processes through the Municipal Mayor, at the Muncipal Hall Building, Navotas, Metro Manila.

Sangguniang Bayan of Navotas ("respondent"), a legislative body, may be served summons and other court processes through the Vice Mayor as the presiding officer, at the Municipal Hall Building, Navotas, Metro Manila.

Municipal Treasurer Manuel T. Enriquez ("respondent") may be served with summons and other court processes at the Municipal Hall Building, Navotas, Metro Manila.

On November 16, 1988 and June 29, 1992, Mirant Navotas Corporation ("Mirant I"), Mirant II Corporation ("Mirant II') and the petitioner separately entered into Build, Operate and Transfer ("BOT") agreements, specifically for the construction, operation, and eventual transfer to the latter of the gas turbine power stations MNC-I and MNC-II situated at Roxas Boulevard Extension, Navotas. The parties further stipulated that Mirant I and Mirant II shall operate the machineries of the turbine power stations; while petitioner shall undertake the actual and direct control, supervision of the power stations and payment of taxes, except business taxes.[1]

During the first quarter of 2003, petitioner paid the real property taxes due in the amount of P3,382,715.88 pertaining to the machineries of the MNC-I power station, and the amount of P4,973,869.83 for MNC-II power station.[2]

[1] See p.5, Annexes G and H of the petition for review.
[2] See p.7 of the petition for review.

On March 24, 2003, Mirant I turned over power station MNC-I to petitioner, in compliance with the BOT agreement executed on November 16, 1988.[3]

In the letter dated March 30, 2004 addressed to respondent Municipality of Navotas through Municipal Assessor Ma. Corazon DC. Berciles, petitioner subsequently discontinued payment of real property taxes claiming exemption under Section 234 (c) of R.A. 7160.[4]

On May 25, 2005, Mirant II received notices of real property tax assessments in the cumulative amount of P 148,298,339.15 for the period of taxable years 2003 (2nd, 3rd, and 4th quarters), 2004 and 2005.[5]

In another letter dated July 26, 2005, the petitioner reiterated that the subject machineries are exempt from real property taxes pursuant to Section 234 (c) of R.A. 7160.[6]

Mirant II eventually transferred possession of power station MNC-II to petitioner on August 1, 2005, pursuant to the June 29, 1992 BOT agreement.[7]

On November 21, 2005, Mirant II received a warrant of levy from the respondent Municipal Treasurer Manuel T. Enriquez.[8] It likewise

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[3] See Annex G of the petition for review.
[4] See p.8 and Annex F of the petition for review.
[5] See p. 5 and Annexes B, C, D and E of the petition for review.
[6] See Annex I of the petition for review.
[7] See Annex H of the petition for review.
[8] See p. 9 and Annex J of the petition for review.

received from the same official two (2) notices of sale of delinquent real property of the subject machineries.[9]

Dissatisfied, on December 16, 2005, petitioner filed a petition for declaratory relief, annulment of notice of delinquency, warrant of levy and notice of sale with prayer for the issuance of a writ of preliminary injunction and temporary restraining order (TRO), docketed as Civil Case No. 4658-MN before the Regional Trial Court ("RTC") of Malabon, Branch 74 against the respondents.[10]

Meanwhile, on December 21, 2005, the respondent Municipality of Navotas proceeded with the scheduled public auction, and the subject machineries were forfeited in its favor since there were no bidders during the sale.[11]

In ruling for the respondents, the RTC issued a Decision dated March 23, 2007 dismissing the petition due to lack of jurisdiction.[12] The trial court reasoned that petitioner earlier failed to appeal the real property tax assessments to the Local Board of Assessment ("LBAA") and Central Board of Assessment Appeals ("CBAA").

Unfazed, on July 27, 2007, the petitioner appealed to this Court by way of a petition for review with application for temporary restraining

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[9] See p. 9 and Annexes K and L of the petition for review.
[10] See p. 10 of the petition for review.
[11] Id.
[12] See Exhibit A of the petition for review.

order and/or order of suspension of collection and writ of preliminary injunction assailing the trial court's verdict.

ISSUE

For this Court's consideration, the petitioner interposes the sole ground that:

> "THE TRIAL COURT ERRED IN HOLDING THAT APPEALS TO THE LBAA AND CBAA, AND PAYMENT UNDER PROTEST OF THE ASSESSED REAL PROPERTY TAXES ARE REQUIRED BEFORE ITS PETITION DATED DECEMBER 12, 2005 (AS AMENDED ON JANUARY 5, 2006) FOR DECLARATORY RELIEF MAY BE GIVEN DUE COURSE."[13]

To preserve the status quo of the parties pending appeal, this Court issued a Resolution dated December 17, 2007 granting petitioner's motion to suspend the collection of taxes.

RULING

Petitioner alleges that the appeals to the LBAA and CBAA, including the payment under protest are not required when what is being contested is not the reasonableness, but the legality of the assessment such as in the case at bar. It further contends that assuming for the sake of argument, the subject machineries are subject to real property taxes, the warrant of

[13] See p. 11 of the petition for review.

levy and notice of sale of delinquent real property should still be nullified because said notice does not contain the following wordings under Section Section 254(b) of R.A. 7160:

> "unless the tax, surcharges and penalties are paid before the expiration of the year for which the tax is due, except when the notice of assessment or special levy is contested administratively or judicially xxx, the delinquent real property will be sold at public auction xxx."[14]

Clearly, the warrant of levy is void which stems from a defective notice of sale of delinquent real property absent any wordings of demand which is required before a public auction takes place.

In their comment to the petition, respondents argue that a judicial action necessitates a previous appeal to the LBAA and CBAA on the disputed real property tax assessments. Contrary to the petitioner's assertion, the requirement of payment under protest is not a denial of due process. They likewise maintain that Section 254(b) of R.A. 7160 does not treat as invalid a notice of sale of delinquent real property and impose any penalty, absent any wordings of demand to pay tax, surcharges and penalties. Any defect in the notice of sale of delinquent real property, if any, was cured by notices of levy and sale that were subsequently issued by the municipal treasurer's office.

The petition is devoid of merit.

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[14] Section 254 (b) of R.A. 7160.

THE PETITION FOR REVIEW IS DISMISSIBLE DUE TO LACK OF JURISDICTION UNDER SECTION 7(a)5 of R.A. 9282

Petitioner appealed before this Court the Decision dated March 23, 2007 issued by the trial court which dismissed the action for declaratory relief, annulment of notice delinquency, warrant of levy, notice of sale and public auction sale on the basis of lack of jurisdiction. Section 7 of R.A. 9282[15] provides the jurisdiction of the Court of Tax Appeals on the following cases:

> Sec. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

[15] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES which took effect on April 23, 2004.

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention, or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) 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;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1)Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One Million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized. ge

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by the, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges, and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.

Section 7 (a) (5) of R.A. 9282 specifically vests upon this Court jurisdiction over rulings of the CBAA acting in its appellate jurisdiction on the assessment and taxation of real property taxes originally decided by the LBAA. Otherwise stated, as a precondition to an appeal with this Court, there must be a Decision issued by both the LBAA and CBAA on the propriety of the imposition of real property taxes, in accordance with Sections 226 and 229 (c) of R.A. 7160 which provide:

> 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.
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> SEC. 229. *Action by the Local Board of Assessment Appeals.* -
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> xxx xxx xxx
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> (c) xxx 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 the said Board, appeal to the Central Board of Assessment Appeals,** as herein provided. xxx.

This Court agrees with the findings of the trial court that petitioner bypassed the authority of the LBAA and CBAA to rule on the propriety of respondent Municipal Government of Navotas' issuance of the questioned assessments. Upon knowledge of the tax delinquencies against Mirant I and Mirant II, petitioner informed the Navotas Municipal Assessor of the exemption of the subject machineries and equipment from real property taxes, under Section 234 (c) of R.A. 7160. It (petitioner) later sought redress with the trial court which dismissed the action for declaratory relief, annulment of notice of delinquency, warrant of levy, notice of sale and public auction due to lack of jurisdiction because the real property tax assessments against Mirant I and Mirant II were never contested before the LBAA and CBAA, under Sections 226 and 229 (c) of R.A. 7160. The failure of the petitioner or Mirant I and Mirant II to dispute the real property tax assessments before these administrative bodies rendered these assessments final and collectible. Since the RTC does not have jurisdiction over the case at bar, there is more reason to dismiss petitioner's appeal with this Court on the same ground.

Although real property taxes are in the nature of local taxes, the wordings of Section 7(a)(5) of R.A. 9282 unequivocally refer to real property taxes. Where the language of the law is clear, it must be applied according to its express terms.[16] *Absolute Sententil expositore non indiget.* There is no ambiguity in the rule.[17]

Petitioner cannot invoke Section 7(a)(3) of the same law as basis for this Court to take cognizance of the RTC's Decision dated March 23, 2007. Said provision refers to the CTA's jurisdiction on decisions, orders or resolutions of the RTCs in local taxes cases decided or resolved by them in the exercise of their original or appellate jurisdiction. Local tax cases pertain to taxes imposed by local government units, other than real

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[16] *Ang Bagong Bayani-OFW Labor Party vs. Commission on Elections*, G.R. Nos. 147589 and 147613, June 26, 2001, 359 SCRA 698.
[17] *Enrico vs. Sps. Medinaceli*, G.R. 173614, September 28, 2007, 534 SCRA 418.

property taxes. In drafting R.A. 9282, Congress would not have made a separate proviso, specifically Section 7(a)5, if lawmakers intended real property taxes to be within the purview of the definition of local taxes.

Section 7(a) 5, a special provision, specifically pertaining to real property taxes must take precedence over Section 7(a) 3, a general provision relating to any kind of local taxes. A particular provision is favored as against a general provision.[18]

THE CTA DOES NOT HAVE JURISDICTION OVER PETITIONS FOR DECLARATORY RELIEF AND APPEALS FROM THESE CASES

In the same manner, it is not within the scope of this Court's jurisdiction to rule on declaratory relief cases or appeal from these cases. Being a court of special and limited jurisdiction, this Court can only act on cases that are clearly conferred by the Constitution and law, and should not be deemed to exist on mere implication.[19]

The proper forum for an action for declaratory relief should be before the RTC, and appeal thereof with the Court of Appeals in

[18] *Vinzons-Chato vs. Fortune Tobacco Corporation*, G.R. 141309, June 19, 2007, 525 SCRA 11 citing *Bagatsing v. Ramirez*, G.R. L-41613, December 17, 1976, 74 SCRA 306.
[19] *Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, G.R. No. 158540, July 8, 2004, 434 SCRA 65.

accordance with Sections 1 and 5, Rule 63 of the 1997 Rules of Civil Procedure and Section 2(a) of Rule 41 of the same Code[20], reading:

RULE 63
DECLARATORY RELIEF AND SIMILAR REMEDIES

SECTION 1. *Who may file petition.* - Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate **Regional Trial Court** to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

xxx xxx xxx

SEC. 5. *Court action discretionary.* – Except in actions falling under the second paragraph of Section 1 of this Rule, the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under circumstances.

xxx xxx xxx

RULE 41
APPEAL FROM THE REGIONAL TRIAL COURTS

Sec. 2. Modes of appeal. –

(a) Ordinary appeal. – The appeal to the **Court of Appeals** in cases decided by the Regional trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x

[20] The 1997 Rules of Civil Procedure took effect on July 1, 1997.

An action for declaratory relief requires that the controversy must be ripe for judicial determination[21], and it must be filed before there is a breach or violation[22]. These requirements are wanting in the instant case. Since the petitioner did not question with the LBAA and CBAA on whether or not the subject machineries are exempt from real property taxes, the action for declaratory relief and appeal thereof filed by the petitioner are not ripe for judicial determination. Also, there exists a violation of the law because the real property taxes assessed by the respondent Municipal Government of Navotas for the period of taxable years 2003(2nd to 4th quarters), 2004 and 2005 remain due, and unpaid. Clearly, the action for declaratory relief and the appeal thereof, are not the appropriate actions against the respondents.

In the case of *Garcia, Jr. vs. The Sandiganbayan*[23], the Supreme Court made it clear that the Sandiganbayan, also a court with only special and limited jurisdiction cannot exercise jurisdiction over petitions for prohibition, mandamus and quo warranto because at the time of the promulgation of that case there was no specific statutory grant of ge

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[21] See Florence Regalado, Remedial Law. 1997 Edition, p. 693 citing *Tolentino vs. The Board of Accountancy*, et. al., L-3062, September 28, 1951, 90 Philippine Reports 83.
[22] See Section 1, Rule 63 of the 1997 Rules of Civil Procedure.
[23] G.R. No. 114135, October 7, 1994, 237 SCRA 552.

jurisdiction to issue said extraordinary writs. Citing *Garcia vs. De Jesus*[24] *case*, the Supreme Court further explained that:

> It is settled that the authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law. In *Garcia vs. De Jesus*, this Court stated: "In the Philippine setting, the authority to issue Writs of Certiorari, Prohibition and Mandamus involves the exercise of original jurisdiction. Thus, such authority has always been expressly conferred, either by the Constitution or by law. As a matter of fact, the well-settled rule is that jurisdiction is conferred only by the Constitution or by law. xxx It is never derived by implication. Indeed, '(w)hile the power to issue the writ of certiorari is in some instance conferred on all courts by constitutional or statutory provisions, ordinarily, the particular courts which have such power are *expressly designated.' xxx*
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> Thus, our Courts exercise the power to issue Writs of Certiorari, Prohibition and Mandamus by virtue of express constitutional grant or legislative enactments. To enumerate: (1) Section 5[1], Article VIII of the 1987 Constitution conferred upon this Court such jurisdiction; (2) Section 9[1] of Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, to the Court of Appeals (then Intermediate Appellate Court); (3) Section 21[1] of the said Act, to the Regional Trial Courts; (4) Section 5[1] of Republic Act No. 6734, or the Organic Act for the Autonomous Region in Muslim Mindanao, to the newly created Shari'ah Appellate Court; and, (5) Article 143[e], Chapter I, Title I, Book IV of Presidential Decree No. 1083, or the Code of Muslim Personal Law, to Shari'ah District Courts.
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> With respect to petitions for *quo warranto* and *habeas corpus*, original jurisdiction over them is expressly conferred to this Court by Section 5(1), Article VIII of the Constitution and to the Court of Appeals and the Regional Trial Courts by Section 9(1) and Section 21(1), respectively, of B.P. Blg. 129.
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> **In the absence then of a specific statutory grant of jurisdiction to issue the said extraordinary writs, the Sandiganbayan, as a court with only special and limited jurisdiction, cannot exercise jurisdiction over the petition for prohibition, *mandamus*, and *quo warranto* filed by petitioner. xxx**

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24 G.R. Nos. 88158 and 97108-09, March 4, 1992, 206 SCRA 779.

Sensing the urgency to expand the jurisdiction of the Sandiganbayan in response to the *Leon Garcia, Jr. vs. Sandiganbayan* Decision, Congress enacted R.A. 7975[25], also known as "*An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending For That Purpose Presidential Decree No. 1606, as Amended*" to include within the appellate Court's jurisdiction petitions for the issuance of writs of mandamus, prohibition, certiorari, habeas corpus, injunction, and other ancillary writs and processes in aid of its appellate jurisdiction."[26] Applying the case of *Leon Garcia, Jr. vs. Sandiganbayan*, this Court is divested jurisdiction over declaratory relief cases or appeal thereof, in the absence of any statutory or constitutional mandate.

PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

Exhaustion of administrative remedies before the LBAA and CBAA is mandatory, and a prerequisite in availing judicial remedies as enunciated in the case of *Republic vs. City of Kidapawan.*[27] In that case, among the issues raised therein, is whether or not PNOC-EDC is liable to pay real

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[25] This law took effect on May 6, 1995.
[26] See Section 4(c)(3rd paragraph) of R.A. 7975.
[27] G.R. 166651, December 9, 2005, 477 SCRA 324 citing *System Plus Computer College of Caloocan City v. Local Government of Caloocan City,* G.R. 146382, August 7, 2003, 408 SCRA 494. See Angeles, Joseph, Restatement of the Law on Local Governments, 2005 Edition, p. 283.

property taxes, and if the machineries, equipment, buildings and other infrastructures found in the Mt. Apo National Park may be levied, all involving questions of law. The case of *Republic vs. City of Kidapawan* is instructive:

> **PNOC-EDC also claims that the real property tax assessment is not yet final and executory. It avers that prior resort to administrative remedies before seeking judicial remedies is not necessary considering that the issue raised is purely a question of law. Consequently, it need not appeal the assessment to the Local Board of Assessment Appeals or to the Central Board of Assessment Appeals as provided under Sections 226 and 229 of the LGC.**
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> **We disagree. It is well-settled in System Plus Computer College of Caloocan City v. Local Government of Caloocan City that all administrative remedies must be exhausted before availing of the judicial remedies. Thus:**
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>> **The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek 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. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein.** Otherwise stated, before seeking intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.
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> **If PNOC-EDC was not satisfied with the assessment of its property, it should have appealed to the Local Board of Assessment Appeals within 60 days from receipt of the written notice of assessment. Instead, it waited until the issuance of a warrant of levy before it filed a petition for injunction in the regional trial court, which was not in accordance with the remedies provided in the LGC.**[28]

[28] *Republic vs. Kidapawan*, supra.

Similarly, in the case of *FELS Energy, Inc. and National Power Corporation vs. Province of Batangas, et.al*[29], one of the issues interposed by the parties is whether or not the power barges are exempt from real property taxes under R.A. 7160, another question of law similarly raised here, specifically when the case was with the RTC. In ruling for the respondents, the Supreme Court in the FELS Energy case concurred with findings of the Court of Appeals that the right to question the Provincial Assessor's assessment had already prescribed upon failure of FELS to appeal the disputed assessment to the LBAA within the reglementary period. Pertinent excerpts of the FELS Energy case are as follows:

> Instead of appealing to the Board of Assessment Appeals (as stated in the notice), NPC opted to file a motion for reconsideration of the Provincial Assessor's decision, a remedy not sanctioned by law. xxx
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> We fully agree with the rationalization of the CA in both CA-G.R. SP No. 67490 and CA-G.R. SP No. 67491. The two divisions of the appellate court cited the case of Callanta vs. Office of the Ombudsman, where we ruled that under Section 226 of R.A. 7160, **the last action of the local assessor on a particular assessment shall be the notice of assessment; it is this last action which gives the owner of the property the right to appeal to the LBAA. The procedure likewise does not permit the property owner the remedy of filing a motion for reconsideration before the local assessor. x x x**
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> To reiterate, if the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the taxpayer's property becomes absolute upon the expiration of the period to appeal. It also bears stressing that the taxpayer's failure to question the assessment in the LBAA renders the assessment of the local assessor final, executory and demandable, thus, precluding the taxpayer from questioning the correctness of the assessment, or from

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[29] G.R. 168557 and 170628, February 16, 2007, 516 SCRA 186.

> invoking any defense that would reopen the question of its liability on the merits.
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> In fine, the LBAA acted correctly when it dismissed the petitioners' appeal for having been filed out of time; the CBAA and the appellate court were likewise correct in affirming the dismissal. [30]

This Court has consistently ruled on the importance of a previous appeal to the LBAA and CBAA. Thus, the petitioner is oblivious of the fact that in the case entitled, "*National Power Corporation vs. Central Board of Assessment Appeals, et. al.*", and docketed as CTA EB No. 51, recourse was earlier made with the LBAA and CBAA. CTA EB No. 51 was subsequently consolidated with another case entitled, "*Bauang Private Power Corporation ("BPPC") vs. Sangguniang Panlalawigan of La Union, et. al.*", and docketed as CTA EB No. 58[31], both involving cases primarily seeking to determine whether or not the machineries and equipment of the 215 megawatt Bauang ("BPPC") diesel power plant are exempt from real property taxes under 234 (c) of R.A. 7160, a question of law. In the Decision dated February 13, 2006, the CTA *en banc* emphasized BPPC's failure to observe exhaustion of administrative remedies on the ground that it did not previously elevate the case with the LBAA resulting to the dismissal of BPPC and NPC's petitions.[32] In the Resolution dated July 10, 2006, the CTA *en banc* affirmed the Decision dated February 13, 2006 and

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[30] Id.
[31] See CTA En Banc Decision dated February 13, 2006.
[32] Id.

stressed BPPC's failure to file a timely protest against the real property tax assessment notice. Thereafter, petitioner appealed to the Supreme Court which issued a Resolution dated October 4, 2006 denying its petition "for failure of the petitioner to sufficiently show that the Court of Tax Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction".[33] In the Resolution dated February 26, 2007, the Supreme Court denied with finality BPPC's Motion for Reconsideration.[34]

In another case entitled, "*National Power Corporation vs. Province of Quezon, et. al.*", and docketed as CTA EB No. 46[35], petitioner previously filed an appeal with the LBAA and CBAA, also seeking exemption from payment of real property tax on the machineries of the Pagbilao Power Plant pursuant to Section 234 (c) of R.A. 7160, and consequently elevating the case to the CTA *en banc*. Evidently, petitioner is aware that an appeal to the LBAA and CBAA is necessary on matters involving real property tax assessments prior to judicial action before this Court. Based on CTA EB Nos. 51, 58 and 46, the CTA *en banc* took cognizance of cases involving real property taxes decided by the CBAA and LBAA. There is no justifiable reason why the CTA in Division should now take a different position.

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[33] G.R. No. 173811, October 4, 2006 SC Resolution.
[34] G.R. No. 173811, February 26, 2007 SC Resolution.
[35] See CTA En Banc Decision dated February 21, 2006.

PETITIONER'S RELIANCE WITH THE TY VS. TRAMPE[36] CASE IS MISPLACED

To further bolster its stand, petitioner relies on the *Ty vs. Trampe* case where the Supreme Court declared that a judicial action may prosper, without resort to exhaustion of administrative remedies only if the controversy involves pure question of law.

A careful examination of the Trampe case vis-à-vis with the instant case shows that the two cases pertain to divergent factual circumstances. In the former case, Ty and MVR Picture Tube, Inc. brought to the Supreme Court's attention by way of a petition for review of the erroneous ruling of the RTC which considered as valid the tax assessments based on the schedule of market values solely issued by the Pasig Municipal Assessor. Simply stated, the taxpayers in that case are questioning the authority of the Pasig Municipal Assessor to prepare the schedule of market values.

While in the case at bar, petitioner never questioned the authority of the Municipal Assessor to issue the real property tax assessment notices, nor the validity of the schedule of market values. Instead, petitioner filed a petition for declaratory relief, annulment of notice of delinquency, warrant of levy, notice of sale and public auction sale before the RTC on

[36] G.R. 117577, December 1, 1995, 250 SCRA 500.

the issue of whether or not the machineries used in the Navotas power station are exempt from real property taxes, under Section 234 (c) of the R.A. 7160. When the trial court dismissed petitioner's action due to lack of jurisdiction, the taxpayer appealed to this Court via a petition for review.

At any rate, the petition is dismissible as the real property tax assessments became final and collectible for failure of the petitioner to question these assessments before the LBAA and CBAA within the reglementary period.

Considering that the Court is bereft of jurisdiction over the instant case under Section 7 of R.A. 9282, and the petitioner failed to exhaust administrative remedies based on Sections 226 and 229 (c) of R.A. 7160, there is no cogent reason to resolve the merits of the petition.

WHEREFORE, premises considered, the RTC's Decision dated May 23, 2007 is **SUSTAINED**. The petition is hereby **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

See attached Dissenting Opinion

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice