REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA EB No. 2123** (CBAA Case No. L-140-2018)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,**
CELIA T. BOGNALEN, in her capacity as Officer-in-Charge of the **OFFICE OF THE MUNICIPAL TREASURER, and DONALD L. DAGANOS,** in his capacity as **MUNICIPAL ASSESSOR**, both of the Municipality of Mankayan, Benguet, *Respondents.*	**MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.* Promulgated: MAY 31 2022 10:50a.m.

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RESOLUTION

MANAHAN, J.:

For this Court's resolution is petitioner's *Motion for Reconsideration (of the Decision dated 24 June 2021)* posted on July 16, 2021 and received by the Court on September 2, 2021 with respondent's *Comment (Re: Motion for Reconsideration dated July 16, 2021)* posted on December 1, 2021 and received by the Court on February 28, 2022.

Petitioner prays for the reconsideration of the Court's Decision dated June 24, 2021, the dispositive portion of which reads:

"**WHEREFORE**, the instant Petition for Review posted by petitioner Lepanto Consolidated Mining Company on August 13, 2019 is hereby **DISMISSED** for lack of merit.

SO ORDERED."

Petitioner posits the following contentions as grounds for its Motion for Reconsideration, and we quote:

"I.

The Honorable Court erred in ruling that payment under protest is a requisite in the instant case. The petitioner is questioning the very authority of the respondents to make the assessment and is neither claiming tax exemption nor is it questioning the reasonableness of the amount assessed.

II.

The Rules of Procedure of the Local Board of Assessment Appeals (LBAA) state that payment under protest is not a prerequisite for the LBAA to hear the petition."

Foremost among the contentions of petitioner is that the instant claim is not one for tax exemption from real property taxes (RPT) but a petition questioning the authority of respondents to impose RPT on properties not classified as "real property" under relevant laws. Petitioner argues that a claim for tax exemption presupposes that RPT may be imposed on petitioner's subject properties only that the law reduces the amount to be paid or removes the obligation to pay altogether. Petitioner debunks this theory of respondents and maintains that the subject Load Haul and Dump Trucks (LHDs) and Low Profile Trucks (LPTs) are not real properties and were erroneously taxed as such. Petitioner cites the ruling of the Supreme Court in *Ty vs. Trampe,*[1] where it was supposedly held that the requirement of payment under protest under Section 252 of the Local Government Code of 1991 (LGC of 1991) does not apply if the issue involved is not the reasonableness of the amount assessed but the very authority of the assessor in assessing the properties. Alongside its arguments against the alleged non-payment under protest, is petitioner's emphasis that the subject properties are personal properties under paragraph 4 of Article 416 of the New Civil Code (NCC) which

[1] G.R. No. 117577, December 1, 1995.

covers "all things which can be transported from one place to place without impairment of the real property to which they are fixed." The subject loader and trucking equipment, according to petitioner, can be transported from one place to another and are not attached on any real property, either permanently or temporarily. Neither can they be categorized as "machineries" under Section 199 (o) of the LGC of 1991 which would warrant the imposition of RPT. Lastly, petitioner invokes the statement contained in Local Finance Circular No. 2-09 issued by the Department of Finance (DOF) which allegedly classifies LHDs and LPTs as personal property.

In their *Comment (Re: Motion for Reconsideration Dated July 16, 2021)*, respondents refute the contention of petitioner and maintain that the latter is actually questioning the correctness or reasonableness of the RPT assessment against its LHDs and LPTs and not their authority to impose said RPT, hence, payment under protest is necessary. Aside from the procedural defect allegedly committed by petitioner of not accompanying its protest with payment of the amount assessed, respondents aver that the subject LHDs and LPTs of petitioner are real properties classified as machinery subject to RPT based on paragraph 5 of Article 415 of the NCC and Section 199 (o) of the LGC of 1991 because these were actually designed to meet the needs that are specific to the mining industry and not manufactured to meet the needs of other industries. In addition, respondents maintain that the amount being collected (Php55,484, 519,36) is not erroneous because this was based on the Tax Declarations of petitioner where it classified such properties as "Industrial" which has a corresponding assessment rate of 80% based on the 1999 schedule of fair market values and assessment levels of RPT in the province of Benguet. Likewise, respondents justify the imposition of penalties by invoking the provisions of Section 255 of the LGC of 1991 and Section 180 of the Local Treasury Operations Manual.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of petitioner's *Motion for Reconsideration (of the Decision dated 24 June 2021)* with the Court.

On June 24, 2021, the Court issued a Decision in the above-captioned case, denying petitioner's Petition for Review for lack of merit. A copy of the Decision was received by the petitioner on July 1, 2021. Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> "**Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

Counted from petitioner's receipt of the decision, petitioner had until July 16, 2021 to file its Motion for Reconsideration. Records show that petitioner posted its Motion for Reconsideration on July 16, 2021 which was received by the Court on September 2, 2021, hence the instant motion was timely filed.

As regards the substantial merits of this case, we find no cogent or compelling reason that would move this Court to reverse or modify the assailed Decision.

To emphasize the conclusion reached by the Court in the assailed Decision, we find it necessary to point out that this case stemmed from an assessment for RPT and Special Education Fund (SEF) for taxable years 2010 to 2016 which herein petitioner protested and filed with the Local Board of Assessment Appeals (LBAA) anchored on its claim that the

LHDs and LPTs used in the mining business are personal properties not subject to RPT.

The remedy of protest is governed by Section 252 of the LGC of 1991, and we quote:

> "Section 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 the thirty (30) days from payment of the tax to the provincial, city or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt." (emphasis supplied)

Based on the foregoing provision, the LBAA correctly dismissed the Petition for Review filed by petitioner on jurisdictional grounds for failure to first pay the tax under protest before it elevated an appeal with their office. We quote the ruling of the Supreme Court in the case of *Napocor vs. Province of Quezon, et al.,* [2] for emphasis, to wit:

> **"It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252.** Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that any owner or person having interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of the property may appeal to the Board of Assessment Appeals should be read in conjunction with Section 252 (d) which states that in the event that the protest is denied xxx, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of the LGC xxx. The action referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessors act of denying the protest filed pursuant to Section 252. xxx" (emphasis supplied)

At to the nature of the protest which will determine the proper *fora* of the appeal, the Court reiterates that the nature of the protest is one that challenges the correctness of the assessment issued by the municipal assessor of Mankayan, Benguet because it claims that the assessment is wrong for its

[2] G.R. No. 171586, January 25, 2010.

improper imposition of RPT on the so-called personal properties used by petitioner in its business. Petitioner then correctly elevated its appeal with the LBAA but unfortunately did not follow the directive of the law to first pay under protest. In the case of *National Power Corporation vs. the Provincial Treasurer of Benguet, et al.*[3] the Supreme Court clarified that a claim for tax exemption in response to a tax assessment is an issue which questions the correctness of an assessment which is properly lodged with the LBAA, and we quote:

> "xxx xxx xxx. As settled in jurisprudence, a claim for exemption from the payment of real property taxes **does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness and correctness of the assessment by the local assessor,** a question of fact which should be resolved at the very instant, by the LBAA." (emphasis supplied)

Unfortunately, petitioner failed to comply with the requisite of prior payment when it elevated its appeal with the LBAA. Its insistence that it filed its appeal before the LBAA under Section 226 instead of Section 252 of the LGC of 1991 which requires no payment under protest is irrelevant and immaterial. As earlier emphasized, the case already covers a tax billing statement where the amounts of deficiency RPT and SEF are being collected, thus, the demand for payment emanates directly from the Office of the Municipal Treasurer.

Notably, the petitioner cannot deviate, at this point in time, from the original theory of its case, i.e., LHDs and LPTs are tax exempt under Local Finance Circular No. 2-09; tax computation and RPT classification of these properties are erroneous, in order to be excluded from the jurisprudential ruling[4] that claims for tax exemption in response to a tax assessment is an issue questioning the correctness of an assessment, hence, must be paid under protest.

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[3] G.R. No. 209303, November 14, 2016.
[4] *Id.*

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration (of the Decision dated 24 June 2021)* filed by petitioner 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.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

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