REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL TRANSMISSION CORPORATION, Petitioner,	**CTA EB NO. 948** *(CTA AC No. 67)*
	Present:
-*versus*-	Del Rosario, *PJ* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ.*
MUNICIPAL TREASURER OF LABRADOR, PANGASINAN Represented by EDUALINO CASIPIT in his capacity as MUNICIPAL TREASURER, Respondent.	Promulgated: OCT 07 2013 Apolinario 9:10 a.m.

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DECISION

DEL ROSARIO, *PJ.*:

The instant Petition for Review is filed pursuant to Rule 43 of the Rules of Court in relation to Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals assailing the June 25, 2012 Decision as well as the September 20, 2012 Resolution of the Court of Tax Appeals (CTA) First Division in the case entitled *"National Transmission Corporation v. Municipal Treasurer of Labrador, Pangasinan represented by Edualino Casipit in his capacity as Municipal Treasurer"* docketed as *CTA AC No. 67.*

THE PARTIES

Petitioner National Transmission Corporation (TransCo) is a government-owned and controlled corporation created and existing under and by virtue of Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), and a government instrumentality, with principal office address at the TransCo Main Building, BIR Road corner Quezon Avenue, Diliman, Quezon City.[1]

On the other hand, respondent Municipal Treasurer of Labrador, Pangasinan, represented by the incumbent officer Edualino C. Casipit, in his official capacity as the Municipal Treasurer thereof, is a local government official under the Local Government Code (LGC) of 1991.[2]

THE FACTS

The controversy stems from a Notice of Assessment dated February 20, 2009 issued by the respondent, which petitioner received on February 23, 2009 directing petitioner to pay municipal business tax of P73,799,167.64 for the year 2008.[3] Petitioner protested the assessment on March 16, 2009[4] but the same was denied by the respondent in a Letter dated April 7, 2009,[5] which was received by petitioner on April 22, 2009.[6]

On April 20, 2009, respondent filed a Complaint for Collection of Municipal Business Tax, Surcharges and Monthly Interests before the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, docketed as Civil Case No. 18931, entitled "Municipal Treasurer of Labrador, Pangasinan vs. National Transmission Corporation".[7]

On May 28, 2009, petitioner filed its Answer (to Amended Complaint with Special and Affirmative Defenses and Counterclaim) praying, among others, that its Answer be treated as its appeal to a court of competent jurisdiction of the denial of its letter-protest as provided under Section 195 of the LGC of 1991.[8]

[1] Assailed Decision, p. 2 of 30; CTA AC 67 Docket, p. 515; Rollo, p. 28.
[2] Assailed Decision, p. 2 of 30; CTA AC 67 Docket, p. 515; Rollo, p. 28.
[3] Assailed Decision, p. 3 of 30; CTA AC 67 Docket, p. 516; Rollo, p. 29.
[4] Assailed Decision, p. 3 of 30; CTA AC 67 Docket, p. 516; Rollo, p. 29.
[5] Assailed Decision, p. 4 of 30; CTA AC 67 Docket, p. 517; Rollo, p. 30.
[6] Petition for Review, The Facts, paragraph 3, p. 3.
[7] Assailed Decision, p. 4 of 30; CTA AC 67 Docket, p. 517; Rollo, p. 30.
[8] Assailed Decision, p. 4-5 of 30; CTA AC 67 Docket, pp. 517-518; Rollo, pp. 30-31.

After the filing of various pleadings by the parties, *i.e., motion for issuance of writ of preliminary attachment of the plaintiff (now the respondent) with comment/opposition of the defendant (now the petitioner), respective motions to disqualify the other parties' counsel with the opposing parties' respective oppositions, motion to declare defendant in default*, the RTC issued the Omnibus Resolution on March 9, 2010, the dispositive portion of which reads:

> "WHEREFORE, the foregoing premises duly considered, the Court resolves:
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> 1. To DISMISS the instant case without prejudice for want of authority of its counsel Atty. Dennis Niño;
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> 2. To DISQUALIFY Atty. Dennis Niño as plaintiff's (respondent herein) counsel; and
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> 3. To DISQUALIFY Atty. Nyerson Dexter Tualla as defendant's (petitioner herein) counsel.
>
> SO ORDERED."[9]

The parties filed their respective motions for reconsideration, but the same were denied by the RTC in the Omnibus Resolution dated June 4, 2010, the dispositive portion of which states:

> "WHEREFORE, the plaintiff's Motion for Reconsideration and the defendant's Partial Motion for Reconsideration are both DENIED for lack of merit.
>
> SO ORDERED."[10]

In said resolution, the RTC ruled, as regards respondent's motion for reconsideration, that respondent's lawyer had no authority to represent the Municipality of Labrador; and that a private lawyer may represent a municipality provided that the latter does not pay the former any compensation. Finding that respondent's lawyer was paid for the services he rendered, the RTC concluded that he therefore had no authority to represent the municipality. On the other hand, as regards petitioner's partial motion for reconsideration, the RTC explained that petitioner's Answer to the Amended Complaint cannot be treated as an appeal from the notice of assessment because "Appeal" and "Answer" are different pleadings and have their own different requirements.[11]

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[9] Assailed Decision, p. 6 of 30; CTA AC 67 Docket, p. 519; Rollo, p. 32.
[10] Assailed Decision, p. 7 of 30; CTA AC 67 Docket, p. 520; Rollo, p. 33.
[11] Assailed Decision, p. 7-8 of 30; CTA AC 67 Docket, p. 520-521; Rollo, pp. 33-34.

Thereafter, petitioner filed the Petition for Review (With Motion for Suspension of Collection of Tax) on July 14, 2010 docketed as CTA AC No. 67, which case was raffled to the CTA First Division,[12] assailing the foregoing Omnibus Resolutions of the RTC, under the procedure provided under Rule 42 of the Rules of Court in relation to Rule 8, Section 3 of the Revised Rules of the Court of Tax Appeals.[13]

Respondent filed his Comment on the petition for review on August 12, 2010, by registered mail, and duly received by the CTA First Division on August 20, 2010.[14] Petitioner, for its part, filed its Reply (To Respondent's Comment Dated 12 August 2010) on August 23, 2010.[15]

In the meantime, petitioner filed a Motion (To Set the Case for Hearing on its Motion for Suspension of Collection of Tax). After oral arguments and submission of required relevant documents, the CTA First Division granted the Motion for Suspension of Collection of Tax in the Resolution dated November 3, 2010, subject to the posting of the required surety bond. Subsequently, in the Resolutions dated January 6, 2011 and February 2, 2011, the CTA First Division noted petitioner's submission of relevant documents recognizing its compliance anent the required surety bond.[16]

The CTA First Division gave due course to the Petition for Review and granted both parties a period of thirty (30) days from notice, within which to simultaneously file their respective memoranda. Respondent filed his Memorandum on March 1, 2011, while petitioner filed its Memorandum on March 11, 2011. Upon elevation of the entire original records of Civil Case No. 18931, the case was submitted for decision in the Resolution dated July 15, 2011.[17]

On June 25, 2012, the CTA First Division rendered the assailed Decision[18] denying the petition for lack of merit. The dispositive portion of the assailed Decision reads:

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[12] Then composed of Presiding Justice *(ret.)* Ernesto D. Acosta and Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.
[13] CTA AC 67 Docket, pp. 1-28.
[14] CTA AC 67 Docket, p. 174.
[15] CTA AC 67 Docket, p. 200.
[16] Assailed Decision, p. 10 of 30; CTA AC 67 Docket, p. 523; Rollo, p. 36.
[17] Assailed Decision, p. 10-11 of 30; CTA AC 67 Docket, p. 523-524; Rollo, pp. 36-37.
[18] CTA AC 67 Docket, pp. 514-543; Rollo, pp. 27-56.

"WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit.

SO ORDERED."

The CTA First Division ruled that the "appeal" referred to in Section 195 of the LGC is an original action assailing the denial of protest, and not an appellate review contemplated under the rules of procedure; and that ideally, petitioner should have filed a separate original action before the appropriate RTC to assail the denial of its protest by respondent within the prescribed period, instead of incorporating the same in its Answer (as a compulsory counterclaim) to the Complaint for the collection of the same subject taxes. Noting that the Supreme Court, in the *Yamane case*, recognizes a liberal interpretation of the procedural rules, the CTA First Division ruled that the RTC may not be faulted had it opted to treat the counterclaim as the "appeal" contemplated under Section 195 of the LGC under the principles of liberality; however, since the RTC opted otherwise, petitioner must therefore bear the legal consequence of the exercised option, *i.e.,* the dismissal of its supposed appeal incorporated in its Answer.

The CTA First Division further ruled that even assuming the Answer with Counterclaim may be considered as an "appeal" contemplated under Section 195 of the LGC of 1991, the same does not legally qualify as a compulsory counterclaim considering that the appeal from the denial of a protest under Section 195 of the LGC is capable of proceeding independently from the main case docketed as Civil Case No. 18931 before Branch 39 of the RTC of Lingayen, Pangasinan. The CTA First Division held that the counterclaim may only be considered as a permissive counterclaim, subject to the payment of the prescribed docket fees, for the court to acquire jurisdiction over the same. Failing in this regard, petitioner's counterclaim cannot remain for independent adjudication.

As regards the issue of whether the RTC erred in disqualifying Atty. Nyerson Dexter Tito Q. Tualla, the CTA First Division ruled that while there appears a Letter dated March 2, 2010 entitled "Re: Legal [C]onfirmation of Authority of TRANSCO's lawyers to Handle All Cases of Transco in the Lower Courts and other Administrative Bodies" presented by petitioner allegedly showing that Atty. Tualla is among the in-house counsel of petitioner authorized to represent the case, this does not justify his previous appearances and representation before the RTC in Civil Case No. 18931. The CTA First Division added that a mere letter from the Office of the Government Corporate Counsel (OGCC) that authorizes any private/in-house counsel of any government-owned and controlled corporations

(GOCCs) to handle their cases and legal matters, will not suffice as it considers the rules set forth in the provisions of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, Administrative Order No. 130 and Memorandum Circular No. 9, including the case of *Phividec Industrial Authority vs. Capitol Steel Corporation (GR No. 155692, October 23, 2003)*, providing the exclusive mandate of the OGCC to handle all legal matters pertaining to GOCCs, their subsidiaries, other corporate offsprings and government acquired asset corporations. In conclusion, the CTA First Division ruled that without any showing that the hiring of Atty. Tualla, as private counsel for the respondent in Civil Case No. 18931, was justified and done in strict compliance with the requirements set forth by applicable laws and existing jurisprudence, his representation is considered void.

Aggrieved, petitioner filed its "Motion for Reconsideration of the Honorable Court's 25 June 2012 Order"[19] on July 20, 2012, but the same was denied by the CTA First Division in the Resolution[20] dated September 20, 2012, the dispositive part of which states:

> "WHEREFORE, premises considered, petitioner's "Motion for Reconsideration of the Honorable Court's 25 June 2012 Order" is hereby DENIED for lack of merit.
>
> SO ORDERED."

The CTA First Division reiterated its position that petitioner's counterclaim can only be considered as "permissive" (not "compulsory"), and the same cannot remain for independent adjudication since there is no showing that payment of the prescribed docket fees was made by petitioner for the court *a quo* to acquire jurisdiction over the same.

As regards petitioner's contention that Atty. Tualla is a regular employee of petitioner, not a private counsel, and therefore has the authority to represent petitioner, the CTA First Division took a second look at the documentary evidence found in the records of Civil Case No. 18931, particularly a copy of the appointment document of Atty. Tualla and found the same to be a mere photocopy; thus given no evidentiary value by the CTA Division. Moreover, the CTA First Division found the issue of the authority of Atty. Tualla to represent petitioner academic having considered the primary reason of dismissal of the main collection case before the RTC, was due to its factual finding that respondent's counsel, Atty. Dennis Niño, on

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[19] CTA AC 67 Docket, pp. 544 to 553.
[20] CTA AC 67 Docket, p. 564; Rollo, p. 57.

had no authority to file a suit in behalf of the local government unit he sought to represent. The CTA Division said that when petitioner's counterclaim was accordingly dismissed with the main collection case filed against it, such dismissal was a legal consequence of the dismissal without prejudice of the complaint in Civil Case No. 18931, upon petitioner's own instance for want of authority.

Dissatisfied, petitioner filed the present Petition for Review, docketed as CTA EB No. 948, on October 17, 2012 praying that judgment be rendered (i) reversing the CTA First Division's June 25, 2012 Decision and September 20, 2012 Resolution; (ii) annulling and setting aside the RTC's 9 March 2010 and 4 June 2010 Resolutions in Civil Case 18931 for having been erroneously issued and in lieu thereof, declare petitioner to have timely filed its appeal to the Municipal Treasurer's denial of the protest with the filing of its Answer with compulsory counterclaim; and (iii) remanding the case to the RTC for the reception of evidence for petitioner on its counterclaim. Petitioner presented the following grounds in support of the petition for review, *viz.*:

A. In the interest of substantial justice and consistent with the liberal approach of procedural rules, petitioner's "appeal" on the denial of the protest should be allowed to proceed; and

B. Lawyers who are regular employees of government instrumentalities and government-owned and controlled corporations are allowed to represent their respective corporations under the supervision and control of the Office of the Government Corporate Counsel.

On November 19, 2012, this Court required respondent to file his comment on the petition for review.[21] As per Records Verification dated January 7, 2013,[22] respondent failed to file the required comment. Thus, on January 21, 2013, this Court gave due course to the petition for review and required the parties to submit their respective memoranda.[23]

On February 7, 2013, respondent filed his Motion for Extension to File Comment which this Court received on February 20, 2013.[24] On February 25, 2013, this Court ordered respondent to submit additional copies

[21] Rollo, pp. 213-214.
[22] Rollo, p. 215.
[23] Rollo, pp. 218-219.
[24] Rollo, p. 221.

of his motion after finding the same to be insufficient in number.[25] On the same date, respondent's counsel filed a Motion to Admit the Attached Two (2) Additional Copies of the Motion for Extension of Time[26] and respondent's Comment[27] on the petition for review.

In the Resolution dated March 13, 2013, this Court granted respondent's "Motion for Extension to File Comment" as well as his "Motion to Admit the Attached Two (2) Additional Copies of the Motion for Extension of Time", and admitted respondent's Comment on the petition for review. In the same Resolution, the Court cancelled the Resolution promulgated on January 21, 2013, and gave the parties a new non-extendible period of thirty (30) days to submit their respective memoranda.[28]

In view of the filing of petitioner's Memorandum[29] on March 6, 2013 and that of respondent's "Manifestation and Motion"[30] on May 6, 2013 stating that he is adopting the Comment to the Petition as his Memorandum, which was noted in a Minute Resolution[31] dated May 9, 2013, the instant case was submitted for decision on July 17, 2013.

Hence, the Court's instant decision.

PETITIONER'S ARGUMENTS

Petitioner argues that a taxpayer's remedy against unfavorable decision or inaction of a treasurer of a local government unit regarding protest on assessment is found in Section 195 of the LGC; the remedy to be pursued is one cognizable by the RTC in the exercise of its original, not appellate, jurisdiction; being an original action, the taxpayer's remedy on the denial of protest can be incorporated in the Answer in the form of a counterclaim in an original action for collection of local business tax instituted by the treasurer himself.

Petitioner insists that a compulsory counterclaim exists in this case considering that the issues of fact and law raised by the claim and the

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[25] Minute Resolution dated February 25, 2013; Rollo, p. 235.
[26] Rollo, p. 237.
[27] Rollo, p. 243.
[28] Rollo, pp. 272-273.
[29] Rollo, p. 274.
[30] Rollo, p. 295.
[31] Rollo, p. 297.

counterclaim are fundamentally identical, and that the evidence of the parties are exactly the same if the actions are pursued independently, thereby burdening the time and effort of courts in trying two cases which can be conveniently adjudicated in one case. Petitioner argues that while as a rule a compulsory counterclaim cannot remain pending for independent adjudication by the court because it is auxiliary to the proceedings in the original suit, the same admits of exceptions citing Rule 17, Sections 2 and 3 of the Rules of Court. Petitioner further argues that even if its remedy is improper, petitioner seeks the Court's indulgence to brush aside technicalities so that it may be given a day in court to present its arguments on the merits of the case citing Rule 1, Section 6 of the Rules of Court and the alleged emerging trend in the Supreme Court's ruling affording a party-litigant the amplest opportunity for the proper and just determination of one's cause, free from the constraints of technicalities.

As regards the question on the disqualification of its lawyers to represent petitioner before the court, petitioner argues that lawyers who are regular employees of government instrumentalities and government-owned and controlled corporations are allowed to represent their respective corporations under the OGCC's supervision and control. While the OGCC exercises control and supervision over all legal departments or divisions maintained separately by the GOCCs, control and supervision, however, do not necessarily mean that the OGCC must be actually present in all and every case that the lawyers from the legal departments of different GOCCs are handling. Otherwise, it will defeat the purpose of delegation. Allegedly, this same principle is employed by the Office of the Solicitor General in deputizing fiscals and in-house counsels of government departments.

Petitioner also asserts that the decision in *Phividec Industrial Authority vs. Capitol Steel Corporation* against the hiring of private counsel to represent a GOCC is inapplicable since the CTA First Division was of erroneous impression that Atty. Tualla is petitioner's private counsel when in fact the records of the case will show that in a pleading entitled, "Opposition to the Motion to Disqualify Defendant's Counsel," it attached Atty. Tualla's appointment as Corporate Attorney III, which is a plantilla position in its Legal Department approved by the Civil Service Commission.

Petitioner also questions the observation of the CTA First Division that Atty. Tualla handled the case of petitioner from the time respondent filed the collection case on April 20, 2009 since Atty. Tualla first participated in Civil Case 18931 only on February 9, 2010 in a pleading entitled "Comment/Opposition (to the Motion for Issuance of Writ of

Preliminary Attachment) with Motion to Disqualify Atty. Dennis V. Niño" after he assumed his position as Corporate Attorney III on October 27, 2009.

Finally, petitioner questions the CTA First Division's ruling that rejected the appointment paper of petitioner's counsel for being a mere photocopy. Petitioner avers that the CTA First Division might have overlooked that the status of petitioner's counsel as a public official enjoys such a presumption under the law and the Rules of Court which states that a person acting in a public office was regularly appointed or elected to it.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent counter-argues that the word "appeal" in Section 195 of the LGC is clear. Under the rules, the modes of appeal are provided therein including the procedure on how appeal is taken. An answer could not be considered an appeal especially when the complaint, which the answer with compulsory counterclaim refutes, was sought to be dismissed. Accordingly, the procedure sought to be introduced by petitioner only wreaks havoc in the orderly administration of justice. The only reason why petitioner sought to introduce a confusing procedure is because its period to appeal had lapsed by reason of bad judgment and in view of technicalities it raised in seeking the dismissal of the complaint after noting the mere appearance of the signature of respondent's counsel (who was then the legal consultant of the municipality of Labrador), although the complaint was also signed and approved by the provincial legal officer. By clinging to technicalities that resulted in the dismissal of the complaint, which carries with it the dismissal of petitioner's counterclaim, the strict observance of the rules should similarly be applied to petitioner in observance of the equal protection of law.

As regards petitioner's allegation that its right to appeal was preempted when respondent filed the complaint for collection while petitioner's period to appeal is still subsisting, respondent argues that no one could deprive a person of his right which is provided by law. In filing the complaint, respondent was just doing his job because of the refusal of petitioner to pay the local business tax on time, *i.e., within twenty (20) days of the month of January or of each quarter*. Respondent further asserts that even the filing of an appeal by the taxpayer would not warrant the suspension of the prescriptive period to collect the tax under Section 194 of the LGC, a reason why respondent instituted the complaint for collection.

ISSUE

Did the CTA First Division err in denying the petition for review, which questioned the RTC's ruling that rejected to treat petitioner's "Answer with Counterclaim" as an "appeal" under the Local Government Code and in disqualifying Atty. Tualla as counsel for the petitioner?

THE COURT'S RULING

The remedy of a taxpayer against a local tax assessment is provided under Section 195 of Republic Act No. 7160, known as the "Local Government Code (LGC) of 1991", which states:

> "SECTION 195. Protest of Assessment. — When the local treasurer or 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 partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly 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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**"

The afore-quoted provision allows a taxpayer to file a written protest against the notice of assessment with the local treasurer within sixty (60) days from receipt of such notice of assessment; otherwise, the assessment shall become final and executory. The taxpayer is also allowed to appeal with the court of competent jurisdiction within thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty (60)-day period for the local treasurer to decide the protest reckoned from the time of filing of such protest; otherwise the assessment becomes conclusive and unappealable.

As observed, the LGC merely provides that appeal should be made with the court of competent jurisdiction. The appeal to the court of competent jurisdiction from the local treasurer's denial of the protest would fall within that court's original jurisdiction as the review is the initial judicial cognizance of the matter.[32] Appeal may either be made to the RTC or the Metropolitan/Municipal/Municipal Circuit Trial Court (MTC) depending upon the amount of assessment involved in a case taking into consideration Batas Pambansa (BP) Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980", as amended by Republic Act (RA) No. 7691. For tax assessments issued by local treasurer involving an amount not exceeding P300,000.00 (or not exceeding P400,000.00 in Metro Manila area), the appeal against the denial of the protest should be made to the MTC, whose decision is appealable to the RTC. On the other hand, if the tax assessment exceeds the foregoing amounts, appeal should be made to the RTC. The decision, order or resolution of the RTC in the exercise of its original or appellate jurisdiction over local tax cases may be appealed to the CTA pursuant to RA No. 1125, as amended by RA 9282.[33]

In the case at bar, petitioner made a timely written protest against the notice of assessment issued by respondent, which directed petitioner to pay municipal business tax of P73,799,167.64 for the year 2008. Petitioner received the notice of assessment on February 23, 2009 and protested the same on March 16, 2009, which is clearly within the 30-day period allowed under Section 195 of the LGC. Petitioner, however, failed to elevate respondent's denial of protest for judicial review, which amount is within the jurisdiction of the RTC. As stated earlier, petitioner received the April 7, 2009 Letter of respondent denying petitioner's protest against the assessment on April 22, 2009. Counting from the said date of receipt of the Letter, petitioner has only 30 days or until May 22, 2009 to appeal the case to the RTC. For failure to make a timely appeal on May 22, 2009, the protested local tax assessment becomes conclusive and unappealable pursuant to Section 195 of the LGC.

This Court could not treat petitioner's counterclaim in Civil Case No. 18931 as the "appeal" contemplated under the LGC. Foremost, while a counterclaim is not a substitute for the lost appeal, the counterclaim itself was filed only on May 28, 2009, way beyond the 30-day period prescribed by the LGC. om

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[32] Yamane v. BA Lepanto Condominium Corporation, G.R. No. 154993, October 25, 2005.
[33] Sec. 7. Jurisdiction. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.

Moreover, as correctly observed by the CTA First Division, petitioner's counterclaim does not qualify as a compulsory counterclaim; instead, it is a permissive counterclaim, which requires payment of docket fees for the court to acquire jurisdiction.

In the case of *Bungcayao vs. Fort Ilocandia Property Holdings, and Development Corporation,*[34] the Supreme Court made an extensive discussion on the concept of counterclaim, pertinent portion of the decision provides:

> "A **compulsory counterclaim** is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is **permissive**.
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> The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.
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> The **criteria to determine whether the counterclaim is compulsory or permissive** are as follows:
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> > (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?
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> > (b) Would res judicata bar a subsequent suit on defendant's claim, absent the compulsory rule?
> >
> > (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
> >
> > (d) Is there any logical relations between the claim and the counterclaim?
>
> **A positive answer to all four questions would indicate that the counterclaim is compulsory.**
>
> xxx xxx xxx

[34] G.R. No. 170483, April 19, 2010.

> Respondent filed three counterclaims. The first was for recovery of the P400,000 given to Manuel, Jr.; the second was for recovery of possession of the subject property; and the third was for damages. The first counterclaim was rendered moot with the issuance of the 6 November 2003 Order confirming the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and to return the P400,000 to respondent. Respondent waived and renounced the third counterclaim for damages. The only counterclaim that remained was for the recovery of possession of the subject property. **While this counterclaim was an offshoot of the same basic controversy between the parties, it is very clear that it will not be barred if not set up in the answer to the complaint in the same case. Respondent's second counterclaim, contrary to the findings of the trial court and the Court of Appeals, is only a permissive counterclaim. It is not a compulsory counterclaim. <u>It is capable of proceeding independently of the main case</u>**.
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> **The rule in permissive counterclaim is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees**. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. xxx" *(Emphasis supplied)*

Applying the foregoing concept, the CTA First Division ruled in this wise:

> "Applying the foregoing in the case at bench, it seems that petitioner's alleged appeal of its protest pursuant to Section 195 of the LGC of 1991, by incorporating the same in its Answer with Counterclaim, does not legally qualify as a compulsory counterclaim considering that the appeal from the denial of a protest under Section 195 of the LGC of 1991 is definitely capable of proceeding independently from the main case, the collection case docketed as Civil Case No. 18931 before Branch 39 of the RTC of Lingayen, Pangasinan.
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> Thus, at most, the counterclaim may only be considered as a permissive counterclaim, subject to the payment of the prescribed docket fees, for the court to acquire jurisdiction over the same. Failing in this regard, petitioner's counterclaim cannot remain for independent adjudication."

Indeed, the required "appeal" from the denial of a protest is capable of proceeding independently from the collection case of the local treasurer. As aforediscussed, "appeal" to the court of competent jurisdiction is authorized by the LGC within 30 days from receipt of the denial of the protest by the local treasurer. On the other hand, judicial action for the collection of local tax is also allowed by the LGC, under Section 194 thereof.[35] Clearly, the counterclaim taken by petitioner, even if treated as an "appeal" under the LGC, would merely be in the nature of a "permissive counterclaim" since the subject matter thereof is capable of proceeding independently from the collection case of the respondent. Being a permissive counterclaim, payment of the prescribed docket fees is indispensable for the court to acquire jurisdiction thereon. Since it is undisputed that the required docket fees were not paid to the RTC, petitioner's counterclaim was properly dismissed.

More importantly, even if the required docket fees were paid, with petitioner's permissive counterclaim being considered as an "appeal" contemplated under Section 195 of the LGC, still, the counterclaim is fatally infirm as it was only filed on May 28, 2009, way beyond the 30-day appeal period prescribed by the LGC, which ended on May 22, 2009 reckoned from petitioner's receipt of the denial of its protest on April 22, 2009. Failure to make a timely appeal renders the protested tax assessment conclusive and unappealable.

With respect to the issue of disqualification of petitioner's counsel, Atty. Tualla, to represent petitioner before the lower court, the CTA First Division aptly considered the same as academic. The dismissal of petitioner's counterclaim was a necessary consequence of the dismissal, at petitioner's instance, of the complaint in Civil Case No. 18931.

WHEREFORE, premises considered, the instant Petition for Review filed on October 17, 2012 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[35] SECTION 194. Periods of Assessment and Collection. — (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period xxx.

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice