REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CAMP JOHN HAY DEVELOPMENT CORPORATION,
Petitioner,

- versus -

CENTRAL BOARD OF ASSESSMENT APPEALS, represented by its Chairman Hon. Cesar S. Gutierrez, HON. ADELINA A. TABANGIN, in her capacity as CHAIRMAN of the BOARD OF TAX (ASSESSMENT) APPEALS of BAGUIO CITY, and HON. ESTRELLA B. TANO, in her capacity as the CITY ASSESSOR of the CITY OF BAGUIO,
Respondents.

C.T.A. E.B. No. 48
(CBAA. Case No. L-37
Tax Appeal Case No. 2002-2003
Board of Tax Assessment Appeals, Baguio City)

Present:

ACOSTA, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
JUL 2 7 2005

x - x

DECISION

ACOSTA, P.J.:

This is a Petition for Review filed by petitioner Camp John Hay Development Corporation on November 24, 2004 under Section 11 of Republic Act No. 1125 as amended by Section 9 of Republic Act No. 9282, seeking the nullification of the assessments for real property taxation issued by respondent City Assessor and the setting aside of the Resolutions of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. "L-37" entitled CJH Development Corporation vs. Adelina A. Tabangin, *et al.*, to wit:

(1) Resolution dated May 23, 2003 which ordered the remand of the case to the Local Board of Assessment Appeals (LBAA) of Baguio City for further proceedings subject to a full and up-to-date payment, either in cash or in a bond of the realty taxes on subject properties as assessed by the City Assessor of Baguio City; and

(2) Resolution dated September 8, 2004 denying petitioner's Motion for Reconsideration on the above Resolution.

Petitioner is a private corporation duly organized and existing under the laws of the Republic of the Philippines. It is engaged in real estate development and other related activities, with principal office address at the Camp John Hay, John Hay Special Economic Zone (JHSEZ), Baguio City. Petitioner is a duly registered Lessee and Developer/Operator of a portion of the JHSEZ as evidenced by a Certificate of Registration issued by the Chairman of Bases Conversion Development Authority (BCDA) on May 21, 1997, with all rights and privileges as defined and contained in a Lease Agreement dated October 19, 1996.

In a letter dated March 21, 2002, respondent Estrella B. Tano, City Assessor of Baguio City, notified petitioner about the issuance against it of thirty–six (36) Owner's Copy of Assessment of Real Property (ARP), with ARP Nos. 01-07040-008887 to 01-07040-008922 covering various buildings of petitioner and two (2) parcels of land owned by the Bases Conversion Development Authority in the JHSEZ, Baguio City, which were leased out to the petitioner.

In its Reply to the City Assessor, petitioner, in a letter dated April 3, 2002, questioned the legal bases of the subject assessments and asked for the assessed values of the properties stated in the notification letter as the buildings and land mentioned therein were not described in sufficient detail to identify the properties. Respondent City Assessor replied in a letter dated April 11, 2002, that the subject ARPs (plus an additional ARP on a building bringing the total number of ARPs to thirty-seven [37]) against the buildings of the petitioner that are located within the CJHEZ are issued on the basis of the approved building permits obtained from the City Engineer's Office of Baguio City while the legal bases of the assessments are Articles 201 to 206 of Republic Act (R.A.) No. 7160 or the Local Government Code of 1991.

On May 23, 2002, petitioner filed with the Board of Tax Assessment Appeals (BTAA) of Baguio City, an appeal challenging the validity and propriety of the issuance by the City Assessor of the subject assessments of real property against it. Petitioner claimed that there was no legal basis for the issuance of the subject assessments because it is, by law, exempt from paying taxes, national and local including real property taxes.

On July 12, 2002 the BTAA of Baguio City issued a Resolution, the dispositive portion of which reads:

> **IN VIEW THEREOF**, we enjoined the Appellant to comply first with the above-quoted provisions prior to the proper hearing of the appeal. This Board is also of the belief that it has jurisdiction over the appeal whether it involves the value of the assessment or not or whether the appellant is taxable or not because of Section 226 of R.A. No. 7160 and as correctly pointed out by the Appellant in its Reply dated July 11, 2002 particularly Paragraph 10 thereof.

On August 2, 2002, petitioner filed a Motion for Reconsideration on the above Resolution of the BTAA of Baguio City, which was later denied through a Resolution dated September 20, 2002.

Both the July 12, 2002 and September 20, 2002 Resolutions of the BTAA of Baguio City enjoined petitioner to comply with Section 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals (LBAA), hereunder quoted for easy reference:

> Section 7. **Effect of Appeal on Collection of Taxes**. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:
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> (1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;
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> (2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and
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> (3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

On October 30, 2002, petitioner filed an appeal to the Central Board of Assessment Appeals (CBAA) pursuant to Section 229 of the Local Government Code of 1991.

In its May 23, 2003 Resolution, the Central Board of Assessment Appeals set aside the resolution of the Local Board of Assessment Appeals of Baguio City and remanded the case for further proceedings, *viz*:

> **WHEREFORE**, the Resolution appealed from is hereby Set Aside and the case Remanded to the Local Board of Assessment Appeals of Baguio City for further proceedings subject to a full and up-to-date payment of realty taxes on subject properties as assessed by Respondent-Appellee, City Assessor of Baguio City, either in Cash or Bond as required.

Petitioner thereafter filed a Motion for Reconsideration on the above Resolution of the CBAA, which was denied for lack of merit through a Resolution dated September 8, 2004 and received by petitioner on October 25, 2004. Hence, the instant petition filed on November 24, 2004.

Petitioner elevates the following issues for the consideration of the Court:

1) Whether or not respondent City Assessor of the City of Baguio has legal basis to issue against petitioner the subject assessments with serial nos. 01-07040-008887 to 01-07040-008922 for real property taxation of the buildings of the petitioner, a tax-exempt entity, or land owned by the Bases Conversion and Development Authority under lease to the petitioner; and

2) Whether or not the Central Board of Assessment Appeals, in its Resolutions dated 23 May 2003 and 08 September 2004, has legal basis to order the remand of the case to the Local Board of Assessment Appeals of Baguio City for further proceedings subject to a full and up-to-date payment, in cash or bond, of the realty taxes on the subject properties as assessed by the City Assessor of the City of Baguio.

Section 226 of Republic Act No. 7160 or the Local Government Code of 1991 allows 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, within sixty (60) days from the date of receipt of the written notice of assessment, to file an appeal with the Board of Assessment Appeals of the province or city concerned.

Assessment, under Section 199(f) of the same Code, is defined as the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification and appraisal of properties. Viewed from this broader perspective, the determination made by the respondent City Assessor with regard to the taxability of the subject real properties squarely falls within its power to assess properties for taxation purposes subject to appeal before the Local Board of Assessment Appeals. ***(Systems Plus Computer College of Caloocan City vs. Local Government of Caloocan City,*** *408 SCRA 498)*

On the other hand, Section 231 thereof reads:

> SEC. 231. *Effect of Appeal on the Payment of Real Property Tax.* – **Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor**, without prejudice to subsequent adjustment depending upon the final outcome of the appeal. *(Emphasis Ours)*

In the case at bar, herein petitioner Camp John Hay Development Corporation filed an appeal with the Board of Tax Assessment Appeals of Baguio City protesting the real property assessments issued by the City Assessor of Baguio City on the grounds, among others, that it is tax-exempt. The Board of Tax Assessment Appeals deferred the hearing of the appeal pending payment by appellant-petitioner of the corresponding taxes due on the subject real properties pursuant to Section 7, Rule V of the Rules of Procedure Before the Local Boards of Assessment Appeals.

On appeal before the Central Board of Assessment Appeals, herein petitioner Camp John Hay Development Corporation raised the following issues:

> I. Whether or not the Appellee Board of Tax Appeals, in its Resolutions dated 12 July 2002 and 20 September 2002, has legal basis to defer the hearing of the appeal and require the Petitioner-Appellant to first pay corresponding taxes due on the real property.

> II. Whether or not the Respondent-Appellee Estrella B. Tano has legal basis to issue against the Petitioner-Appellant the subject Assessments with Serial Nos. 01-07040-008887 to 01-07040-008922 for real property taxation of the buildings of the Petitioner-Appellant, a tax-exempt entity, or land owned by the Bases Conversion and Development Authority under lease to the Petitioner-Appellant.

The Central Board of Assessment Appeals affirmed the requirement of payment of corresponding taxes due pending appeal but set aside the order of deferment of hearing. Instead, it remanded the case to the Local Board of Assessment Appeals of Baguio City for further proceedings subject to a full and up-to-date payment of the realty taxes on the subject properties, either in cash or bond pursuant to Section 7, Rule V, Rules of Procedure Before the Local Boards of Assessment Appeals. The second issue, however, was not tackled by the Central Board of Assessment Appeals inasmuch as the Local Board of Assessment Appeals has not yet resolved the same, hence, the latter cannot pass upon jurisdiction to the former.

Now, herein petitioner Camp John Hay Development Corporation questioned the resolutions of the Central Board of Assessment Appeals before the Court *En Banc* on the ground that the Central Board of Assessment Appeals has no legal basis to order the remand of the case to the Local Board of Assessment Appeals of Baguio City for further proceedings subject to a full and up-to-date payment, in cash or bond, of the realty taxes on the subject properties as assessed by the City Assessor of the City of Baguio. It likewise argues that the City Assessor of the City of Baguio has no legal basis to issue the subject assessments for real property taxation of the buildings of the petitioner, a tax-exempt entity, or land owned by the Bases Conversion and Development Authority under lease to the petitioner.

We rule against the petitioner. Section 229(c) of the Local Government Code of 1991 provides in part that:

> "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 said Board, appeal to the Central Board of Assessment Appeals."

But most important is the requirement in the Local Government Code of 1991 that taxes be first paid before a protest thereon will be entertained. To quote:

> 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 municipal treasurer, in the case of a municipality within Metro Manila Area, who shall decide the protest within sixty (60) days from receipt. *(Underscoring supplied)*

At the outset, it has been clearly shown that herein petitioner failed or refused to "pay under protest" its real property taxes due. It filed its protest with the Local Board of Assessment Appeals of Baguio without paying the taxes as assessed by the City Assessor of Baguio City. As discussed, the Local Board of Assessment Appeals deferred the hearing of the appeal pending the payment by petitioner of the assessed taxes. This was questioned by herein petitioner before the Central Board of Assessment Appeals. When the Central Board of Assessment Appeals confirmed the said requirement, it came to Us without complying with the mandate of law and of the Rules of Procedure Before the Local Boards of Assessment Appeals. This, We cannot countenance as We find the resolution of the Central Board of Assessment Appeals in order. The remand of the case to the Local Board of Assessment Appeals for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty taxes on the subject properties as assessed by the City Assessor of Baguio City is proper pursuant to Section 252 of the

Local Government Code of 1991 above-cited in relation to Section 7, Rule V of the Rules of Procedure Before the Local Boards of Assessment Appeals, to wit:

> Section 7. **Effect of Appeal on Collection of Taxes**. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:
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> (1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;
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> (2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and
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> (3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

The Court *En Banc* likewise notes that petitioner would like Us to resolve the issue of whether it is liable to real property tax or whether it is indeed tax-exempt without complying with the law and the rules when it raised the same as one of the grounds for the Petition for Review.

The Central Board of Assessment Appeals in its resolution refused to delve on the issue of petitioner's taxability because the Local Board of Assessment Appeals has not decided the case on the merits. On the same vein, We cannot resolve such controversy despite the fact that petitioner elevated the same as an issue in the present petition. To do otherwise, will not only be procedurally wrong but legally wrong as well. Section 252 is quite plain. Before a protest may be entertained, the tax should have been first paid without prejudice to subsequent adjustment thereof depending upon the final outcome of the appeal[1] and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned.[2]

WHEREFORE, premises considered, the instant petition for review is hereby **DISMISSED** for lack of merit. Accordingly, the Resolutions of the Central Board of Assessment Appeals dated May 23, 2003 and September 8, 2004 are hereby affirmed.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[1] Section 231, Local Government Code of 1991
[2] Section 252(b), Local Government Code of 1991

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.

ERNESTO D. ACOSTA
Presiding Justice