REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*	**CTA EB NO. 2201** (CBAA Case No. L-138-2017 LBTAA Case No. 013-6)
-versus-	
HON. FERNANDO M. FANDIÑO, in his capacity as City Assessor, Pasay City, LOCAL BOARD OF TAX ASSESSMENT APPEALS OF PASAY CITY, and CENTRAL BOARD OF ASSESSMENT APPEALS, *Respondents.*	

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HON. FERNANDO M. FANDIÑO, in his capacity as City Assessor, Pasay City, *Petitioner,*	**CTA EB NO. 2205** (CBAA Case No. L-138-2017 LBTAA Case No. 013-6)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
BANGKO SENTRAL NG PILIPINAS, *Respondent.*	Promulgated: MAR 0 4 2022

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RESOLUTION

MANAHAN, J.:

On May 18, 2021, the Court rendered the assailed Decision, which disposed of the case, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by BSP in CTA EB No. 2201 is **PARTIALLY GRANTED**; while the *Petition for Review* filed by the City Assessor of Pasay in CTA EB No. 2205 is **DENIED**, for lack of merit.
>
> Accordingly, the CBAA's *Decision* dated July 1, 2019 and Resolution dated November 8, 2019 of the CBAA in CBAA Case No. L-138-2017 are **REVERSED** and **SET ASIDE**.
>
> The PICC properties of the BSP are declared **EXEMPT** from the real property tax imposed by the City of Pasay, ***except*** for the portions thereof leased to taxable persons or entities, pursuant to Section 234(a) of the LGC of 1991. Such being the case, any Tax Declaration or real property tax assessment issued by the City Assessor of Pasay inconsistent with the said real property tax exemption of BSP is deemed **INVALID**.
>
> **SO ORDERED.**[1]

On June 24, 2021, the Court received the *Motion for Reconsideration (Re: Decision Dated 18 May 2021)*[2] filed by City Assessor Engr. Fernando M. Fandiño through registered mail on June 11, 2021. The said *Motion* had insufficient copies.

On July 6, 2021, the Court received the *Opposition*[3] filed by Bangko Sentral ng Pilipinas (BSP) through registered mail on June 28, 2021.

On October 25, 2021, the City Assessor submitted the additional required copies of his *Motion*. Thus, on November 15, 2021, the subject *Motion* was deemed submitted for resolution.

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[1] EB Docket, CTA Case No. 2201, Decision dated May 18, 2021, pp. 208-209.
[2] EB Docket, pp. 232-243.
[3] EB Docket, starts at p. 247.

The City Assessor states that the issue in this case is whether the Philippine International Convention Center (PICC) properties are entitled for re-classification from commercial to special cultural, not the exemption of BSP from paying the real property taxes due on the PICC properties. The City Assessor also argues that when the Court ruled on BSP's exemption, it in effect allowed the BSP to change its theory on appeal and deprived the City Assessor of his right to due process.

Citing Presidential Decree (PD) No. 520,[4] the City Assessor argues that the creation of the PICC was for corporate purposes, not cultural. Nothing in PD No. 520 exempts the BSP from real property taxes. The City Assessor further states that many areas of the PICC are under lease to various business and commercial enterprises, and that the PICC holds concerts for numerous foreign and local artists, as well as graduation ceremonies and similar events. These events are clearly not for cultural purposes but for commerce and profit.

As such, the City Assessor reiterates that the PICC properties are neither exempt from real property tax nor are they actually, directly, and exclusively used for cultural purposes.

On the other hand, the BSP states that it is a government instrumentality. As such government instrumentality, BSP's exemption from real property taxes is based on its ownership of the real property, or in this case, ownership over the PICC properties. Thus, the PICC properties are exempt from real property taxes by virtue of ownership of BSP over these properties and not on their usage, except to the extent of the portions the beneficial use of which has been granted to taxable persons. BSP also states that it has been consistently asserting its exemption from real property taxes before the Local Board of Assessment Appeals (LBAA) and the Central Board of Assessment Appeals (CBAA) as an alternative prayer to the prayer for reclassification, and is also included in the Petition for Review before the CTA.

The *Motion for Reconsideration* filed by the City Assessor is denied.

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[4] Authorizing the Central Bank of the Philippines to Construct an International Conference Center Building, Acquire a Suitable Site for the Purpose, Organize a Corporation which will Manage and Administer the said Center and for other purposes, July 23, 1974.

As to the City Assessor's argument that the BSP changed its theory on appeal considering that the case before the LBAA and CBAA involved reclassification of property and not exemption from real property taxes, the Court disagrees.

As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, the Court may give due course to the petition and resolve the principal issues raised therein.[5]

Perusal of the records show that BSP has consistently prayed as an alternative prayer before the LBAA and CBAA for the PICC properties to be declared exempt from real property tax. This was likewise included in the prayer in the subject Petition for Review. In the instant case, there was no change of theory on appeal, and the City Assessor was given every opportunity to address the issue on the RPT exemption of the PICC properties.

Thus, we reiterate that under Section 234(a) of the Local Government Code of 1991 (LGC), real property owned by the Republic of the Philippines or any of its political subdivisions are exempted from the payment of real property tax, except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

In *Philippine Heart Center v. The Local Government of Quezon City, et al.*,[6] the Supreme Court stated that "real properties owned by the Republic, whether titled in the name of the Republic itself or in the name of agencies or instrumentalities of the national government, are exempt from real property tax."

In the instant case, the City Assessor of Pasay has admitted that BSP is a government instrumentality.[7] Furthermore, in *Republic of the Philippines, represented by the Philippine Reclamation Authority (PRA) v. City of Parañaque*,[8]

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[5] *Loreto Bate v. Spouses Robert Veloso and Glorio Veloso*, G.R. No. 194270, December 3, 2012; citing *Conlas v. Tubil*, G.R. No. 184285, September 25, 2009.

[6] G.R. No. 225409, March 11, 2020.

[7] EB Docket, CTA EB No. 2205, Par. 3, *Petition [Appeal from the City Assessor's Denial of the BSP's Request for reclassification of the PICC Properties]* in relation to Par. 1, Answer [both filed before the LBTAA of Pasay City], pp. 98 and 114.

[8] G.R. No. 191109, July 18, 2012.

the Supreme Court named BSP as one of the government instrumentalities vested with corporate powers, to wit:

> Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a GOCC. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines, and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations xxx. (*Underscoring supplied*)

Thus, the BSP, being a government instrumentality, is covered by the real property tax exemption granted under Section 234(a) of the LGC. Such being the case, real properties owned by BSP are exempt from real property tax. However, the tax exemption of real property owned by the Republic, its political subdivisions, agencies or instrumentalities ceases if the beneficial use of the real property has been granted, for consideration or otherwise, to a taxable person.[9]

Applying the foregoing, the PICC properties which are owned by the BSP are exempt from real property tax, unless the beneficial use thereof has been granted to a taxable person. In case the beneficial use of any portion of the PICC properties has been granted to a taxable person, the personal liability for the real property tax thereon is on such taxable person at the time of accrual of the real property tax, and not on BSP. This is in consonance with *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, et al.*,[10] and *Philippine Heart Center v. The Local Government of Quezon City, et al.*,[11] both quoted in the assailed Decision.

In summary, the PICC properties are exempt from real property taxes because such properties are owned by the BSP, a government instrumentality with corporate functions. However, the portions of the PICC properties, the beneficial use of which has been granted to taxable persons, by virtue of lease contracts entered into by PICC, Inc. (on behalf of BSP), are taxable, and the corresponding real property tax which has

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[9] LGC, Section 234(a). See also *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, et al.*, G.R. No. 210736, September 5, 2018.
[10] G.R. No. 210736, September 5, 2018.
[11] G.R. No. 225409, March 11, 2020.

accrued thereon must be assessed in the name of, and collected from, the said taxable persons or tenants.

WHEREFORE, the *Motion for Reconsideration (Re: Decision Dated 18 May 2021)* filed by City Assessor Engr. Fernando M. Fandiño is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice