REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHINA BANKING CORPORATION,
Petitioner,

-versus-

CITY TREASURER OF MANILA,
Respondent.

C.T.A. EB No. 150
(Civil Case No. 04-111537)
(Civil Case No. 177197-CV)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ*.

Promulgated:

SEP 15 2006

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D E C I S I O N

ACOSTA, P.J.:

This is a Petition for Review filed on September 23, 2005 seeking to set aside the April 25, 2005 Decision rendered by the Regional Trial Court of Manila, Branch 27, dismissing the action for the refund of sum of money filed by petitioner China Banking Corporation against the City Treasurer of Manila on grounds of lack of cause of action, prematurity, and non-exhaustion of administrative remedies, which affirmed *in toto* the Order of the Metropolitan Trial Court, Branch 19, Manila dated August 20, 2004.

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This controversy ensued due to payments under protest made by petitioner's branches to respondent of amounts in addition to the Gross Receipts Tax (GRT) being regularly paid by said branches, pursuant to Section 21 of City Ordinance No. 7988.

Instead of a formal letter of protest, petitioner sent five letters to respondent dated March 5, 2004, March 26, 2004, January 27, 2004 and two letters dated January 28, 2004. Except for the amount, all of the said letters have the same tenor, one of which is hereunder quoted for ready reference:

> "We are hereby paying UNDER PROTEST alleged additional local government tax for the current year (2004) in the total amount of PESOS: FIVE THOUSAND EIGHT HUNDRED SEVENTY THREE & 46/100 ONLY. (Php5,873.46) included in Manager's Check No. 4166 payable to the "City Treasurer of Manila fao China Bank-Blumentritt Branch" (net of our refund amounting to P17,286.66 per letter dated March 07, 2003). It is our position that we are not liable on the said alleged additional local tax; and assuming that we are covered by Sec. 21 of the Ordinance cited, such constitutes double taxation and must be struck down.
>
> "Please be notified that we are presently instituting the appropriate legal action to effect refund of any erroneous/excessive payment made hereby."[1]

In five separate letters all dated March 30, 2004, petitioner wrote respondent asking for the refund/tax credit of the amounts covered by the above-mentioned letters. One of these letters is also hereunder quoted:

> "In relation to our letter of protest dated March 5, 2004 we hereby make formal demand upon your office to refund and/or give us tax credit in the amount of P5,873.46 for the reason that we are not liable on the 50% of 1% of the previous year gross receipt representing alleged additional local business tax. Assuming that we are covered by Section 21 of the City Ordinance No. 7988, we

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[1] Annex "A", page 33, Records

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> vehemently disagree with the aforesaid assessment on the ground that such constitutes double taxation."[2]

Among respondent's response to the above correspondences is the letter dated April 26, 2004[3], where respondent wrote in part, thus:

> "This is to acknowledge receipt of your letter dated March 30, 2004, making a formal demand to refund the amount of P 5,873.46 which is the subject matter of your letter dated March 5, 2004, for the reasons therein stated.
>
> "Inasmuch as the payment was made under protest, we have not yet received your formal letter of protest as mandated by Section 195 of R.A. 7160, otherwise known as the Local Government Code of 1991, hence this Office, much to our regret, could not act on your demand for refund pending the resolution of your protest. We reiterate, therefore, that your formal protest, stating therein the reasons relied upon for the protest be sent to us for our appropriate action."

These letters prompted petitioner to file the case for refund of sum of money with the Metropolitan Trial Court (MTC) on April 26, 2004. The case was docketed as Civil Case No. 177997 and assigned to Branch XIX.

Respondent filed her Motion to Dismiss dated July 15, 2004, on grounds of lack of cause of action, prematurity, and non-exhaustion of administrative remedies.

In an Order dated August 20, 2004, the MTC granted respondent's Motion to Dismiss, explaining that "while the petitioner may have filed letters informing the respondent that it is paying under protest the additional local government tax imposed upon it (*Annexes "A", "C", "E", "G", and "I"*) said letters are not in the nature of written protest contesting the assessment made by the local treasurer," which is specifically required by Section 195 of the Local Government Code of 1991. The Order further stated that, "It did not state the grounds for its protest so as to apprise the

[2] Annex "K", page 43, Records
[3] Annex "1", page 55, Records

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local treasurer of the merits thereof and afford him the opportunity to decide on the proper action to be taken thereon and without any resolution on the protest which should have been made by the petitioner, there will be no basis for any claim for refund or tax credit."

Petitioner filed its Motion for Reconsideration with the MTC dated September 17, 2004, but the same was denied via an Order dated November 11, 2004. Not satisfied, petitioner then appealed to the Regional Trial Court (RTC), which was docketed as Civil Case No. 04-111537 and assigned to Branch 27 of the RTC of Manila.

In a Decision dated April 25, 2005, the Regional Trial Court affirmed *in toto* the Decision of the Metropolitan Trial Court. The Decision states in part:

> "A careful reading of the letters dated January 27, 2004, January 28, 2004, March 5, 2004 and March 26, 2004 shows that the same merely informed the City Treasurer that plaintiff-appellant was paying under protest the additional local government tax. Although plaintiff-appellant indicated in the said letters its position that it is not liable on the said additional local tax and the same constitutes double taxation. Still, it is not the written protest contemplated by Section 195 of Republic Act 7160. It did not state the legal basis of its protest from which the City Treasurer will rest its findings. Even applying the liberal construction in favor of the plaintiff and assuming the said letters were the written protest under Section 195 of Republic Act 7160, nevertheless, plaintiff-appellant did not come to this Court appealing any decision of the City Treasurer denying their protest, to which the judicial remedy may be availed of. Instead plaintiff-appellant filed with the Metropolitan Trial Court a refund for the sum of money without exhausting administrative remedies. It is basic that a party's failure to exhaust administrative remedies is fatal, especially where the case involves not just issues of law and of fact but of administrative discretion – the available administrative proceedings must be pursued until a definite and final determination is held.

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> In addition, Section 196 of Republic Act 7160 clearly provides that, 'no case or proceedings shall be maintained in any court for the recovery of any tax, fee or charge erroneously or illegally collected until a written claim for refund has been filed with the local treasurer'. The evidence disclosed that no such written claim for refund was ever filed before the City Treasurer. The letters dated January 27, 2004, January 28, 2004, March 5, 2004 and March 26, 2004 cannot be considered as the written claim for refund inasmuch as the same merely informed the defendant-appellee that it is paying under protest. These letters did not demand any refund from defendant-appellee."*(References and citations omitted)*

A Motion for Reconsideration was later filed but it was denied by the RTC via an Order dated August 8, 2005.

Hence, this Petition raising the following issues:

I. Whether or not the Local Government Code requires a specific form of the letter of refund.

II. Whether or not a strict construction of the statute should be applied.

On March 21, 2006, respondent filed her Comment alleging the Petition for Review should be dismissed for failure of petitioner to raise a genuine issue and/or errors committed by the *courts a quo*. Respondent claims that the issues raised by petitioner has been passed upon, fully discussed and considered in the assailed Decision dated April 25, 2005, issued by the Regional Trial Court Branch 27, Manila. Moreover, she continues, for the sake of argument and clarity, the dismissal of the case by Metropolitan Trial Court was due to the following: a) lack of cause of action; b) prematurity and failure to exhaust administrative remedies; and c) lack of authority to sue.

The foregoing issues can be summarized as: Whether or not the letters sent by petitioner to respondent may be considered as the written protest required by Section 195 of the Local Government Code and whether petitioner had capacity to sue.

In as much as the crux of the controversy depends on the proper interpretation of Sections 195 and 196 of the Local Government Code of 1991, the Court deems it appropriate to quote the same, thus:

> "**Section 195. Protest of Assessment.** – When the local treasurer of his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment, otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing.** If the local treasurer finds the protest to be wholly or partially meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partially correct, he shall deny the protest wholly or partially with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**"
>
> "**Section 196. Claim for refund of Tax Credit. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer.** No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit. (*Emphasis supplied*)

In the instant case, the lower courts correctly held that petitioner's letters show that the same merely informed the City Treasurer that petitioner was paying under protest the additional local government tax. And that although petitioner indicated in the said letters its position that it is not liable on the said additional local tax and that the same constitutes double taxation, still it was not the written protest contemplated by Section 195 of Republic Act No. 7160. Since the same did not state the legal basis of its protest from which the City Treasurer will rest its findings. Therefore, these letters of petitioner purporting to be "protests" cannot be considered as such, inasmuch as the same merely informed the respondent that it is paying under protest. They cannot be considered a formal demand for refund or a protest which the local treasurer is given the authority to resolve first, prior to the elevation thereof to a judicial forum.

Moreover, with regard to the March 5 and March 26, 2004 letters, even applying liberal construction in favor of the petitioner and assuming that said letters were the written protest contemplated by Section 195 of R.A. No. 7160, petitioner did not come before the lower courts appealing any decision or non-action of the City Treasurer on their protest, to which judicial remedy may be availed of. Instead, petitioner filed with the Metropolitan Trial Court on April 26, 2004, a refund for a sum of money without awaiting the final decision of the Local Treasurer on the "protest" or waiting for the lapse of the (60) day period given to the latter to decide the protest. Thus, the judicial claim was filed in violation of Section 195 of R.A. No. 7160.

It is a well-settled rule that administrative remedies should first be exhausted before a taxpayer should resort to judicial action. This is to avoid delay, unnecessary loss of time and money, and to facilitate the settlement of local tax cases.[4]

While the Court agrees with petitioner's contention that the Local Government Code does not require any specific form of the letter for refund/protest, still a letter purporting to be a refund must inform the respondent of the basis of such claim as to enable the latter to make an intelligent decision thereon. Otherwise the prior exhaustion of administrative remedies required by law would be rendered naught and a worthless endeavor.

In view thereof, the Court finds it unnecessary to resolve the other issue raised.

Finding no reason factual or legal to deviate from the findings of the *courts a quo*, the Court **DENIES** the instant petition for lack of merit.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[4] Villanueva, et. al. vs. Judge Ortiz and Patanao, 56 O.G. 276, cited in Flores, Local Government Taxation, Book II, page 641

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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