REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

MARIETA A. BONDAD, in her capacity as Municipal Treasurer, and JOEL D. TINGBAOEN, in his capacity as the MUNICIPAL ASSESSOR, both of the Municipality of Mankayan, Benguet,
Respondents.

C.T.A. AC NO. 96

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, and
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

AUG 16 2013
4:20 p.m.

x - x

DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Lepanto Consolidated Mining Company, seeking the reversal, setting aside and annulment of the Resolution[2] dated April 3, 2012 (the "Assailed Resolution") and Order[3] dated July 17, 2012 (the "Assailed Order"), both rendered by Branch 64 of the Regional Trial Court (RTC) of Abatan, Buguias, Benguet in Civil Case No. 6410-CV-117 entitled "*Lepanto Consolidated Mining Company vs. Marieta A. Bondad, in her capacity as Municipal Treasurer, and the Municipal Assessor, both of the Municipality of Mankayan, Benguet*".

---

[1] Docket, pp. 7-40
[2] Annex "B" to Petition for Review
[3] Annex "A" to Petition for Review

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

Petitioner is a corporation duly organized and existing under Philippines laws with principal offices at the 21st Floor, BA-Lepanto Building, Paseo de Roxas, Makati City, where notices, pleadings, resolutions and other orders may be served.[4]

Respondent Marieta A. Bondad is of legal age, married, resident of Mankayan, Benguet and the incumbent Municipal Treasurer of the Municipality of Mankayan, Benguet with office address at Mankayan Municipal Hall, Mankayan, Benguet, where she may be served with notices and processes of this Honorable Court.[5]

Respondent Joel D. Tingbaoen is of legal age, married, resident of Mankayan, Benguet and the then Municipal Assessor of Mankayan, Benguet (who issued the questioned assessment) with office address at the Mankayan Municipal Hall, Mankayan, Benguet, where summons, orders and other court processes may be served.[6]

Petitioner is a large scale mining company with more or less forty (40) units of mobile mining equipment known as Load Haul and Dump Equipment ("LHD") used in its mining operation.

Petitioner has paid the real property tax on these LHD equipment over the decades but not after the issuance of Local Finance Circular No. 2-09 on August 20, 2009, by the Department of Finance (DOF) declaring mobile equipment such as dump trucks, excavators, bulldozers, payloaders, used in mining operations, such as petitioner's LHDs (Load Haul and Dump equipment) as personal properties and therefore not subject to real property taxation.[7]

On January 21, 2010, petitioner, through its Finance Manager, Nelson B. Varilla, wrote a letter[8] to respondent Municipal Assessor (copy furnished the Municipal Treasurer), stating that petitioner will no

[4] Petition for Review, par. 1, Docket, p. 7
[5] Ibid, par. 2, Ibid, pp. 7-8
[6] Id., par. 1, Id, p. 8
[7] Id., par. 5, Id., p. 10
[8] Annex "D" to Petition for Review

longer pay the taxes on its loader equipment as these are allegedly exempt from Real Property Tax pursuant to DOF Local Finance Circular No. 2-09 of the Department of Finance, and, requesting that the tax assessment on its loader equipment be cancelled.

On June 1, 2010, respondent Municipal Treasurer sent a notice of assessment[9] to petitioner demanding payment of realty taxes on its properties including its loader equipment.

Since the June 1, 2010 notice of assessment of respondent Municipal Treasurer had effectively denied petitioner's request for cancellation of the tax assessment on its loader equipment (LHDs), petitioner, thereafter, filed, on August 6, 2010, a Petition[10] with the Regional Trial Court of Abatan, Buguias, Benguet, Branch 64, docketed as Civil Case No. 6410-CV-117, contesting the assessment on its LHDs for being contrary to the provisions of DOF Local Finance Circular No. 2-09.

On September 29, 2010, respondents filed their Comment/Answer With Affirmative Defense[11] interposing the following affirmative defense, to wit:

> "c. This case falls within the primary jurisdiction of the Board of Assessment Appeals
>
> x x x x x x x x x
>
> d. Petitioner should have paid the Real Property Tax under protest as a condition precedent to their Appeal.
>
> x x x x x x x x x"

In the hearing[12] of respondent's Affirmative Defense of lack of jurisdiction held on December 8, 2010, the RTC, Br. 64 (the "RTC") , ordered both parties to file their respective memorandum on the matter of jurisdiction, after which, the incident will be submitted for resolution.

---

[9] Annex "E" to Petition for Review
[10] Annex "F" to Petition for Review
[11] Annex "G" to Petition for Review
[12] Order, RTC Docket, p. 54

On March 15, 2011, an Order[13] was promulgated by the RTC resolving respondent's affirmative defense of lack of jurisdiction as follows:

> "**WHEREFORE**, finding the Motion to Dismiss incorporated in the Answer, to be without legal basis, the same is hereby denied.
>
> Pre-Trial conference is hereby set on March 30, 2011.
>
> **SO ORDERED**."

On June 29, 2011, the RTC issued an Order[14] ordering petitioner to file a Memorandum on Appeal within twenty (20) days from date of the Order and the respondents were given twenty (20) days from receipt of petitioner's Memorandum on Appeal to file their Reply Memorandum, after which, the Appeal will be deemed submitted for resolution.

Memorandum[15] (For the Petitioner) was filed on August 1, 2011 while respondents filed their Memorandum[16] on October 3, 2011.

On October 19, 2011, the RTC promulgated a Decision[17], the dispositive portion of which reads:

> "**WHEREFORE**, judgment is hereby rendered:
>
> 1. Declaring Respondents' letter, dated June 1, 2010, denying petitioner's written request, dated January 21, 2010, to be of no legal force and effect;
>
> 2. Declaring the current tax assessments of petitioner's "Load Haul Dump" mining equipments, issued by respondent-Mankayan, Benguet, as null and void; and

[13] Order, Ibid, pp. 77-80
[14] Order, Ibid, p. 119
[15] RTC Records, pp. 122-130
[16] Ibid, pp. 158-162
[17] Ibid, pp. 164-170

3. Ordering the Respondents to delete from their assessment records the tax assessments of all "Load Haul and Dump" (LHD) mining equipments of Petitioner, as real properties.

SO ORDERED."

On November 17, 2011, respondents filed their Motion for Reconsideration[18] while petitioner filed its Motion to Admit Belated Comment, with the Comment to Defendants' Motion for Reconsideration[19] attached thereto, on January 17, 2012.

On April 3, 2012, a Resolution[20] was promulgated by the RTC, resolving respondent's Motion for Reconsideration and rendering a new judgment, the dispositive portion of which reads as follows:

"**WHEREFORE**, finding merit to the Motion for Reconsideration, filed by Respondents, the same is hereby granted. The Decision, dated October 19, 2011, is hereby reconsidered and set aside, and a new judgment is hereby rendered:

1. Declaring Respondents' letter, dated June 1, 2010, denying Petitioner's written request, dated January 21, 2010, to be with legal force and effect;

2. Declaring the current tax assessment of Petitioner's "Load Haul Dump" mining equipments, issued by Respondent-Mankayan, Benguet, as valid; and

3. Order the Respondents to maintain from their assessment records the tax assessments of all "Load Haul and Dump" (LHD) mining equipments of Petitioner, as real properties.

---

[18] Id., pp. 178-182
[19] Id., pp. 186-189
[20] Id., pp. 191-195

SO ORDERED."

On April 19, 2012, petitioner filed its Motion for Reconsideration [Of the Resolution dated April 2, 2011][21] while respondents filed, on June 21, 2012, their Motion to Admit Belated Comment, with the Comment (To the Motion for Reconsideration filed by Petitioner)[22] attached thereto.

On July 17, 2012, the RTC denied petitioner's Motion for Reconsideration [Of the Resolution dated April 2, 2012], through an Order[23] promulgated on the same date.

Hence, the instant Petition for Review filed on August 17, 2012, where petitioner submitted the following legal issue[24] for resolution of this Court, to wit:

> "Whether or not petitioner's LHD (Load Haul and Dump) mobile equipment are considered real properties for purposes of real property taxation."

On October 8, 2012, respondents filed their Comment (To the Petition for Review of Petitioner)[25].

In a Resolution[26] promulgated on October 22, 2012, this Court ordered the parties to file their simultaneous memoranda within thirty (30) days from receipt of the notice. Upon receipt of the parties' memoranda or the expiry of the period granted, the instant petition shall be considered submitted for resolution.

Petitioner filed its Memorandum[27] on November 22, 2012 while respondents filed their Memorandum[28] on December 14, 2012. The

[21] Id., pp. 201-217
[22] Id., pp. 244-250
[23] Id., pp. 251-254
[24] Issue, Petition for Review, CTA Docket, p. 16
[25] CTA Docket, pp. 169-173
[26] Ibid, p. 180
[27] Id., pp. 181-211
[28] Id., pp. 220-229

case was considered submitted for decision per Resolution[29] promulgated by this Court on January 8, 2013.

To support its Petition, petitioner submitted the following arguments and grounds:

I.

The LHD Mobile Equipment are considered personal properties and therefore, are not subject to realty taxes.

A. The LHDs cannot be considered immobilized by destination. They are merely incidentals and petitioner's mining operation can continue and be carried on without the use of such equipment. They are simply used for convenience to facilitate and improve the loading and hauling of earth materials extracted from the ground.

B. Petitioner's mining industry is not being carried on in a building or permanently on a piece of land.

II.

There is no inconsistency, conflict much less discrepancy between the provisions of article 415(5) of the Civil Code, Section 199(o) of the Local Government Code and the Benguet Revenue Ordinance No. 05-107, on one hand, and Sec. 9 of Local Finance Circular No. 2-09 of the Department of Finance, on the other, the latter circular did not amend much less expand the provisions of the former laws regarding the definition of machines as real property and their tax ability.

III.

Local Finance Circular No. 2-09 enjoys the presumption of legality and validity. RTC 64 erred in declaring the nullity of said circular considering the absence of a legal proceeding directly attacking its validity and the failure of respondents to duly plead such issue in the trial court.

---

[29] Id., p. 231

IV.

> A special and specific provision, such as Sec. 9 of Local Finance Circular No. 2-09 prevails over the general provisions under Article 415(5) of the Civil Code and Section 199(o) of the Local Government Code. *Generalia Specialibus Non Derogant.*

Respondent, on the other hand, counterargues that Local Finance Circular No. 2-09 issued by the Department of Finance "blatantly amended Article 415 of the Civil Code when the department circular changed the definition of machineries; that, under Article 415(5) of the Civil Code and Section 199(o) of the Local Government Code, petitioner's LHDs are clearly to be considered as real property for taxation purposes; that, the LHD machines were purposely manufactured to meet the needs of the mining industry only and not of any other industry; and, by its nature and purpose are designed to be used by the mining industry; that, to be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute and, as such it cannot amend the law either by abridging or expanding its scope.[30]

After a careful and thorough evaluation of the records of the case as well as the arguments of both parties in their memoranda, We find no merit in the Petition for Review.

The crux of the controversy lies on the issuance of Local Finance Circular No. 2-09 on August 20, 2009 by the Department of Finance declaring mobile equipment such as dump trucks, excavators, bulldozers, payloaders used in mining operations, such as petitioner's Load Haul and Dump (LHD) equipment, as personal properties and, therefore, not subject to realty taxes.

In the determination of the classification of petitioner's LHDs i.e. whether they are real or personal property, a review of the relevant laws, rules and regulations, on the matter is in order.

[30] Perez, et al. vs. PLDT, G.R. No. 152048, April 7, 2009

Article 415 of the Civil Code enumerates what are considered as immovable property. Specifically Art. 415(5) reads as follows:

> Article 415. The following are immovable property:
>
> x x x
>
> (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of said industry or works. (Underscoring supplied)

Section 199(o) of the Local Government Code, under the Title Real Property Taxation (Title II), defines "machinery" as follows:

> "Section 199. Definitions. – When used in this title:
>
> x x x x x x x x x
>
> (o) "Machinery" embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes." (Underscoring supplied)

The above definitions clearly show that petitioner's LHDs fall under the classification of real property and, thus, would be subject to real property taxation.

The relevant provisions of Local Finance Circular No. 2-09 are hereinbelow quoted, to wit:

"AUGUST 20, 2009
DOF LOCAL FINANCE CIRCULAR NO. 2-09

SUBJECT: PRESCRIBING THE GUIDELINES GOVERNING THE POWER OF PROVINCES, CITIES AND MUNICIPALITIES TO IMPOSE LOCAL TAXES, FEES AND CHARGES ON MINING COMPANIES PURSUANT TO THE PERTINENT PROVISIONS OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991 AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR).

x x x x x x x x x

Section 9. Mobile Equipment such as Dump Trucks, Excavators, Bulldozers, Payloaders, etc. Used in Mining Operations. – Dump trucks, excavators, bulldozers, payloaders, or similar equipments used in mining operations are considered personal properties and, therefore, not subject to payment of real property tax (*Taganito Mining Corp. and Hinatuan Mining Corp. vs. Provincial Assessors of Surigao del Norte, and LBAA of Surigao del Norte, CBAA Case No. M-14*), which embodies the proceedings found on page 414 to 416 of the Journal of Record of the House of Representatives Proceedings and Debates, 4th Regular Session 1990-1991, vol. Two, Sept. 4-Nov. 6, 1990.

x x x x x x x x x."

It is noteworthy to state that, by petitioner's very own allegation/admission in its Petition for Review, it paid the real property tax on its LHD mobile equipment over the decades but not after the issuance of DOF Local Finance Circular No. 2-09 on August 20, 2009, when the LHDs were declared as personal property, hence, not subject to the real property tax.

The question now is can the Department of Finance change the classification of the LHDs or the equipment/machinery enumerated in Section 199(o) of the Local Government Code from real to personal property through the issuance of Local Finance Circular No. 2-09?

We believe not. WE hold that the RTC correctly ruled in respondents' favor because DOF Local Finance Circular No. 2-09, being a mere administrative issuance cannot override what is explicitly stated in an enacted law. It is an elementary rule in statutory construction that a statute is superior to an administrative directive and the former cannot be replaced by the latter.[31]

In a number of cases[32], the Supreme Court ruled that in case of discrepancy or conflict between the basic law and the regulations issued to implement it, the former prevails over the latter because the rules and regulations cannot go beyond the terms and provisions of the basic law.

In *Nasipit Lumber Company vs. National Wages & Productivity Commission*[33] the Supreme Court stated thus:

> "xxx. It is a hornbook doctrine that the issuance of an administrative rule or regulation must be in harmony with the enabling law. If a discrepancy occurs 'between the basic law and an implementing rule or regulation, it is the former that prevails'. This is so because the law cannot be broadened by a mere administrative issuance. It is axiomatic that 'an administrative agency cannot amend an act of Congress', xxx."

Again, in *Perez, et al. vs. PLDT*, the Supreme Court ruled:

> "At the outset we reaffirm the time-honored doctrine that, in case of conflict, the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and

---

[31] China Banking Corporation, et al. vs. Court of Appeals, et al., G.R. No. 121158, December 5, 1996 (265 SCRA327)

[32] Hijo Plantation, Inc. vs. Central Bank of the Philippines, G.R. No. L-34526, August 9, 1988; Nasipit Lumber Company, Inc., et al. vs. National Wages & Productivity Commission, et al., G.R. No. 113097, April 27, 1998; United BF Homeowners' Association and Home Insurance and Guaranty Corporation vs. BF Homes, Inc., G.R. No. 124873, July 14, 1999.

[33] Supra, Note 32

> be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope."

In the instant case there is clearly a conflict between Section 199(o) of the Local Government Code and Article 415(5) of the Civil Code, and DOF Local Finance Circular No. 2-09 regarding the classification/categorization of petitioner's Load Haul and Dump (LHD) mobile equipment. Applying the aforecited rule in statutory construction, the classification/categorization under Article 415(5) of the Civil Code and Section 199(o) of the Local Government Code must, necessarily, prevail over the provisions of DOF Local Finance Circular No. 2-09.

We subscribe to the following observation of the RTC in the Assailed Order dated July 17, 2012, viz:

> "So far, Petitioner was not able to illustrate that subject LHDs belong to the category of personal or movable properties under the principles of taxation. Usually known, personal properties, like cars and ordinary dump trucks commonly seen in roads, construction sites or highways, transporting boulders or aggregates have Registration Certificates being issued by the Land Transportation Office. Petitioner's LHDs are not only specialized self-propelled or self-powered machines, but are specially designed to be exclusively use (sic) to meet the needs of its mining activities. These are the kind of machines specially acquired, and intentionally and purposely being used to and from the mine tunnels underground of the company. It is not being used for some other ordinary related activities of the company, other than for loading and or transporting mineral ores or its boulders from the mine."

Going now to petitioner's argument that "Local Finance Circular No. 2-09 enjoys the presumption of legality and validity, RTC 64 erred in declaring the nullity of said circular considering the absence of a legal proceeding directly attacking its validity and the failure of respondents to duly plead such issue in the trial court", We find the same bereft of merit.

The Assailed Resolution dated April 3, 2012, did not, as alleged by petitioner, declare Local Finance Circular No. 2-09 as null and void. The RTC merely upheld the validity of the tax assessments on petitioner's Load Haul and Dump mobile equipment. This is clear in the dispositive portion of the Assailed Resolution which We quote:

> "WHEREFORE, finding merit to the Motion for Reconsideration, filed by Respondents, the same is hereby granted. The Decision, dated October 19, 2011, is hereby reconsidered and set aside, and a new judgment is hereby rendered:
>
> 1. Declaring Respondents' letter, dated June 1, 2010, denying Petitioner's written request, dated January 21, 2010, to be with legal force and effect;
>
> 2. Declaring the current tax assessments of Petitioner's 'Load Haul Dump' mining equipments, issued by Respondent-Mankayan, Benguet, as valid; and
>
> 3. Ordering the Respondents to maintain from their assessment records the tax assessments of all 'Load Haul and Dump' (LHD) mining equipments of Petitioner, as real properties.
>
> SO ORDERED."

Relative to the aforementioned ruling of RTC in the Assailed Resolution We find the following excerpts from the case of Republic vs. Court of Appeals, Henrico Uvero, et al.[34], to be most instructive, viz:

> "Instructive is the brief treatise made by Mr. Justice Isagani A. Cruz, whose words we quote –
>
> 'There are two views on the effects of a declaration of the unconstitutionality of a statute.
>
> The first is the *orthodox view.* Under this rule, as announced in *Norton v. Shelby*, an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no

---

[34] G.R. No. 79732, November 8, 1993

protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.

The second or *modern view* is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke or annul the statute. The parties to the suit are concluded by the judgment, but not one else is bound.

The orthodox view is expressed in Article 7 of the Civil Code, providing that 'when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. x x x."

WHEREFORE, finding no reversible error in the Assailed Resolution dated April 3, 2012 and Assailed Order dated July 17, 2012, both rendered by the Regional Trial Court (RTC), Branch 64, of Abatan, Buguias, Benguet, the same are both hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(Concurs with Justice Castañeda's Concurring Opinion)
AMELIA R. COTANGCO-MANALASTAS
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, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-versus-

MARIETA A. BONDAD, in her capacity as Municipal Treasurer, and JOEL D. TINGBAOEN, in his capacity as the Municipal Assessor, both of the Municipality of Mankayan, Benguet,
Respondents.

CTA AC No. 96
(Civil Case No. 6410-CV-117)

Present:

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

Promulgated: AUG 16 2013 4:20 p.m.

x- -x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., J.:

For review are the Regional Trial Court ("RTC") of Abatan, Benguet's Resolution dated April 3, 2012 and the Order dated July 17, 2012 which in effect set-aside the Decision dated October 19, 2011 and upheld the validity of the real property tax assessments on the "Load Haul and Dump" mining equipments covering taxable year 2010 against Lepanto Consolidated Mining Company ("Lepanto").

I respectfully register my separate concurring opinion sustaining the imposition of real property tax assessments but on the basis of the absence of CTA's jurisdiction.

The issue of jurisdiction may be raised by any of the parties or may be reckoned by the court, at any stage of the proceedings, even on appeal.[1]

The CTA is vested appellate jurisdiction over decisions of the Central Board of Assessment Appeals ("CBAA") concerning the assessment and taxation of real property taxes pursuant to Section 7 (5) of Republic Act ("R.A.") No. 9282[2], reading:

> "SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> "(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; xxx

Section 7(5) of R.A. 9282 should be taken in conjunction with the provisions of Sections 252, 226 and 229 of the 1991 Local Government Code as interpreted by the Supreme Court in the case of *Dr. Pablo R. Olivares et al. v. Mayor Joey Marquez et al.*[3]

> Republic Act (R.A.) No. 7160, or the Local Government Code of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who is not satisfied with the assessment or reasonableness of the real property tax sought to be collected.
>
> Section 252 of R.A. No. 7160 provides:
>
> SEC. 252. Payment Under Protest. — (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 provincial, city treasurer or

[1] *Apolonia Frianela v. Servillano Banayad Jr.*, G.R. No. 169700, July 30, 2009, 594 SCRA 380.
[2] R.A. 9282 took effect on April 23, 2004.
[3] G.R. No. 155591, September 22, 2004, 438 SCRA 679.

municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II 11 of this Code. (Emphasis supplied)

Chapter 3, Title Two, Book II of the Local Government Code, entitled "Assessment Appeals," refers to the appellate procedure before the Local Board of Assessment Appeals (LBAA), as provided in Section 226, et seq. of the Code, and the Central Board of Assessment Appeals (CBAA), as provided in Section 230 thereof.

Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the

notice of assessment, as provided in Section 226 of R.A. No. 7160, to wit:

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.

And, if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof.[4] (Emphasis supplied.)

The law allows the taxpayer to file a written protest within 30 days from payment of tax. Within a period of 60 days from the date of the receipt of the notice of assessment or upon the lapse of the 60 days in the event of the Municipal Assessor's inaction, the taxpayer is afforded the remedy to appeal before the LBAA, and later if aggrieved again, file an appeal with the CBAA.

Here, according to Lepanto, it wrote a letter dated January 21, 2010 requesting respondent Municipal Assessor and the Municipal Treasurer to refrain from imposing real property taxes on its loader equipment by invoking Local Finance Circular No. 2-09 which treats as personal properties mobile equipment such as dump trucks, excavators, bulldozers, payloaders and similar equipment used in mining operations.

On June 8, 2010, Lepanto received the notice of assessment based on the Municipal Assessor's findings. **Instead of elevating its appeal to**

Jc

---

[4] See *National Power Corporation v. CBAA et al.*, C.T.A. E.B. Nos. 51 & 58, February 13, 2006 and *National Power Corporation v. Municipal Government of Navotas et al.*, CTA EB Case No. 461, March 1, 2010.

LBAA, Lepanto directly filed before the RTC of Abatan, Benguet a Petition "**for appeal from the denial of cancellation for real property assessment and real property taxation involving loader equipments**" on August 6, 2010.[5]

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction.[6] The failure to appeal within the statutory period shall render the assessments final and demandable.

Considering that the real property tax assessments have become final and collectible for failure of Lepanto to pay real property taxes under protest[7] and appeal before the LBAA within the mandated period, the CTA is devoid of jurisdiction over this case.

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

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[5] Docket, pp. 60-61.
[6] *Dr. Pablo Olivares et al. v. Mayor Joey Marquez, supra.* See *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010, 611 SCRA 71.
[7] Docket, p. 10.