Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ISABEL B. SANTOS, *Petitioner,*	**CTA EB NO. 1103** (CBAA Case No. L-122)
-versus-	
THE LOCAL BOARD OF ASSESSMENT APPEALS OF VALENZUELA CITY AND GUALBERTO B. BERNAS IV, IN HIS OFFICIAL CAPACITY AS THE CITY TREASURER OF VALENZUELA CITY, CENTRAL BOARD OF ASSESSMENT APPEALS HONORABLE OFELIA A. MARQUEZ, CHAIRMAN, ROBERTO D. GEOTINA, MEMBER, CAMILO L. MONTENEGRO, MEMBER, *Respondents.*	Present: DEL ROSARIO, *P.J.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.* Promulgated: SEP 04 2015 2:50 p.m.

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DECISION

MINDARO-GRULLA, , J.:

Submitted for decision is a Petition for Review filed on December 13, 2013 which seeks the nullification of the Decision[1] and Resolution[2] dated August 2, 2013 and October 21, 2013, respectively, of the Central Board of Assessment Appeals.

The antecedent facts are as follows:

[1] CBAA Records, Folder 1, pp. 204-217.
[2] CBAA Records, Folder 2, pp. 286-289.

Petitioner is of legal age, Filipino, widow and currently residing at Cecilio J. Santos St., Valenzuela City.[3] She may be served with summons and other processes through her undersigned counsel at 2nd Floor, Basilio and Isabel (B&I) Santos Building, Cecilio J. Santos St., Valenzuela City.[4]

Respondent Gualberto B. Bernas IV (or Ms. Rosa Irma A. Alcoran, current City Treasurer) is impleaded in his official capacity as OIC-City Treasurer of Valenzuela City.[5] He may be served with summons and other processes at the City Hall, Mc. Arthur Highway, Malinta, Valenzuela City.[6]

Respondent Atty. Ard Henry H. Binwag (Atty. Cecilynne Andrade, current City Assessor) is impleaded in his official capacity as OIC-City Assessor of Valenzuela City.[7] He may be served with summons and other processes at the City Hall, Mc. Arthur Highway, Malinta, Valenzuela City.[8]

Respondent Honorable CBAA, composed of Honorable Ofelia A. Marquez, Roberto D. Geotina, Camilo L. Montenegro, are impleaded in their official capacity as Chairman and Members, respectively, of Honorable Central Board.[9] They may be served with legal processes of this Honorable Court at the Office of the Honorable Central Board, 7th Floor, EDPC Bldg., BSP Complex, Roxas Blvd., Manila.[10]

Petitioner is a co-owner of two (2) parcels of land located at Caruhatan, Valenzuela City covered by TCT Nos. 118898 [11] and 118903. [12] Said properties were likewise declared for real tax purposes as evidenced by Tax Declaration (TD) Nos. C-017-03634[13] and C-017-03635.[14]

[3] Par. 2, Petition for Review, *En Banc* Docket, p. 3.
[4] *Id.*
[5] Par. 2.1, Petition for Review, *En Banc* Docket, p. 3.
[6] *Id.*
[7] Par. 2.2, Petition for Review, *En Banc* Docket, p. 3.
[8] *Id.*, pp. 3-4.
[9] Par. 2.3, Petition for Review, *En Banc* Docket, p. 4.
[10] *Id.*
[11] CBAA Records, Folder 3, pp. 14-16.
[12] *Id.*, at pp. 17-19.
[13] *Id.*, at pp. 20-21.
[14] *Id.*, at pp. 22-23.

On May 21, 2009, petitioner received Notices of Realty Tax Deficiency, both dated May 20, 2009 from the Office of the City Treasurer of Valenzuela City, informing her of alleged tax deficiencies by reason of reclassification from residential to commercial lots as follows:

Transfer Certificate Title No.	Tax Declaration No.	Taxable Period	Amount
TCT No. 118898	C-017-014417	1999 to 2008	P 78,589.48[15]
TCT No. 118903	C-017-014418	1999 to 2008	P 66,676.66[16]

On May 29, 2009, petitioner paid, by instalment, the assessed deficiency tax assessment for both parcels of land, as follows:

Tax Declaration No.	Official Receipt No.	Period of Payment	Amount
C-017-014417	VC 090931[17]	1999 / 2-4Q	P 19,253.25
C-017-014418	VC 090932[18]	1999 / 2-4Q to 2000 / 1-1Q	P 20,923.80
		Total	**P 40,177.05**

On June 30, 2009 and July 31, 2009, respectively, petitioner paid under protest, and by instalment, the assessed deficiency tax assessment for both parcels of land, as follows:

Date	Tax Declaration No.	Official Receipt No.	Period of Payment	Amount
June 30, 2009	C-017-014417	VC 091900[19]	1999 / 1-1 Q	P 6,417.75
June 30, 2009	C-017-014418	VC 091899[20]	1999 / 1-1 Q	P 5,230.95
July 31, 2009	C-017-014417	VC 093638[21]	2000 / 1-1Q	P 6,417.75
July 31, 2009	C-017-014418	VC 093639[22]	2000 / 2-4Q	P13,582.25
			Total	**P 31,648.70**

In a letter dated July 31, 2009,[23] petitioner wrote respondent Gualberto B. Bernas IV, OIC-City Treasurer of Valenzuela City, informing the latter that she was exercising her right to protest the re-classification and the re-assessment, and that she was seeking enlightenment on the following: (1) the basis of the re-classification; (2) the basis

[15] CBAA Records, Folder 1, p. 46.
[16] *Id.*, at 47.
[17] *Id.*, at 53 and 200.
[18] *Id.*, at 198.
[19] *Id.*, at 48 and 200.
[20] *Id.*, at 54 and 198.
[21] *Id.*, at 49 and 201.
[22] *Id.*, at 55 and 199.
[23] *Id.*, at 60.

of the tax deficiency; and (3) the propriety and legality of the back assessment.

In a letter-reply dated August 3, 2009,[24] the Office of the City Treasurer, through OIC-City Treasurer Gualberto B. Bernas IV, informed petitioner that the City Assessor has the function to appraise, assess and re-assess all the real properties in the Local Government Unit primarily for taxation purposes, and similarly informed her that he will endorse said letter to the City Assessor.

On September 1, 2009, petitioner again paid under protest, and by instalment, the following:

Tax Declaration No.	Official Receipt No.	Period of Payment	Amount
C-017-014417	VC 095921[25]	2009 / 1-1Q	P 7,338.13
C-017-014418	VC 095922[26]	2009 / 3-4Q	P 9,123.74
		TOTAL	**P16,461.87**

Thereafter, petitioner alleges that one of the staff members in the Office of the City Treasurer told her that there was a mistake in the assessment of back taxes, reasoning that it was brought about by a glitch in the computer system, and consequently, there was, in fact, no tax liability.[27] She further avers that she was made to believe that the amount already paid for the alleged tax deficiencies will be credited for future tax liability. On the strength of such representation, she set aside her written protest.

On June 9, 2010,[28] petitioner received Final Notices of Realty Tax Deficiency for the parcels of land covered by TD Nos. C-017-014417 and C-017-014418, respectively, amounting to P269,839.02[29] for the years 1999 to 2008 and P158,758.18[30] for the years 2001-2008.

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[24] *Id.*, at 61.
[25] *Id.*, at 201.
[26] *Id.*, at 199.
[27] Petition before the Local Board of Assessment Appeals, Par. 3.2, CBAA Records, Folder 3, p. 4.
[28] Petition before the Local Board of Assessment Appeals, Par. 3.3, CBAA Records, Folder 3, p. 4.
[29] CBAA Records, Folder 3, p. 24.
[30] *Id.*, at 25.

Thereafter, on June 16, 2010, petitioner received a Notice of Realty Tax Deficiency[31] dated June 1, 2010 for the parcel of land covered by TCT No. 118898, for the years 2009, 2nd Qtr - 2010, 4th Qtr in the amount of P46,889.37 including interest, plus P269,839.02 tax deficiency for the years 1999-2008.

Petitioner resumed her instalment payments, albeit under protest, on July 1, 2010, as follows:

Tax Declaration No.	Date of Payment	Official Receipt No.	Period of Payment	Amount
C-017-014417	July 1, 2010	VC 143288[32]	2009, 2-2Q	P 8,208.75
C-017-014418	July 1, 2010	VC 143287[33]	2010, 1-2Q	P10,340.25
			TOTAL	**P18,549.00**

On August 2, 2010, petitioner filed a letter-appeal[34] before respondent City Treasurer of Valenzuela. Due to the inaction of the said office within the requisite 60-day period pursuant to Section 252(a) of the Local Government Code (LGC) of 1991, petitioner filed a petition before the Local Board of Assessment Appeals (LBAA) on November 30, 2010.

In the Joint Comment/Opposition filed by the City Treasurer and Office of the City Assessor,[35] they claim that assessments made on petitioner's properties were pursuant to a tax mapping operation by the City Assessor's Office when they discovered that TD Nos. C-017-03634 and C-017-03635 were actually commercial lots, as they consist of several establishments used for operation of business, which petitioner failed to report.[36] On the basis of said findings, the City Assessor informed the owners of the subject properties of the erroneous classification, considering that the actual use of the same is commercial in nature.[37]

[31] *Id.*, at 26.
[32] *Id.*, at 27.
[33] *Id.*, at 28.
[34] CBAA Records, Folder 1, pp. 65-70; CBAA Records, Folder 3, pp. 29-34.
[35] CBAA Records, Folder 3, pp. 38-63.
[36] LBAA Decision, CBAA Records, Folder 3, pp. 95-96..
[37] CBAA Records, Folder 3, pp. 54-55.

On April 27, 2011, petitioner continued her payment under protest, as follows:

Tax Declaration No.	Official Receipt No.	Period of Payment	Amount
C-017-014417	VC 194046[38]	2011 / 1-2Q	P10,036.12
C-017-014418	VC 194045[39]	2010 / 3-4Q	P11,860.88
		TOTAL	**P21,897.00**

On November 29, 2011, the LBAA rendered a decision[40] against petitioner, the dispositive portion thereof reads:

> "PREMISES CONSIDERED, finding Petitioner/Appellant's petition unmeritorious, the Board hereby Order, that:
>
> 1. Tax Declaration Nos. C-017-014417 and C-017-014418 are affirmed.
> 2. Petitioner is hereby ordered to pay the computed real estate taxes without interest and penalty.
> 3. No pronouncement as to cost, damages and penalties.
>
> SO ORDERED."

On January 27, 2012, petitioner filed a Notice of Appeal with the Central Board of Assessment Appeals (CBAA).[41]

On July 29, 2013, the CBAA rendered its Decision dismissing petitioner's appeal on the ground that the proper respondent in the said appeal should have been the City Assessor and not the City Treasurer of Valenzuela because the proximate cause of the appeal is the action of the City Assessor in re-assessing and re-classifying the subject properties from "residential" to "commercial" and the realty taxes, as computed by the City Treasurer, are merely the consequence or result of the assessor's action. [42] The dispositive portion of which reads:

> "WHEREFORE, premises considered, the instant appeal is hereby DISMISSED.

[38] CBAA Records, Folder 1, p. 58.
[39] *Id.*, at 52.
[40] CBAA Records, Folder 3, pp. 95-100.
[41] CBAA Records, Folder 1, pp. 2-99.
[42] *Id.*, at 215.

SO ORDERED."

Petitioner filed a Motion for Reconsideration on August 22, 2013, which was subsequently denied in a Resolution dated October 21, 2013. Hence, the instant petition before the Court *En Banc*.

Petitioner presented the following issues:

"I.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN NOT DECLARING THAT A VALID NOTICE OF ASSESSMENT WAS NOT ISSUED TO PETITIONER.

II.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN FAILING TO HOLD THAT THE ASSESSMENT OF BACK TAXES IS IMPROPER AND ILLEGAL.

III.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN NOT APPRECIATING THAT THE SUBJECT PARCELS OF LAND MAY NOT BE RE-CLASSIFIED FROM RESIDENTIAL TO COMMERCIAL MERELY BY THEIR INCIDENTAL COMMERCIAL USE AND IN NOT FINDING THAT THE RE-CLASSIFICATION CAN EXTEND ONLY TO THE PORTION BEING USED FOR COMMERCIAL PURPOSE.

IV.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN NOT FINDING THAT THE CITY ASSESSOR HAD APPEARED BEFORE THE HONORABLE LOCAL BOARD BY VIRTUE OF ITS COERCIVE POWER.

V.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN *MOTU PROPIO* DISMISSING THE INSTANT CASE FOR ALLEGEDLY HAVING BEEN FILED AGAINST AN IMPROPER PARTY.

VI.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN FAILING TO RULE THAT THE ISSUES RAISED BY RESPONDENT CITY TREASURER IN ITS MOTION TO DISMISS HAD ALREADY BEEN WAIVED.

VII.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN DISREGARDING THE PREVAILING DOCTRINE ON NON-JOINDER OR MISJOINDER OF PARTY.

VIII.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN DECLARING THAT THE CITY TREASURER IS AN IMPROPER PARTY TO THE INSTANT CASE.

IX.

WHETHER THE HONORABLE CENTRAL BOARD GRAVELY ERRED IN FAILING TO DECLARE THAT RESPONDENT CITY TREASURER IS BARRED FROM FILING THE MOTION TO DISMISS." [43]

Respondents, through the Office of the Solicitor General, filed their comment[44] and argue that the present case is dismissible outright as petitioner failed to pay under protest the deficiency taxes assessed against her. Moreover, they assert that the actual use of petitioner's properties is commercial in nature; and there was a valid notice of assessment served upon petitioner.

In reply,[45] petitioner counter-argues that the petition should not be dismissed considering that she had paid under protest, albeit by instalment. While admitting that she has remaining back taxes due as of September 1, 2009 in the amounts of P13,254.05 and P33,565.73 for TD Nos. 017-14418 and 017-14417, respectively, she argues that these balances would have been fully paid had petitioner not been told to have her instalments discontinued by one of the staff members in the Office of the City Treasurer.[46]

[43] *En Banc* Docket, pp. 8-10.
[44] *Id.*, at 274-291.
[45] *Id.*, at 292-303.
[46] Reply (To OSG's Comment dated 27 May 2014) filed on June 9, 2014, *En Banc* Docket, p. 294; CBAA Records, Folder 1, pp. 293-294.

She further argues that she is not required by law to first pay the alleged back taxes due because her action is rooted in the reclassification of her real properties from commercial to residential pursuant to Section 226, not 252, of the Local Government Code of 1991.[47] Moreover, petitioner contends that respondents are barred to raise the arguments relating to payment under protest and filing of written protest within the period required by law for their failure to raise them in their Joint Opposition/Comment and Position Paper before the LBAA and CBAA, respectively.[48]

The case was submitted for decision on September 24, 2014.[49] Thereafter, petitioner posted a "Motion for Leave to Admit Additional Evidence" on October 8, 2014 and received by the Court on October 16, 2014.

In his Comment thereto,[50] respondent City Treasurer, while not contesting as to the fact of payment under protest of the amount of P811,914.99 on September 30, 2014, he argues that petitioner's belated payment bolsters his stance that petitioner did not comply with a condition precedent, *i.e.,* payment in full, under protest, of the total tax due pursuant to Section 252 of the LGC of 1991 which mandates that no protest shall be entertained unless the taxpayer first pays the tax.

On December 22, 2014, the Court *En Banc* directed petitioner to submit the original or certified true copy of the official receipt and statement of account issued by the Office of the City Treasurer of Valenzuela within five (5) days from receipt thereof.[51] Petitioner belatedly complied by posting her "Motion for Leave to Admit Compliance and Reply" on March 11, 2015 and received by the Court on March 20, 2015.

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[47] *Id.*, at 299.
[48] *Id.*, at 300-301.
[49] *En Banc* Resolution dated September 24, 2014, En Banc Docket, pp.399-400.
[50] Posted on October 16, 2014 and received by the Court on October 24, 2014; En Banc Docket, pp. 407-410.
[51] *En Banc* Docket, pp. 411-413.

We resolve.

A careful scrutiny of the records of the case reveals that petitioner anchors her protest before the City Treasurer of Valenzuela, and her subsequent appeals to the LBAA and CBAA, based on the provisions of Section 252 of Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991.[52] Nevertheless, on appeal before the Court *En Banc*, petitioner, through counsel, takes an inconsistent position that her action is rooted in the reclassification of her real properties from commercial to residential pursuant to Section 226, not 252, of RA No. 7160. Petitioner opines that she is not required to first pay the tax before filing her protest.[53]

Sections 226 and 252 of RA No. 7160 read:

> Section 226. *Local Board of Assessment Appeals.* - 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 may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.
>
> 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 Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
>
> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

[52] Par. 1.2 of petitioner's Petition before the LBAA; CBAA Docket, Folder 3, p. 2.
[53] *En Banc* Docket, p. 299.

(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code. [Emphasis supplied.]

In ***National Power Corporation v. Province of Quezon, et al.***,[54] the Supreme Court clarified that Sections 252 and 226 of LGC provide successive administrative remedies to a taxpayer who questions the correctness of an assessment in this wise:

"By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. **Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocors failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.**

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 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* may x x x appeal to the Board of Assessment Appeals x x x, **should be read in conjunction with Section 252 (d),** which states that in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. 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

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

> pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocors action before the LBAA was thus prematurely filed." [Emphasis supplied.]

Simply stated, if the taxpayer questions the correctness of the assessment, he should first comply with Section 252 of LGC, *i.e.,* the requirement of payment under protest. Failure to prove such requirement renders his administrative protest under Section 226 of the LGC without any effect. To emphasize, no protest shall be entertained unless the taxpayer first pays the tax.

In the instant case, it is undisputed that petitioner questions the correctness of the reclassification from "residential" to "commercial" lots of her two (2) co-owned properties, covered by TD Nos. C-017-014417 and C-017-014418 made by the City Assessor of Valenzuela. By reason of such reclassification, petitioner similarly questions the correctness of the alleged deficiency realty tax assessments of the subject properties incurred from years 1999 to 2009 prepared by the City Treasurer of Valenzuela. Consequently, it is incumbent upon petitioner to comply with the requirement of payment under protest pursuant to Section 252 of the LGC.

The records disclosed that petitioner failed to comply with the requirement of payment under protest when she exercised her right to protest the said deficiency realty tax assessments before the respondent City Treasurer on two (2) separate occasions, *i.e.*, on July 31, 2009 and August 2, 2010.

First. Petitioner filed her first letter-protest on July 31, 2009[55] before respondent Gualberto B. Bernas IV, OIC - City Treasurer, in response to the Notices of Realty Tax Deficiency, both dated May 20, 2009, from the Office of the City Treasurer of Valenzuela City, informing her of alleged tax deficiencies by reason of reclassification from residential to commercial lots as follows:

[55] CBAA Records, Folder 1, p. 60.

Tax Declaration No.	Taxable Period	Amount
C-017-014417	1999 to 2008	P 78,589.48[56]
C-017-014418	1999 to 2008	P 66,676.66[57]
	TOTAL	**P 145,266.14**

Thereafter, she paid under protest, and by instalment, on the following dates:

Date of Payment	Tax Declaration No.	Official Receipt No.	Period of Payment	Amount
July 31, 2009	C-017-014417	VC 093638[58]	2000 / 1-1Q	P 6,417.75
July 31, 2009	C-017-014418	VC 093639[59]	2000 / 2-4Q	P 13,582.25
September 1, 2009	C-017-014417	VC 095921[60]	2009 / 1-1Q	P 7,338.13
September 1, 2009	C-017-014418	VC 095922[61]	2009 / 3-4Q	P 9,123.74
			TOTAL	**P 36,461.87**

Second. After receipt of the Final Notices of Realty Tax Deficiency for the parcels of land covered by TD Nos. C-017-014417 and C-017-014418, respectively, amounting to P269,839.02 [62] for the years 1999 to 2008, and P158,758.18[63] for the years 2001-2008 on June 9, 2010, and tax delinquency on June 16, 2010, respectively, petitioner paid under protest, on July 1, 2010, as follows:

Tax Declaration No.	Date of Payment	Official Receipt No.	Period of Payment	Amount
C-017-014417	July 1, 2010	VC 143288[64]	2009, 2-2Q	P 8,208.75
C-017-014418	July 1, 2010	VC 143287[65]	2010, 1-2 Qtr.	P10,340.25
			TOTAL	**P18,549.00**

On August 2, 2010, petitioner filed her second letter-protest to OIC - City Treasurer Gualberto B. Bernas IV.

Clearly then, the foregoing facts as stated in petitioner's pleadings reveals that petitioner failed to pay the

[56] *Id.*, at 46.
[57] *Id.*, at 47.
[58] *Id.*, at 49 and 201.
[59] *Id.*, at 55 and 199.
[60] *Id.*, at 201.
[61] *Id.*, at 199.
[62] CBAA Records, Folder 3, p. 24.
[63] *Id.*, at 25.
[64] *Id.*, at 27.
[65] *Id.*, at 28.

assessed deficiency taxes in full prior to the filing of her written protests before the City Treasurer.

In fact, during the hearing before the CBAA on February 11, 2013, petitioner, through counsel, admitted that she paid only a portion of the assessed deficiency taxes covering the period 1999-2009:

> "ATTY. SUANDING: Kasi the problem was that, ang gusto kasi po n'yong bayaran is 'yung current year lang po eh. Hindi naman pwede naming tanggapin 'yung current when you have back taxes.
>
> ATTY. MORTEL: Actually ma'am siguro meron lang misunderstanding, siguro 'yung back taxes na iniisip nung client naming eh 'yung including the 1999 to 2009 back taxes.
>
> ATTY. SUANDING: But I understand that you paid under protest 'yung back taxes di po ba?
>
> ATTY. MORTEL: Yes, ma'am. Pero...
>
> ATTY. SUANDING: So, paid na 'yun.
>
> ATTY. MORTEL: A portion of that...
>
> ATTY. SUANDING: Portion din pala."[66]

Correspondingly, in her reply [67] before this Court, petitioner, through counsel, admitted having back taxes due in the amounts of P13,254.05 and P33,565.73 for TD Nos. 017-14418 and 017-14417, respectively, as of September 1, 2009.[68]

Petitioner further underscored in her "Motion for Leave to Admit Additional Evidence,"[69] that she paid under protest the total amount of alleged back taxes due on the subject

[66] CBAA Docket, Folder 4, Hearing dated February 11, 2013, pp. 22-23.
[67] *En Banc* Docket, pp. 292-303.
[68] *Id.*, at 293-294.
[69] *Id.*, at 401-405; See Motion for Leave to Admit Compliance and Reply, *En Banc* Docket, pp. 414-421.

properties in the total amount of P811,914.99 only on September 30, 2014.

Thus, the application of Section 4, Rule 129 of the Rules of Court is relevant in this case, which reads:

> **SECTION 4.** *Judicial Admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In ***Alfelor, et al. v. Halasan, et al.,***[70] the Supreme Court held that:

> "A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. **Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded."** [Emphasis supplied.]

Accordingly, petitioner's failure to comply with the requisite payment under protest violates a mandatory provision of Section 252 of the LGC. It therefore violates the doctrine of exhaustion of administrative remedies and renders the present petition premature and thus without a cause of action, with the effect that this Court does not acquire jurisdiction over the present petition.[71]

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[70] G.R. No. 165987, March 31, 2006.
[71] *See Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, February 12, 2013.*

It bears stressing that this Court, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction[72] specifically defined under Section 7(a)(5)[73] of Republic Act (R.A.) No. 1125,[74] as amended by R.A. No. 9282.[75]

In view of the dismissal of the instant case on the ground of lack of jurisdiction, there is no more need to determine the validity of the assessment.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED.**

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(Joins PJ del Rosario's Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[72] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 05, 2010.
[73] "*Sec. 7. Jurisdiction. - The CTA shall exercise:*

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

"5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;"

[74] An Act Creating the Court of Tax Appeals.
[75] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

ERLINDA P. UY
Associate Justice

(Joins PJ del Rosario's stand)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(Joins PJ del Rosario's Separate Concurring Opinion)
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ISABEL B. SANTOS,
Petitioner,

-versus-

THE LOCAL BOARD OF ASSESSMENT APPEALS OF VALENZUELA CITY AND GUALBERTO B. BERNAS IV, IN HIS CAPACITY AS THE CITY TREASURER OF VAELNZUELA CITY, CENTRAL BOARD OF ASSESSMENT APPEALS HONORABLE OFELIA A. MARQUEZ, CHAIRMAN; ROBERTO D. GEOTINA, MEMBER; CAMILO L. MOTENEGRO, MEMBER,
Respondents.

CTA EB NO. 1103
(CBAA Case No. L-122)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 04 2015
2:50 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Cielito N. Mindaro-Grulla, which denied the instant Petition for Review, but *solely* on the ground that petitioner, Isabel B. Santos, failed to appeal with the Local Board of Assessment Appeals, within sixty (60) days from receipt of notice, the reclassification of her properties, pursuant to Section 226 of the Local Government Code (LGC), as amended.

At the onset, it must be stressed that there are two (2) stages in the imposition and collection of real property tax (RPT). In the first stage, the property undergoes an assessment wherein the assessor appraises the property and determines its assessed value. In the second stage, the RPT is computed and eventually collected by the Treasurer on the tax rates (approved by the sanggunian concerned) based on the assessed value of the property, as determined by the assessor. The treasurer computes the RPT only on the basis of the copies of the tax declarations and assessment roll, as furnished by the assessor.[1]

As elucidated in my Separate Concurring Opinion in the recent case of *National Power Corporation v. The Central Board of Assessment Appeals, et al.*,[2], the proper remedy of taxpayers to assail the action of the assessor is resort to Section 226 of the LGC, as amended, *viz*:

> Notably, Section 252 of the LGC, as amended, falls under Chapter VI, Collection of Real Property Tax. **It must be stressed that the duty to collect the realty tax due on the assessment pertains to the treasurer while the duty to assess realty tax is the function of the assessor.**
>
> **In availing of the remedy under Section 252 of the LGC, as amended, petitioner has actually availed of the wrong remedy for purposes of questioning the action of the assessor as it is clear under Section 226 of the LGC, as amended, that a property owner or person having legal interest in a real property may question the assessment made by the assessor by directly filing a petition with the LBAA,** pursuant to Section 226 of the LGC, *viz.*:
>
>> "Section 226. *Local Board of Assessment Appeals*. – 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** may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal."
>
> Indubitably, Section 226 of the LGC, as amended, gives dissatisfied owners of real properties with an administrative forum where they can question the action of the provincial, city or municipal assessor in the assessment of their properties. Specifically, an aggrieved taxpayer can file an **outright appeal** before the LBAA against an adverse action of the

[1] Section 248, Local Government Code.
[2] CTA EB Case No. 1025, March 23, 2015.

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assessor in the assessment of real property within sixty (60) days from receipt of the written notice of assessment.

In *Systems Plus Computer College of Caloocan City vs. Local Government of Caloocan City,*[3] the Honorable Supreme Court ruled that, under Section 226 of the LGC of 1991, **the remedy of appeal to the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property**, *viz:*

> "Under Section 226 of RA 7160, **the remedy of appeal to the Local Board of Assessment Appeals is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property**, thus:
>
> > 'Section 226. Local Board of Assessment Appeals. -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 may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.'
>
> xxx xxx xxx

This ruling was reiterated in the case of *Fels Energy, Inc., vs. The Province of Batangas and The Office of the Provincial Assessor of Batangas,*[4] wherein the Honorable Supreme Court held:

"**The remedy of appeal to the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of the property**. It follows then that the determination made by the respondent Provincial Assessor with regard to the taxability of the subject real properties falls within its power to assess properties for taxation purposes subject to appeal before the LBAA.

We fully agree with the rationalization of the CA in both CA-G.R. SP No. 67490 and CA-G.R. SP No. 67491. The two divisions of the appellate court cited the case of Callanta v. Office of the Ombudsman, where we ruled that under Section 226 of R.A. No 7160, **the last action of the local assessor on a particular assessment shall be the**

[3] G.R. No. 146382, August 7, 2003.
[4] G.R. Nos. 168557 & 170628, February 16, 2007.

notice of assessment; it is this last action which gives the owner of the property the right to appeal to the LBAA. The procedure likewise does not permit the property owner the remedy of filing a motion for reconsideration before the local assessor. The pertinent holding of the Court in Callanta is as follows:

> x x x [T]he same Code is equally clear that the aggrieved owners should have brought their appeals before the LBAA. Unfortunately, despite the advice to this effect contained in their respective notices of assessment, the owners chose to bring their requests for a review/readjustment before the city assessor, a remedy not sanctioned by the law. To allow this procedure would indeed invite corruption in the system of appraisal and assessment. It conveniently courts a graft-prone situation where values of real property may be initially set unreasonably high, and then subsequently reduced upon the request of a property owner. In the latter instance, allusions of a possible covert, illicit trade-off cannot be avoided, and in fact can conveniently take place. Such occasion for mischief must be prevented and excised from our system.

For its part, the appellate court declared in CA-G.R. SP No. 67491:

> x x x. The Court announces: Henceforth, whenever the local assessor sends a notice to the owner or lawful possessor of real property of its revised assessed value, the former shall no longer have any jurisdiction to entertain any request for a review or readjustment. The appropriate forum where the aggrieved party may bring his appeal is the LBAA as provided by law. It follows ineluctably that the 60-day period for making the appeal to the LBAA runs without interruption. This is what We held in SP 67490 and reaffirm today in SP 67491.

To reiterate, if the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the taxpayer's property becomes absolute upon the expiration of the period to appeal. **It also bears stressing that the taxpayer's failure to question the assessment in the LBAA renders the assessment of the local assessor final, executory and demandable, thus, precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.**" *(Emphases in the original)*

In the case at bar, petitioner is questioning the reclassification of its properties from "*residential*" to "*commercial*" made by the City Assessor of Valenzuela City. Thus, pursuant to Section 226 of the LGC, as amended, *vis-a-vis* the afore-quoted jurisprudence, petitioner should have questioned the said reclassification in the LBAA within sixty (60) days from receipt of notice of assessment. Records, however, show that petitioner instead filed a protest letter with the City Treasurer of Valenzuela City, under Section 252 of the LGC, as amended.

To my mind, Section 252 of the LGC, as amended, which pertains to payment under protest filed with the treasurer, should be applied only in cases involving questions on the reasonableness or correctness of the computation of the RPT on the basis of existing assessment considering that it is the duty of the treasurer to compute and collect the realty tax due on such assessment. Truth be told, the treasurer has no authority over the assessment, valuation or reclassification of property, which is the sole duty of the assessor.

Clearly, petitioner invoked a wrong provision of the LGC, as amended, in questioning the reclassification of her properties. For her failure to appeal the reclassification of her properties to the LBAA within sixty (60) days from receipt of the written notice of assessment pursuant to Section 226 of the LGC, as amended, the reclassification made by the City Assessor became final and demandable thereby precluding petitioner from questioning the correctness of the said reclassification.

For all the foregoing, I **VOTE** to **DENY** the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice