

EN BANC

[G.R. NO. 154126, September 15, 2006]

ALLIED BANKING CORPORATION AS TRUSTEE FOR THE TRUST FUND OF COLLEGE ASSURANCE PLAN PHILIPPINES, INC. (CAP), PETITIONER, VS. THE QUEZON CITY GOVERNMENT, THE QUEZON CITY TREASURER, THE QUEZON CITY ASSESSOR AND THE CITY MAYOR OF QUEZON CITY, RESPONDENTS.

RESOLUTION

CARPIO MORALES, J.:

Allied Banking Corporation (petitioner) filed the instant motion for clarification of the Decision of this Court promulgated on October 11, 2005 which declared as invalid the third sentence of Section 3, Quezon City Ordinance No. 357 Series of 1995 (the proviso)^[1] for adopting a method of assessment or appraisal of real property contrary to the Local Government Code and its Implementing Rules and Regulations and the Local Assessment Regulations No. 1-92 issued by the Department of Finance.

Petitioner contends in its motion for clarification that the return of the real property tax erroneously collected and paid is a necessary consequence of this Court's finding that the proviso is invalid, hence, there is no need to claim for a refund with the Local Board of Assessment Appeals^[2] as provided by the second paragraph of the dispositive portion of the decision to wit:

WHEREFORE, the petition is hereby GRANTED. The assailed portion of the provisions of Section 3 of Quezon City Ordinance No. 357 is hereby declared invalid.

Petitioner's claim for refund, however, must be lodged with the Local Board of Assessment Appeals, if it is not barred by the statute of limitations.
(Underscoring supplied)

Treating the motion for clarification as a motion for reconsideration, this Court required respondents to comment thereon.

In their Comment, respondents aver that with the Court's finding that petitioner failed to exhaust administrative remedies,^[3] "it cannot be allowed to create legal shortcut" by

demanding that the real property tax it paid be refunded to it without going through the usual procedure provided for by the Local Government Code,^[4] specifically Sections 252,^[5] 226,^[6] 229,^[7] 230^[8] and 231^[9] thereof. As respondents conclude that the Court's decision is clear and exhaustive to guide the parties, they pray that the motion for clarification be denied.

This Court notes that prior to the filing before the trial court of the petition for declaration of nullity of the proviso, petitioner commenced a claim for refund with the City Treasurer who referred it to the City Assessor.

The City Assessor denied petitioner's claim for refund by letter dated May 7, 2000:

Please be informed that the subject new assessment was made by the Office of the City Assessor in faithful compliance with the provision of 3rd [s]entence of Section 3, Ordinance No. SP-357, S-95. The duty of the City Assessor is to apply the said statutory provision and not interpret the same. Under the settled jurisprudence in our jurisdiction, the City Assessor, being in the Executive Department, is duty bound to implement the said provision. The same is presumed valid and legal unless declared otherwise by a court of competent jurisdiction.^[10] (Underscoring supplied)

In its Decision subject of the present motion, this Court ruled that the assailed proviso is null and void *ab initio* for being *ultra vires* and for contravening the provisions of the Local Government Code and its Implementing Rules and Regulations and Local Assessment Regulations No. 1-92 and, as such, it acquired no legal effect and conferred no rights from its inception.^[11]

Clearly, petitioner and all those similarly situated are entitled to a tax refund/credit corresponding to the difference between the assessed value based on the proviso and the assessed value based on the then prevailing schedule of fair market values prepared by the City Assessor.

It bears stressing, however, that entitlement to a tax refund does not necessarily call for the automatic payment of the sum claimed.^[12] The amount of the claim being a factual matter, it must still be proven in the normal course and in accordance with the administrative procedure for obtaining a refund of real property taxes, as provided under the Local Government Code.

Under Section 253 of the Local Government Code, the claim for refund or credit for taxes must be filed before the city treasurer^[13] who shall decide the claim based on the tax declarations, affidavits, documents and other documentary evidence to be presented by petitioner.

SEC. 253. Repayment of Excessive Collections. - When an assessment of basic

real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies provided in Chapter 3, Title Two, Book II of this Code.

WHEREFORE, in light of the foregoing discussion, the second paragraph of the earlier quoted dispositive portion of the Decision of this Court dated October 11, 2005 is amended to read:

Petitioner's claim for refund may be pursued in accordance with Section 253 of the Local Government Code within Two (2) Years from the finality of this Decision.

SO ORDERED.

Panganiban, C. J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Atria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., concur.

[1] Section 3. The City Assessor shall undertake a general revision of real property assessments using as basis the newly approved schedule specified in Sections 1 and 2 hereof. He shall apply the new assessment level of 15% for residential and 40% for commercial and industrial classification, respectively as prescribed in Section 8 (a) of the 1993 Quezon City Revenue Code to determine the assessed value of the land. Provided; however, that **parcels of land sold, ceded, transferred and conveyed for remuneratory consideration after the effectivity of this revision shall be subject to real estate tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation of the Bureau of Internal Revenue prevailing at the time of sale, cession, transfer and conveyance, whichever is higher, as evidenced by the certificate of payment of the capital gains tax issued therefor.** (Emphasis and underscoring supplied)

[2] *Rollo*, pp. 262.

[3] *Id.* at 270-271.

[4] *Id.* at 274-275.

[5] 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 thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila 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.

(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.

[6]

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.

[7]

SECTION 229. *Action by the Local Board of Assessment Appeals.* - (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial

proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. 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, as herein provided. The decision of the Central Board shall be final and executory.

[8]

SECTION 230. Central Board of Assessment Appeals. - The Central Board of Assessment Appeals shall be composed of a chairman, and two (2) members to be appointed by the President, who shall serve for a term of seven (7) years, without reappointment. Of those first appointed, the chairman shall hold office for seven (7) years, one member for five (5) years, and the other member for three (3) years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. The chairman and the members of the Board shall be Filipino citizens, at least forty (40) years old at the time of their appointment, and members of the Bar or Certified Public Accountants for at least ten (10) years immediately preceding their appointment. The chairman of the Board of Assessment Appeals shall have the salary grade equivalent to the rank of Director III under the Salary Standardization Law exclusive of allowances and other emoluments. The members of the Board shall have the salary grade equivalent to the rank of Director II under the Salary Standardization Law exclusive of allowances and other emoluments. The Board shall have appellate jurisdiction over all assessment cases decided by the Local Board of Assessment Appeals.

[9]

SECTION 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.

[10] *Rollo*, p. 92.

[11] *Id.* at 259.

[12] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482, 487.

[13] *Ty v. Trampe, supra* at 104.a