JUAN JAMORA, JR. ENTERPRISES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2731

LOCAL BOARD OF ASSESSMENT APPEALS, CITY ASSESSOR OF ILOILO CITY and the CITY OF ILOILO,
Respondents.

11/13/77

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D E C I S I O N

The jurisdictional issue in this case is: May a property owner who is not satisfied with the action of the provincial or city assessor in the assessment or reassessment of his real property, or who has appealed to the Local Board of Assessment Appeals under Section 30 of Presidential Decree No. 464, otherwise known as "The Real Property Tax Code of the Philippines", but because of failure of said board to act on his appeal, file a petition direct to this Court for the review of the assessment of the assessor?

Petitioner Juan Jamora, Jr. Enterprises, Inc., is a corporation established and existing pursuant to the laws of the Philippines with office address at Valeria St., Iloilo City. It appears that in September and November, 1974, and January and August 1975, petitioner received from the City Assessor of Iloilo City the following new Tax Declarations increasing the valuations or assessments of its various lots and buildings located in Iloilo City, to wit:

Tax Declarations Nos.		Dates of Receipt
17407 17410 17409	- - - - - - - - - - -	September 20, 1974
14762	- - - - - - - - - - -	November 29, 1974
38273	- - - - - - - - - - -	January 13, 1975
38274 38272	- - - - - - - - - - -	January 17, 1975
41614 41615 42472	- - - - - - - - - - -	January 30, 1975
14763 14764 14765 14769 20710 41505	- - - - - - - - - - -	August 18, 1975

Pursuant to Section 30 of the Real Property Tax Code (or Presidential Decree No. 464), which took effect on June 1, 1974, ten (10) of the New Tax Declarations (i.e., Nos. 17407, 17410, 17409, 14762, 38273, 38274, 38272, 41614, 41615, 42472) were separately appealed by petitioner to the Local Board of Assessment Appeals of Iloilo City but the said Board allegedly failed or refused to act on the said appeals because of lack of funds. After the lapse of the one-hundred-and-twenty-day period from the respective dates of receipt of the appeals provided in Section 34 of the Real Property Tax

Code within which the Local Board of Assessment Appeals should decide the appeal, petitioner wrote the Register of Deeds, as Chairman of the said Board, that it had no choice but to file a case in the Court of Tax Appeals, since it could not bring the matter direct to the Central Board of Assessment Appeals headed by the Secretary of Finance.

Consequently, on September 8, 1975, petitioner filed its original petition for review in this Court, joining as party respondents the City Assessor, City Treasurer and City Council all of Iloilo City, and questioning the correctness and legality of the new Tax Declarations, including those which had not yet been appealed to the Local Board of Assessment Appeals (i.e., Nos. 14763, 14764, 14765, 14769, 20710 and 41505). In the said petition, petitioner also challenged the validity and legality of Resolution No. 1226 of the Iloilo City Council dated September 12, 1974, which approved Ordinance No. 192, Series of 1974, imposing an additional tax of 1½% on real properties located in Iloilo City.

On October 3, 1975, counsel for respondents City Assessor, City Treasurer, and City Council of Iloilo City, filed a motion to dismiss the said petition for review on the ground of lack of jurisdiction. In support of their motion, respondents argue: (1) that with respect to the cases appealed to the Local Board of Assessment Appeals, if the said Board failed to act on them, petitioner should have filed an action for mandamus in the proper court against the Board, pursuant to Section 3, Rule 65 of the Rules of Court, instead of filing the instant petition for review with the Court of Tax Appeals which has no jurisdiction over the same, but falls under the Central Board of Assessment Appeals under the provisions of Presidential Decree No. 464; (2) that with respect to the unappealed cases (or Tax Declarations Nos. 14763, 14764, 14765, 14769, 20710, 41505, received by petitioner on August 18, 1975), it had still sixty (60) days from receipt thereof, or until October 18, 1975, within which to appeal the same to the Local Board of Assessment Appeals of Iloilo City under Section 30 of Presidential Decree No. 464, hence, petitioner's appeal to this Court is premature; and (3) that as regards Ordinance No. 192, Series of 1974 of the City Council of Iloilo, the proper forum to pass judgment on the validity thereof is the Court of First Instance and not this Court.

On November 7, 1975, after a hearing on respondents' motion to dismiss was conducted by this Court, petitioner filed an amended petition for review, replacing as party-respondents the City Treasurer and City Council of Iloilo City with the Local Board of Assessment Appeals of Iloilo City and the City of Iloilo, and withdrawing the allegations contained in its original petition disputing the validity of Resolution No. 1226 of the Iloilo City Council.

The amended petition for review, however, reiterated the same allegations and causes of action against the new Tax Declarations issued by the City Assessor, and now contains arguments to the effect that this Court has jurisdiction to entertain the instant appeal.

On December 11, 1975, a motion to dismiss amended petition for review was filed on behalf of respondents Local Board of Assessment Appeals, City Assessor of Iloilo City and the City of Iloilo, reiterating the grounds of the previous motion to dismiss and, in addition, invoking the following principal arguments:

(1) That the jurisdiction of the Court over appeals involving cases of appraisal and assessment of real property as provided under Section 7(3) of Republic Act No. 1125 has already been repealed by Presidential Decree No. 464 (or the Real Property Tax Code) and the said appeals are now under the jurisdiction and cognizance of the Central Board of Assessment Appeals pursuant to Sections 35 and 36 of the said Decree;

(2) That even granting without admitting, that this Court has jurisdiction over the assessments involved in the instant appeal, still petitioner's petition for review cannot be entertained by this court for lack of any showing that petitioner has paid, under protest, the real property tax covered in the assessments, pursuant to the provisions

of Section 64 of Presidential Decree No. 464, which state:

> "No court shall entertain any suit assailing the validity of a tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of a failure to perform their duties within the time herein specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any portion of the tax assessed under the provisions of this Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the Court in the pending proceeding."

(3) That if the Local Board of Assessment Appeals failed to act on its protests when it is so enjoined by Presidential Decree No. 464 to do so, the proper remedy of petitioner is to file an action for mandamus to compel said Board to discharge its duties and functions and not to bring the present action before this Court which is not sanctioned by law and established jurisprudence.

In its opposition, petitioner, however, maintains that its appeal is cognizable by the Court because:

(1) The refusal or failure of the Local Board of Assessment Appeals of Iloilo City to act on its appeals (apparently referring to the ten appeals involving tax declarations Nos. 17407, 17410, 17409, 14762, 38273, 38274, 38272, 41614, 41615, 42472) is a decision in itself not to act and the same falls under the phrase "other matters arising under the Assessment Law" as prescribed in Section 7(3) of Republic Act No. 1125;

(2) The action for mandamus, suggested by respondents, to compel the local Board to discharge its duties and functions in connection with the appealed assessments is not the proper remedy because its appeal falls under the jurisdiction of this Court;

(3) Presidential Decree No. 464 (or the Real Property Tax Code) does not provide expressly or impliedly that the appellate jurisdiction of this Court covering cases of real property assessments has been removed and transferred to the Central Board of Assessment Appeals; and

(4) The rule of prior payment under protest before a taxpayer's appeal can be entertained is not applicable in this case because payment under the questioned new assessments made by respondent City Assessor is not yet due.

Considering the facts, the issue involved, and the arguments of the parties, we are inclined to sustain the view of respondents that this Court has no jurisdiction to entertain petitioner's appeal and forthwith it should be dismissed.

While it may be true that Presidential Decree No. 464 does not expressly provide that the exclusive appellate jurisdiction of this Court to review decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property arising under the Assessment Law in accordance with Sections 7(3) and 11 of Republic Act No. 1125 has been repealed, and repeal by implication is not favored unless it is manifest that it is so intended, the incompatibility of the two laws is not only irreconcilable but the repugnancy clear and convincing in character as a result of the language used, the subject matter embraced and the forum created to which appeals can be taken, that Presidential Decree No. 464 unmistakably and unequivocally indicates such a repeal. Under the said Decree, the action of the provincial or city assessor in the assessment of real property is appealable to the Local Board of Assessment Appeals, and from an adverse decision of the latter, appeal can be interposed by the owner, not to this Court, but to the Central Board of Assessment Appeals. The pertinent provisions of the Decree on these matters read:

> SEC. 30. Local Board of Assessment Appeals.- Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province or city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavit or documents submitted in support of the appeal.

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SEC. 34.- Action by the Local Board of Assessment Appeals.- The Local Board of Assessment Appeals shall decide the appeal within one hundred and twenty days from the date of receipt of such appeal. The decision rendered must be based on substantial evidence presented at the hearing or at least contained in the record and disclosed to the parties or such relevant evidence as a reasonable mind might accept as adequate to support the conclusion.

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The Secretary of the Board shall furnish the property owner and the Provincial or City Assessor with a copy each of the decision of the Board. In case the provincial or city assessor concurs in the revision of the assessment, it shall be his duty to notify the property owner of such fact using the form prescribed for the purpose. The owner or administrator of the property or the assessor who is not satisfied with the decision of the Board of Assessment Appeals, may, within thirty days after receipt of the decision of the local Board, appeal to the Central Board of Assessment Appeals by filing his appeal under oath with the Secretary of the proper provincial or city Board of Assessment Appeals using the prescribed form stating therein the grounds and the reasons for the appeal, and attaching thereto any evidence pertinent to the case. A copy of the appeal should be also furnished the Central Board of Assessment Appeals, through its Chairman, by the appellant.

Within ten (10) days from receipt of the appeal, the Secretary of the Board of Assessment Appeals concerned shall forward the same and all papers related thereto, to the Central Board of Assessment Appeals through the Chairman thereof.

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SEC. 36. Scope of Powers and Functions.- The Central Board of Assessment Appeals shall have jurisdiction over appealed assessment cases decided by the Local Board of Assessment Appeals. The said Board shall decide cases brought on appeal within twelve(12) months from the date of receipt, which decision shall become final and executory after the lapse of fifteen (15) days from the date of receipt of a copy of the decision by the appellant.

Then in its transitory provisions, the Decree provides:

SEC. 110. Turn over of pending assessment cases, records, supplies and equipment of the Board of Assessment Appeals.- All assessment cases pending before the Board of Assessment Appeals created under Commonwealth Act No. 470 and the charters of all cities including all their records, supplies and equipment shall be turned over by its outgoing Chairman to the Local Board of Assessment Appeals in their respective localities created under Presidential Decree No. 76. Such cases shall be decided pursuant to and in accordance with the provisions of this Code.

SEC. 111. Repealing Clause.- Commonwealth Act Numbered Four Hundred Seventy, as amended; the pertinent provisions of the charters of all cities; Section two thousand ninety-two of the Revised Administrative Code; and all acts, laws or decrees or parts of acts, laws or decrees inconsistent with the provisions of this Code are hereby repealed or modified accordingly. Com. Act

The express repeal of Commonwealth Act No. 470 (or the Assessment Law), as amended, and the pertinent provisions of the charters of all cities; and of course the consequent abolition of the provincial or city Boards of Assessment Appeals created thereunder, whose decisions are appealable to the Court of Tax Appeals; and the creation of Local Boards of Assessment Appeals of provinces and cities to take charge of appeals from assessments of provincial or city assessors, whose decisions are appealable to the Central Board of Assessment Appeals under the Real Property Tax Code, seem to leave no room for doubt that the appellate jurisdiction of this Court to review by appeal "decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto," under Section 7(3) of Republic Act No. 1125, has in effect been abrogated or nullified.

1. The Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Ker & Company, Ltd., vs. Court of Tax Appeals, No. L-12396, January 31, 1962, 4 SCRA 160; Commissioner of Internal Revenue vs. Villa, No. L-23988, January 2, 1968, 22 SCRA 4; Commissioner of Internal Revenue vs. Ayala Securities Corporation No. L-29485, March 31, 1976, 70 SCRA 204.) With the repeal of the Assessment Law, under which cases arising therefrom are appealable to this Court pursuant to Section 7(3) of the Republic Act No. 1125, it logically follows that there are no more decisions of provincial or city Boards of Assessments Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law appealable to the Court of Tax Appeals. For how can this Court take cognizance

of appeals from decisions of provincial or city Boards of Assessment Appeals when the Assessment Law under which such cases arise has already been expressly repealed.

2. It is true, as stated above, that under Section 30 of the Real Property Tax Code, *supra*, any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may appeal to the Local Board of Assessment Appeals created by the said Code. However, from an adverse decision of the Local Board of Assessment Appeals, the proper forum to which an appeal can be taken is not anymore the Court of Tax Appeals under Sections 7(3) and 11 of Republic Act No. 1125, but the Central Board of Assessment Appeals under Section 34 of the Real Property Tax Code, *supra*, created and organized by the said Code.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law. (Commissioner of Internal Revenue vs. Villa, *supra*, citing 21 Corpus Juris Secundum, 127-128.) Since jurisdiction over appeals from decisions of the Local Boards of Assessment Appeals is now conferred by law upon the Central Board of Assessment Appeals only, it must necessarily follow that the Court of Tax Appeals is without jurisdiction to take cognizance of appeals from decisions of the Local Boards of Assessment Appeals.

3. Anent this, Section 110 of the Real Property Tax Code, *supra*, requires that all assessment cases pending before the Board of Assessment Appeals created under Commonwealth Act No. 470 and the charters of all cities including all their records, supplies and equipment shall be turned over to the Local Board of Assessment Appeals in their respective localities created under Presidential Decree No. 76; and such cases shall be decided pursuant to and in accordance with the provisions of the Real Property Tax Code. From this, it can readily be seen that the provincial or city Boards of Assessment Appeals created under the Assessment Law and the charters of all cities and whose decisions are appealable to the Court of Tax Appeals were abolished. The Local Boards of Assessment Appeals created under Presidential Decree No. 76, and whose decisions are appealable to the Central Board of Assessment Appeals under the Real Property Tax Code are entirely different from the defunct provincial or city Boards of Assessment Appeals whose decisions are appealable to this Court. It is thus clear that there are no more decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law appealable to the Court of Tax Appeals pursuant

to Section 7(3) of Republic Act No. 1125. And since all assessment cases pending before the defunct Boards of Assessment Appeals created under the repealed Assessment Law should be decided pursuant to and in accordance with the provisions of the Real Property Tax Code, Section 7(3) of Republic Act No. 1125 has practically been rendered useless and of no effect.

4. But to make more manifest the indication of the purpose to abrogate or repeal the appellate jurisdiction of this Court under Section 7(3) of Republic Act No. 1125, Section 111 of the Real Property Tax Code provides that "all acts, laws or decrees or parts of acts, laws or decrees inconsistent with the provisions of this Code are hereby repealed or modified accordingly." After what has already been discussed above, nothing remains to be added except to underscore the fact that the continued exercise by the Court of Tax Appeals of its appellate jurisdiction under Section 7(3) of Republic Act No. 1125 in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law would not only be inconsistent with the provisions of the Real Property Tax Code, particularly Sections 34 and 36 thereof, which expressly vest upon the Central Board of Assessment Appeals appellate jurisdiction over real

property assessment cases decided by the Local Boards of Assessment Appeals, but repugnant with the clear and express intention of the said Code to repeal the Assessment Law (Commonwealth Act No. 470). And the repugnancy, if not anomaly, is even made more patent when it is considered that the Assessment Law, under which cases appealable to the Court of Tax Appeals arise, has already been expressly repealed and all cases involving assessments and appraisals of real property, even if previously assessed prior to the repeal of the said law, should now be decided pursuant to and in accordance with the Real Property Tax Code. To say, therefore, that this Court has still jurisdiction to take cognizance of appeals involving assessment of real property under Section 7(3) of Republic Act No. 1125 is to incur in self-contradiction. The Real Property Tax Code prescribes the procedure for appeals from decisions of the Local Boards of Assessment Appeals, and the Central Board of Assessment Appeals to adjudicate them; and all acts, laws or decrees or parts of acts, laws, or decrees, including Section 7(3) of Republic Act No. 1125, inconsistent or repugnant with the provisions of the said Code are repealed or modified accordingly as expressly provided under Section 111 of the said Code.

At any rate, even on the supposition that the jurisdiction of the Court of Tax Appeals under Section 7(3) of Republic Act No. 1125 has not been repealed, petitioner's appeal to this Court is defective and premature. As regards Tax Declarations Nos. 14763, 14764, 14765, 14769, 20710 and 41505 issued by the Iloilo City Assessor, no appeal or appeals have been filed by petitioner with the Local Board of Assessment Appeals of Iloilo City; and with respect to Tax Declarations Nos. 17407, 17410, 17409, 14762, 38273, 38274, 41614, 41615 and 42472, although they have been appealed to the local Board, no formal and appealable decision thereon has as yet been rendered by it. As a matter of fact, as admitted by petitioner, no hearing has been conducted on said appeals. (See par. 12, Original Petition for Review, p. 4, CTA rec.; and par. 13, Amended Petition for Review, p. 49, CTA rec.).

Under Section 7(3) of Republic Act No. 1125, this Court has appellate jurisdiction to review by appeal decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto. The decision of the Board of Assessment Appeals contemplated therein is that rendered by it pursuant to law, and rightly so, should be one that determines or resolves the subject matter of the controversy or the legality of the assessments. In a case, this Court said:

> . . . . We believe we have no jurisdiction over the present appeal. Section 7(3) of Republic Act No. 1125 confers upon this Court appellate jurisdiction to review by appeal -
>
> > Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relating thereto.
>
> The "decisions" of provincial or city Boards of Assessment Appeals which may be reviewed on appeal by this Court <u>are decisions of such boards rendered pursuant to law</u>. In the case of the Iloilo City Board of Assessment Appeals, its decisions which may be reviewed by us are those which are rendered by said Board under Section 37 of Com. Act No. 158. Said section provides that said Board shall "hear all appeals duly transmitted to it, (and) shall decide the same forthwith." x x x. (Compañia General de Tabacos de Filipinas vs. Iloilo City Board of Assessment Appeals, CTA Case No. 360, Dec. 27,1960.)

In this case, the Local Board of Assessment Appeals of Iloilo City simply failed or refused to act on the ten (10) appeals filed by petitioner. Such act or omission, contrary to petitioner's pretense, cannot be considered a decision as contemplated by law and jurisprudence. If the legality of such act or omission is the one being questioned or appealed by petitioner, that matter does not involve a real property assessment or a matter arising under the Assessment Law, and the appropriate action of petitioner against the said Board for its inaction should be by mandamus before the ordinary courts to compel it to discharge its duties and functions required by law and not by an appeal under Section 7(3) of Republic Act No. 1125.

The cases of Paracale-Gumaus Co. vs. Blaquera, CTA Case No. 211, (Res.) Aug. 22, 1956; Collector of Internal Revenue vs. Court of Tax Appeals, 1 SCRA 91-92; and Collector of Internal Revenue vs. Sweeny et al., 106 Phil. 62-63, cited by petitioner, refer to claims for refund of internal revenue taxes erroneously or illegally collected and the rulings therein allowing taxpayers to appeal to this Court without any decision of the Commissioner of Internal Revenue on their claims for refund were made in view of the express requirement of Section 306 of the National Internal Revenue Code that no suit or proceeding (for refund) shall be begun after the expiration of two years from the date of payment of the tax or penalty. It is not necessary for taxpayers to wait for the decision of the Commissioner of Internal Revenue if no decision is forthcoming before expiration of the two-year period. In fact, they should not wait for such decision because Section 306 of the Revenue Code requires that court action for recovery of an internal revenue tax erroneously or illegally paid must be instituted within two years after payment. (Collector of Internal Revenue vs. Sweeney, 106 Phil. 59; Gibbs vs. Collector of Internal Revenue, 107 Phil. 232; Collector of Internal Revenue vs. Convention of Philippine Baptist Churches, L-11807, January 28, 1961, 1 SCRA 114; Koppel vs. Collector of Internal Revenue, L-10550, September 16, 1961, 3 SCRA 17; Commissioner of Internal Revenue vs. Victorias Milling, L-24108, January 3, 1968, 22 SCRA 12.) The instant appeal not being a suit for the recovery of an internal revenue tax erroneously or illegally paid under Section 306 of the National Internal Revenue Code, obviously, the aforesaid rulings cannot be made to apply to this case.

ACCORDINGLY, petitioner's amended petition for review and, consequently, its original petition for review, are hereby dismissed for lack of jurisdiction. With costs.

SO ORDERED.

Quezon City, November 17, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge