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SECOND DIVISION

[G.R. No. 169234. October 2, 2013]

CAMP JOHN HAY DEVELOPMENT CORPORATION, *petitioner, vs.* **CENTRAL BOARD OF ASSESSMENT APPEALS, REPRESENTED BY ITS CHAIRMAN HON. CESAR S. GUTIERREZ, ADELINA A. TABANGIN, IN HER CAPACITY AS CHAIRMAN OF THE BOARD OF TAX (ASSESSMENT) APPEALS OF BAGUIO CITY, and HON. ESTRELLA B. TANO, IN HER CAPACITY AS THE CITY ASSESSOR OF THE CITY OF BAGUIO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; ON REAL PROPERTY TAXES; PAYMENT UNDER PROTEST AND REMEDIES THEREFOR.—** Section 252 of RA No. 7160, also known as the Local Government Code (LGC) of 1991, categorically provides: 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 Manila Area, who shall decide the protest within sixty (60) days from receipt**. x x x (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 Two, Book II of this Code**. Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the Local Board of Assessment Appeals (LBAA) and Court Board of Assessment Appeals (CBAA), including its effect on the payment of real property taxes, follow: x x x [They] clearly sets forth the

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administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

2. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; LITERAL APPLICATION WHERE THE LAW IS CLEAR AND PLAIN.— The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.

3. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; ON REAL PROPERTY TAXES; PAYMENT UNDER PROTEST AND REMEDIES THEREFOR; PRIOR PAYMENT OF TAX REQUIRED BEFORE THE PROTEST WHICH SHOULD BE FILED WITH THE LBAA AND THEREAFTER WITH THE CBAA.— Section 252 emphatically directs that the taxpayer/ real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty [30] days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders, and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits, or overpayments of taxes. Significantly, in *Dr. Olivares v. Mayor Marquez,* this Court had

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the occasion to extensively discuss the subject provisions of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes.

4. ID.; ID.; ID.; CLAIM FOR EXEMPTION; NOT A QUESTION OF THE ASSESSOR'S AUTHORITY TO ASSESS AND COLLECT TAX BUT PERTAINS TO THE REASONABLENESS OF THE ASSESSMENT.— [A] claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991which states that: SEC. 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll**. In other words, 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. Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

5. ID.; ID.; ID.; FOR FAILURE TO DECLARE THE TRUE VALUE OF THE PROPERTY FOR TAXATION PURPOSES, THE ASSESSOR SHALL ASSESS AND DECLARE THE PROPERTY IN THE NAME OF THE DEFAULTING OWNER

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WHO IS OBLIGED TO PAY AND MAY THEREAFTER PROTEST THE SAME.— It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes. As discussed above, the duty to declare the true value of real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives. They are thus considered the taxpayers. Hence, when these persons fail or refuse to make a declaration of the true value of their real property within the prescribed period, the provincial or city assessor shall declare the property in the name of the defaulting owner and assess the property for taxation. In this wise, the taxpayer assumes the character of a defaulting owner, or defaulting administrator, or defaulting authorized representative, liable to pay back taxes. For that reason, since petitioner herein is the declared owner of the subject buildings being assessed for real property tax, it is therefore presumed to be the person with the obligation to shoulder the burden of paying the subject tax in the present case; and accordingly, in questioning the reasonableness or correctness of the assessment of real property tax, petitioner is mandated by law to comply with the requirement of payment under protest of the tax assessed, particularly Section 252 of RA No. 7160 or the LGC of 1991.

6. ID.; ID.; ID.; RIGHTS OF LOCAL GOVERNMENT UNITS TO COLLECT TAXES DUE, UPHELD; POWER OF COURTS TO IMPEACH TAX ASSESSMENT WITHOUT PRIOR PAYMENT, RESTRICTED.— To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities

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and make them effective partners in the attainment of national goals.

7. TAXATION; TAX EXEMPTIONS; STRICTLY CONSTRUED.— Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. Thus applying the rule of strict construction of laws granting tax exemptions, and the rule that doubts should be resolved in favor of provincial corporations, this Court holds that petitioner is considered a taxable entity in this case.

CARPIO, *J., concurring opinion:*

TAXATION; TAX EXEMPTION; JOHN HAY SPECIAL ECONOMIC ZONE (JHSEZ); GRANT BY PROCLAMATION NO. 420 OF TAX EXEMPTION AND OTHER PRIVILEGES TO JHSEZ IS VOID FOR BEING VIOLATIVE OF THE CONSTITUTION.— Republic Act No. 7227, the Bases Conversion and Development Act of 1992, was enacted on 13 March 1992. R.A. No. 7227 authorized the President to create through executive proclamation Special Economic Zones in various areas in the country, including Camp John Hay in Baguio City. President Fidel V. Ramos issued Proclamation No. 420, establishing the JHSEZ, on 5 July 1994. Section 3 of Proclamation No. 420 created a regime of tax exemption within the JHSEZ. x x x [However,] on 24 October 2003, this Court promulgated its decision in *John Hay Peoples Alternative Coalition v. Lim* (*John Hay*). We ruled against JHSEZ's tax exemptions, and declared that "under Section 12 of R.A. No. 7227 *it is only the Subic SEZ which was granted by Congress with tax exemption, investment incentives and the like.* There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time via presidential proclamation." The grant by Proclamation No. 420 of tax exemption and other privileges to JHSEZ is void for being violative of the Constitution: a law granting any tax exemption must have the concurrence of a majority of all the members of Congress, and cannot be granted by the Chief Executive alone. x x x Our decision in *John Hay* became final and executory and recorded in the Book of Entries of Judgments on 17 November 2005. x x x [Thus, because] the

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tax exemption in Proclamation No. 420 was declared with finality as unconstitutional by this Court on 17 November 2005, CJHDC no longer had any legal basis for claiming tax exemption. CJHDC could then only question the correctness of the amount of the tax assessment, not the lack of legal authority by the City Assessor to impose or assess any realty tax on CJHDC. Payment under protest under Sections 231 and 252 of the Local Government Code thus applied to CJHDC as of 17 November 2005.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PEREZ, *J.*:

A claim for tax exemption, whether full or partial, does not deal with the authority of local assessor to assess real property tax. Such claim questions the correctness of the assessment and compliance with the applicable provisions of Republic Act (RA) No. 7160 or the Local Government Code (LGC) of 1991, particularly as to requirement of payment under protest, is mandatory.

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 27 July 2005 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 48 which affirmed the Resolutions dated 23 May 2003 and 8 September 2004 issued by the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-37 remanding the case to the Local Board of Assessment Appeals (LBAA) of Baguio City for further proceedings.

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[1] *Rollo*, pp. 47-57; Penned by Presiding Justice Ernesto D. Acosta with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez concurring.

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The Facts

The factual antecedents of the case as found by the CTA *En Banc* are as follows:

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

In response, petitioner questioned the assessments in a letter dated 3 April 2002 for lack of legal basis due to the City Assessor's failure to identify the specific properties and its corresponding assessed values. The City Assessor replied in a letter dated 11 April 2002 that the subject ARPs (with an additional ARP on another building bringing the total number of ARPs to thirty-seven [37]) against the buildings of petitioner located within the JHSEZ were issued on the basis of the approved building permits obtained from the City Engineer's Office of Baguio City and pursuant to Sections 201 to 206 of RA No. 7160 or the LGC of 1991.

Consequently, on 23 May 2002, petitioner filed with the Board of Tax Assessment Appeals (BTAA) of Baguio City an appeal under Section 226[2] of the LGC of 1991 challenging the validity

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[2] SEC. 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.

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and propriety of the issuances of the City Assessor. The appeal was docketed as Tax Appeal Case No. 2002-003. Petitioner claimed that there was no legal basis for the issuance of the assessments because it was allegedly exempted from paying taxes, national and local, including real property taxes, pursuant to RA No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.[3]

The Ruling of the BTAA

In a Resolution dated 12 July 2002,[4] the BTAA cited Section 7,[5] Rule V of the Rules of Procedure Before the LBAA, and enjoined petitioner to first comply therewith, particularly as to the payment under protest of the subject real property taxes

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[3] An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

[4] *Rollo*, pp. 100-101.

[5] Section 7. *Effect of Appeal on Collection of Taxes.* – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:

(1) The amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) The bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) The amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond. (Underlining supplied)

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before the hearing of its appeal. Subsequently, the BTAA dismissed petitioner's Motion for Reconsideration in the 20 September 2002 Resolution[6] for lack of merit.

Aggrieved, petitioner elevated the case before the CBAA through a Memorandum on Appeal docketed as CBAA Case No. L-37.

The Ruling of the CBAA

The CBAA denied petitioner's appeal in a Resolution dated 23 May 2003,[7] set aside the BTAA's order of deferment of hearing, and remanded the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment of the realty taxes on subject properties as assessed by the respondent City Assessor of Baguio City, either in cash or in bond.

Citing various cases it previously decided,[8] the CBAA explained that the deferment of hearings by the LBAA was merely in compliance with the mandate of the law. The governing provision in this case is Section 231, not Section 226, of RA No. 7160 which provides that "[a]ppeal 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." In addition, as to the issue raised pertaining to the propriety of the subject assessments issued against petitioner, allegedly claimed to be a tax-exempt

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[6] *Rollo,* p. 114.

[7] CTA *En Banc rollo,* pp. 30-35.

[8] *Manila Electric Company v. The Provincial Assessor of Batangas and the Provincial Board of Assessment Appeals of Batangas,* CBAA Case No. 10, 6 June 1975; *Fortune Cement Corporation v. The Board of Assessment Appeals of Batangas Province and the Provincial Assessor of Batangas,* CBAA Case No. 69, 6 July 1976; *Maxon Systems (Phils.), Inc. v. Board of Assessment Appeals of the Province of Cavite, et al.*, CBAA Case No. L-05, 15 August 1994.

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entity, the CBAA expressed that it has yet to acquire jurisdiction over it since the same has not been resolved by the LBAA.

On 8 September 2004, the CBAA denied petitioner's Motion for Reconsideration for lack of merit.[9]

Undaunted by the pronouncements in the abovementioned Resolutions, petitioner appealed to the CTA *En Banc* by filing a Petition for Review under Section 11 of RA No. 1125, as amended by Section 9 of RA No. 9282, on 24 November 2004, docketed as C.T.A. EB No. 48, and raised the following issues for its consideration: (1) whether or not respondent City Assessor of the City of Baguio has legal basis to issue against petitioner the subject assessments with serial nos. 01-07040-008887 to 01-07040-008922 for real property taxation of the buildings of the petitioner, a tax-exempt entity, or land owned by the BCDA under lease to the petitioner; and (2) whether or not the CBAA, in its Resolutions dated 23 May 2003 and 8 September 2004, has legal basis to order the remand of the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment, in cash or bond, of the realty taxes on the subject properties as assessed by the City Assessor of the City of Baguio.[10]

The Ruling of the CTA En Banc

In the assailed Decision dated 27 July 2005,[11] the CTA *En Banc* found that petitioner has indeed failed to comply with Section 252 of RA No. 7160 or the LGC of 1991. Hence, it dismissed the petition and affirmed the subject Resolutions of the CBAA which remanded the case to the LBAA for further proceedings subject to compliance with said Section, in relation to Section 7, Rule V of the Rules of Procedure before the LBAA.

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[9] *Rollo,* pp. 155-157.

[10] *Id.* at 51.

[11] *Id.* at 47-57.

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Moreover, adopting the CBAA's position, the court *a quo* ruled that it could not resolve the issue on whether petitioner is liable to pay real property tax or whether it is indeed a tax-exempt entity considering that the LBAA has not decided the case on the merits. To do otherwise would not only be procedurally wrong but legally wrong. It therefore concluded that before a protest may be entertained, the tax should have been paid first without prejudice to subsequent adjustment depending upon the final outcome of the appeal and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned.

Consequently, this Petition for Review wherein petitioner on the ground of lack of legal basis seeks to set aside the 27 July 2005 Decision, and to nullify the assessments of real property tax issued against it by respondent City Assessor of Baguio City.[12]

The Issue

The issue before the Court is whether or not respondent CTA *En Banc* erred in dismissing for lack of merit the petition in C.T.A. EB No. 48, and accordingly affirmed the order of the CBAA to remand the case to the LBAA of Baguio City for further proceedings subject to a full and up-to-date payment of realty taxes, either in cash or in bond, on the subject properties assessed by the City Assessor of Baguio City.

In support of the present petition, petitioner posits the following grounds: (a) Section 225 (should be Section 252) of RA No. 7160 or the LGC of 1991 does not apply when the person assessed is a tax-exempt entity; and (b) Under the doctrine of operative fact, petitioner is not liable for the payment of the real property taxes subject of this petition.[13]

Our Ruling

The Court finds the petition unmeritorious and therefore rules against petitioner.

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[12] *Id.* at 42.

[13] *Id.* at 30-31.

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Section 252 of RA No. 7160, also known as the LGC of 1991,[14] categorically provides:

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 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 Two, Book II of this Code**. (Emphasis and underlining supplied)

Relevant thereto, the remedies referred to under Chapter 3, Title Two, Book II of RA No. 7160 or the LGC of 1991 are those provided for under Sections 226 to 231. Significant provisions pertaining to the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes, follow:

SEC. 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

[14] RA No. 7160, which took effect on 1 January 1992, repealed Presidential Decree No. 464 or the Real Property Tax Code (RPTC), as provided in Section 534 denominated as "*Repealing Clause.*"

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copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SEC. 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 powers 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**.

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

The above-quoted provisions of RA No. 7160 or the LGC of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected.

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The language of the law is clear. No interpretation is needed. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[15]

To begin with, Section 252 emphatically directs that the taxpayer/real property owner questioning the assessment should first pay the tax due before his protest can be entertained. As a matter of fact, the words "paid under protest" shall be annotated on the tax receipts. Consequently, only after such payment has been made by the taxpayer may he file a protest in writing (within thirty [30] days from said payment of tax) to the provincial, city, or municipal treasurer, who shall decide the protest within sixty (60) days from its receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

Secondly, within the period prescribed by law, any owner or person having legal interest in the property not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may file an appeal with the LBAA of the province or city concerned, as provided in Section 226 of RA No. 7160 or the LGC of 1991. Thereafter, within thirty (30) days from receipt, he may elevate, by filing a notice of appeal, the adverse decision of the LBAA with the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders, and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits, or overpayments of taxes.[16]

Significantly, in *Dr. Olivares v. Mayor Marquez*,[17] this Court had the occasion to extensively discuss the subject provisions

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[15] *Agpalo*, Statutory Construction, p. 95.

[16] Rule III, Section 1, Rules of Procedure of the Central Board of Assessment Appeals.

[17] 482 Phil. 183 (2004). Also cited in the case of *National Power*

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of RA No. 7160 or the LGC of 1991, in relation to the impropriety of the direct recourse before the courts on issue of the correctness of assessment of real estate taxes. The pertinent articulations follow:

x x x A perusal of the petition before the RTC plainly shows that **what is actually being assailed is the correctness of the assessments made by the local assessor** of Parañaque on petitioners' properties. **The allegations in the said petition purportedly questioning the assessor's authority to assess and collect the taxes were obviously made in order to justify the filing of the petition with the RTC. In fact, there is nothing in the said petition that supports their claim regarding the assessor's alleged lack of authority. What petitioners raise are the following:** (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; **(4) some properties are exempt from taxation as they are being used exclusively for educational purposes;** and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the "improper, excessive and unlawful the collection of taxes against the petitioner[s]." **Moreover, these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA**.

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.

Even assuming that the assessor's authority is indeed an issue, it must be pointed out that in order for the court *a quo* to resolve

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Corporation v. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, Resolution dated 25 January 2010, 611 SCRA 71, 94 wherein the Court ruled that: "[l]ike Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax." (Emphasis omitted).

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the petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with.

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In the present case, the authority of the assessor is not being questioned. Despite petitioners' protestations, the petition filed before the court *a quo* primarily involves the correctness of the assessments, which are questions of fact, that are not allowed in a petition for *certiorari*, prohibition and *mandamus*. The court *a quo* is therefore precluded from entertaining the petition, and it appropriately dismissed the petition.[18] (Emphasis and underlining supplied)

By analogy, the rationale of the mandatory compliance with the requirement of "payment under protest" similarly provided under Section 64 of the Real Property Tax Code (RPTC)[19] was earlier emphasized in *Meralco v. Barlis*,[20] wherein the Court held:

We find the petitioner's arguments to be without merit. The trial court has no jurisdiction to entertain a Petition for Prohibition absent petitioner's payment under protest, of the tax assessed as required by Sec. 64 of the RPTC. **Payment of the tax assessed under protest, is a condition *sine qua non* before the trial court could assume jurisdiction over the petition and failure to do so, the RTC has no jurisdiction to entertain it.**

The restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled.

x x x

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[18] *Id.* at 191-192.

[19] Presidential Decree No. 464 was repealed by RA No. 7160 on 1 January 1992, as provided under Section 534(c) thereof which states: "The provisions of x x x Presidential Decree Nos. 381, 436, **464**, 477, 526, 632, 752 and 1136 are hereby repealed and rendered of no force and effect."

[20] 410 Phil. 167, 176-181 (2001).

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There is no merit in petitioner's argument that the trial court could take cognizance of the petition as it only questions the validity of the issuance of the warrants of garnishment on its bank deposits and not the tax assessment. Petitioner MERALCO in filing the Petition for Prohibition before the RTC was in truth assailing the validity of the tax assessment and collection. To resolve the petition, it would not only be the question of validity of the warrants of garnishments that would have to be tackled, but in addition the issues of tax assessment and collection would necessarily have to be dealt with too. As the warrants of garnishment were issued to collect back taxes from petitioner, the petition for prohibition would be for no other reason than to forestall the collection of back taxes on the basis of tax assessment arguments. **This, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, by paying under protest the tax assessed, to allow the court to assume jurisdiction over the petition.**

x x x

It cannot be gainsaid that petitioner should have addressed its arguments to respondent at the first opportunity - upon receipt of the 3 September 1986 notices of assessment signed by Municipal Treasurer Norberto A. San Mateo. Thereafter, it should have availed of the proper administrative remedies in protesting an erroneous tax assessment, *i.e.*, to question the correctness of the assessments before the Local Board of Assessment Appeals (LBAA), and later, invoke the appellate jurisdiction of the Central Board of Assessment Appeals (CBAA). Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. But an appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal. The failure to appeal within the statutory period shall render the assessment final and unappealable. **Petitioner having failed to exhaust the administrative remedies available to it, the assessment attained finality and collection would be in order**. (Emphasis and underscoring supplied)

From the foregoing jurisprudential pronouncements, it is clear that the requirement of "payment under protest" is a condition *sine qua non* before a protest or an appeal questioning the correctness of an assessment of real property tax may be entertained.

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Moreover, a claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA. This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991which states that:

> SEC. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>
> **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll**. (Emphasis supplied)

In other words, 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.[21]

Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

In the case at bench, records reveal that when petitioner received the letter dated 21 March 2002 issued by respondent City Assessor, including copies of ARPs (with ARP Nos. 01-07040-008887 to 01-07040-008922) attached thereto, it filed

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[21] See *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, Resolution dated 25 January 2010, 611 SCRA 71, 94.

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its protest through a letter dated 3 April 2002 seeking clarification as to the legal basis of said assessments, without payment of the assessed real property taxes. Afterwards, respondent City Assessor replied thereto in a letter dated 11 April 2002 which explained the legal basis of the subject assessments and even included an additional ARP against another real property of petitioner. Subsequently, petitioner then filed before the BTAA its appeal questioning the validity and propriety of the subject ARPs.

Clearly from the foregoing factual backdrop, petitioner considered the 11 April 2002 letter as the "action" referred to in Section 226 which speaks of the local assessor's act of denying the protest filed pursuant to Section 252. However, applying the above-cited jurisprudence in the present case, it is evident that petitioner's failure to comply with the mandatory requirement of payment under protest in accordance with Section 252 of the LGC of 1991 was fatal to its appeal. Notwithstanding such failure to comply therewith, the BTAA elected not to immediately dismiss the case but instead took cognizance of petitioner's appeal subject to the condition that payment of the real property tax should first be made before proceeding with the hearing of its appeal, as provided for under Section 7, Rule V of the Rules of Procedure Before the LBAA. Hence, the BTAA simply recognized the importance of the requirement of "payment under protest" before an appeal may be entertained, pursuant to Section 252, and in relation with Section 231 of the same Code as to non-suspension of collection of the realty tax pending appeal.

Notably, in its feeble attempt to justify non-compliance with the provision of Section 252, petitioner contends that the requirement of paying the tax under protest is not applicable when the person being assessed is a tax-exempt entity, and thus could not be deemed a "taxpayer" within the meaning of the law. In support thereto, petitioner alleges that it is exempted from paying taxes, including real property taxes, since it is entitled to the tax incentives and exemptions under the provisions of RA No. 7227 and Presidential Proclamation No. 420, Series of

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1994,[22] as stated in and confirmed by the lease agreement it entered into with the BCDA.[23]

This Court is not persuaded.

First, Section 206 of RA No. 7160 or the LGC of 1991, as quoted earlier, categorically provides that **every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property**, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. Clearly, the burden of proving exemption from local taxation is upon whom the subject real property is declared; thus, said person shall be considered by law as the taxpayer thereof. Failure to do so, said property shall be listed as taxable in the assessment roll.

In the present case, records show that respondent City Assessor of Baguio City notified petitioner, in the letters dated 21 March 2002[24] and 11 April 2002,[25] about the subject ARPs covering various buildings owned by petitioner and parcels of land (leased out to petitioner) all located within the JHSEZ,

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[22] Creating and Designating a Portion of the Area Covered by the Former Camp John Hay as the John Hay Special Economic Zone Pursuant to Republic Act No. 7227.

[23] *Rollo*, pp. 38-39; Petition for Review on *Certiorari*, par. 45, which allegedly provides as follows:

"Section 18. Percentage to the National Treasury – Pursuant to R.A. 7227, Section 12(c), **in lieu of paying taxes**, five percent (5%) of the Gross Income Earned by the LESSEE shall within ninety (90) days from the close of the calendar year, be paid and remitted to the following through the JPDC:

3% the National Treasury

1% the local government

1% a development fund

Total 5%"

[24] *Id.* at 59; Annex "C", of the Petition for Review on *Certiorari*.

[25] *Id.* at 61-64; Annex "E", of the Petition for Review on *Certiorari*.

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Baguio City. The subject letters expressed that the assessments were based on the approved building permits obtained from the City Engineer's Office of Baguio City and pursuant to Sections 201 to 206 of RA No. 7160 or the LGC of 1991 which pertains to whom the subject real properties were declared.

Noticeably, these factual allegations were neither contested nor denied by petitioner. As a matter of fact, it expressly admitted ownership of the various buildings subject of the assessment and thereafter focused on the argument of its exemption under RA No. 7227. But petitioner did not present any documentary evidence to establish that the subject properties being tax exempt have already been dropped from the assessment roll, in accordance with Section 206. Consequently, the City Assessor acted in accordance with her mandate and in the regular performance of her official function when the subject ARPs were issued against petitioner herein, **being the owner of the buildings**, and therefore considered as the person with the obligation to shoulder tax liability thereof, if any, as contemplated by law.

It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes. As discussed above, the duty to declare the true value of real property for taxation purposes is imposed upon the owner, or administrator, or their duly authorized representatives. They are thus considered the taxpayers. Hence, when these persons fail or refuse to make a declaration of the true value of their real property within the prescribed period, the provincial or city assessor shall declare the property in the name of the defaulting owner and assess the property for taxation. In this wise, the taxpayer assumes the character of a defaulting owner, or defaulting administrator, or defaulting authorized representative, liable to pay back taxes. For that reason, since petitioner herein is the declared owner of the subject buildings being assessed for real property tax, it is therefore presumed to be the person with the obligation to shoulder the burden of paying the subject tax in the present case; and accordingly, in questioning the reasonableness or correctness of the assessment of real property tax, petitioner is mandated by law to comply with the requirement

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of payment under protest of the tax assessed, particularly Section 252 of RA No. 7160 or the LGC of 1991.

Time and again, the Supreme Court has stated that taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and the entity that would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[26] Thus applying the rule of strict construction of laws granting tax exemptions, and the rule that doubts should be resolved in favor of provincial corporations, this Court holds that petitioner is considered a taxable entity in this case.

Second, considering that petitioner is deemed a taxpayer within the meaning of law, the issue on whether or not it is entitled to exemption from paying taxes, national and local, including real property taxes, is a matter which would be better resolved, at the very instance, before the LBAA, for the following grounds: (a) petitioner's reliance on its entitlement for exemption under the provisions of RA No. 7227 and Presidential Proclamation No. 420, was allegedly confirmed by Section 18,[27] Article XVI of the Lease Agreement dated 19 October 1996 it entered with the BCDA. However, it appears from the records that said Lease Agreement has yet to be presented nor formally offered before any administrative or judicial body for scrutiny; (b) the subject provision of the Lease Agreement declared a condition that in order to be allegedly exempted from the payment of taxes, petitioner should have first paid and remitted 5% of the gross income earned by it within ninety (90) days from the close of the calendar year through the JPDC. Unfortunately, petitioner has neither established nor presented any evidence to show that it has indeed paid and

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[26] *FELS Energy, Inc. v. Province of Batangas, et al.* 16 February 2007, 516 SCRA 186, 207 citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, 15 December 2005, 478 SCRA 61, 74 and *Republic v. City of Kidapawan*, G.R. No. 166651, 9 December 2005, 477 SCRA 324, 335.

[27] *Rollo,* pp. 38-39.

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remitted 5% of said gross income tax; (c) the right to appeal is a privilege of statutory origin, meaning a right granted only by the law, and not a constitutional right, natural or inherent. Therefore, it follows that petitioner may avail of such opportunity only upon strict compliance with the procedures and rules prescribed by the law itself, *i.e.* RA No. 7160 or the LGC of 1991; and (d) at any rate, petitioner's position of exemption is weakened by its own admission and recognition of this Court's previous ruling that the tax incentives granted in RA No. 7227 are exclusive only to the Subic Special Economic [and Free Port] Zone; and thus, the extension of the same to the JHSEZ (as provided in the second sentence of Section 3 of Presidential Proclamation No. 420)[28] finds no support therein and therefore declared null and void and of no legal force and effect.[29] Hence, petitioner needs more than mere arguments and/or allegations contained in its pleadings to establish and prove its exemption, making prior proceedings before the LBAA a necessity.

With the above-enumerated reasons, it is obvious that in order for a complete determination of petitioner's alleged exemption from payment of real property tax under RA No. 7160 or the LGC of 1991, there are factual issues needed to be confirmed. Hence, being a question of fact, petitioner cannot do without first resorting to the proper administrative remedies, or as previously discussed, by paying under protest the tax assessed in compliance with Section 252 thereof.

Accordingly, the CBAA and the CTA *En Banc* correctly ruled that real property taxes should first be paid before any protest thereon may be considered. It is without a doubt that such requirement

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[28] The second sentence of Section 3 of Proclamation No. 420, which was declared as null and void by this Court, provides as follows: "x x x Among others, the zone (referring to JHSEZ) shall have all the applicable incentives of the Special Economic Zone under Section 12 of R.A. No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted."

[29] See *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 554 (2003).

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of "payment under protest" is a condition *sine qua non* before an appeal may be entertained. Thus, remanding the case to the LBAA for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty tax on the subject properties was proper.

To reiterate, the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled.[30] The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[31]

All told, We go back to what was at the outset stated, that is, that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991. Such argument which may involve a question of fact should be resolved at the first instance by the LBAA.

The CTA *En Banc* was correct in dismissing the petition in C.T.A. EB No. 48, and affirming the CBAA's position that it cannot delve on the issue of petitioner's alleged non-taxability on the ground of exemption since the LBAA has not decided the case on the merits. This is in compliance with the procedural steps prescribed in the law.

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[30] *Meralco v. Barlis, supra* note 20 at 176-177.

[31] *FELS Energy, Inc. v. Province of Batangas, supra* note 26 at 208 citing CONSTITUTION, Section 25, Article II and Section 2, Article X, and RA No. 7160, Section 2(a).

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WHEREFORE, the petition is **DENIED** for lack of merit. The Decision of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 48 is **AFFIRMED**. The case is remanded to the Local Board of Assessment Appeals of Baguio City for further proceedings. No costs.

SO ORDERED.

Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J. (Chairperson), see concurring opinion.

CONCURRING OPINION

CARPIO, *J.*:

I join Justice Jose P. Perez in his denial of Camp John Hay Development Corporation's (CJHDC) petition. There is no merit in CJHDC's present petition because John Hay Special Economic Zone (JHSEZ) is not tax-exempt. Any tax protest filed by CJHDC, therefore, can only refer to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest as a condition for contesting the assessment.

A restatement of the facts is necessary to establish context.

Republic Act No. 7227, the Bases Conversion and Development Act of 1992, was enacted on 13 March 1992. R.A. No. 7227 authorized the President to create through executive proclamation Special Economic Zones in various areas in the country, including Camp John Hay in Baguio City. President Fidel V. Ramos issued Proclamation No. 420, establishing the JHSEZ, on 5 July 1994. Section 3 of Proclamation No. 420 created a regime of tax exemption within the JHSEZ.

> Sec. 3. *Investment Climate in John Hay Special Economic Zone.* – Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules and regulations governing the zone, including investment incentives, in consultation with pertinent government departments. Among others, the zone shall have all the applicable

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incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.

CJHDC entered into a Lease Agreement with Bases Conversion Development Authority (BCDA) on 19 October 1996 for the development of JHSEZ. On 21 March 2002, the City Assessor of Baguio City issued notices of assessment to CJHDC on the properties that it leased from BCDA. In Case No. 2002-003, CJHDC questioned the assessments before the Board of Tax Assessment Appeals of Baguio City (BTAA-Baguio), and stated that it was exempted from paying taxes pursuant to Section 12(c) of R.A. No. 7227[1] and Section 3 of Proclamation No. 420.

BTAA-Baguio, in its Resolution dated 12 July 2002, directed CJHDC to comply with Section 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals (LBAA), which entails payment of the assessed tax under protest or the issuance of a

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[1] Sec. 12. *Subic Special Economic Zone*. – x x x

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter.

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surety bond.[2] BTAA-Baguio dismissed for lack of merit CJHDC's motion for reconsideration in its Resolution dated 20 September 2002.

CJHDC's appeal to the Central Board of Assessment Appeals (CBAA) on 30 October 2002, docketed as Case No. L-37, resulted in a 23 May 2003 Resolution which set aside the resolution of BTAA-Baguio and remanded the case to the LBAA for further proceedings subject to a full and up-to-date payment of realty taxes on the leased properties as assessed by the City Assessor of Baguio City. The CBAA denied CJHDC's motion for reconsideration on 8 September 2004.

In the meantime, on 24 October 2003, this Court promulgated its decision in *John Hay Peoples Alternative Coalition v. Lim*[3] (*John Hay*). We ruled against JHSEZ's tax exemptions, and declared that "under Section 12 of R.A. No. 7227 *it is only the Subic SEZ*

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[2] Sec. 7. *Effect of Appeal on Collection of Taxes*. – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:

(1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;

(2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and

(3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

[3] G.R. No. 119775, 460 Phil. 530, decision promulgated on 24 October 2003; unsigned resolution promulgated on 29 March 2005; Entry of Judgment made on 17 November 2005.

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which was granted by Congress with tax exemption, investment incentives and the like. There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time *via* presidential proclamation."[4] The grant by Proclamation No. 420 of tax exemption and other privileges to JHSEZ is void for being violative of the Constitution:[5] a law granting any tax exemption must have the concurrence of a majority of all the members of Congress, and cannot be granted by the Chief Executive alone.

On 5 March 2004, CJHDC filed a Motion for Leave to Intervene in *John Hay*, "alleging that it, together with its consortium partners Fil-Estate Management, Inc. and Penta Capital Investment Corporation, entered into a Lease Agreement dated October 19, 1996 with respondent BCDA for the development of the John Hay SEZ; and that it 'stands to be most affected' by this Court's Decision 'invalidating the grant of tax exemption and other financial incentives' in the John Hay SEZ since '[i]ts financial obligations and development and investment commitments under the Lease Agreement were entered into upon the premise that these incentives are valid and subsisting."[6] In an Order dated 25 May 2004, this Court granted CJHDC's Motion for Leave to Intervene and noted its Motion for Reconsideration in Intervention.

In an unsigned Resolution dated 29 March 2005, this Court denied with finality the motions for reconsideration filed in *John Hay*, including that of CJHDC. Our decision in *John Hay* became final and executory and recorded in the Book of Entries of Judgments on 17 November 2005.

While CJHDC's Motion for Leave to Intervene in *John Hay* was pending, it filed on 24 November 2004 a Petition for Review, docketed as C.T.A. E.B. No. 48, before the Court of Tax Appeals (CTA). CJHDC sought to nullify the assessments for

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[4] *Id.* at 549. Italicization in the original.

[5] Section 28(4), Art. VI of the Constitution provides that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress."

[6] G.R. No. 119775, Unsigned Resolution, 29 March 2005, p. 7.

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real property taxation and to set aside the resolutions of the CBAA.

The CTA dismissed CJHDC's petition for lack of merit. In its Decision promulgated on 27 July 2005, the CTA stated that "[t]he remand of the case to the Local Board of Assessment Appeals for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty taxes on the subject properties as assessed by the City Assessor of Baguio City is proper pursuant to Section 252 of the Local Government Code of 1991 x x x in relation to Section 7, Rule V of the Rules of Procedure Before the Local Boards of Assessment Appeals x x x."[7] The CTA also noted that CJHDC wanted the CTA to resolve the issue of its liability for real property tax or the issue of its tax-exempt status without complying with the law and rules. The CTA agreed with the CBAA's ruling that, pursuant to Sections 231[8] and 252[9] of the Local Government Code of 1991,

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[7] *Rollo*, pp. 15-16.

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

[9] 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 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.

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"[b]efore a protest may be entertained, the tax should have been first paid without prejudice to subsequent adjustment thereof depending upon the final outcome of the appeal and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned."[10]

CJHDC filed the present Petition for Review on *Certiorari* on 29 September 2005, after the promulgation of our Resolution in *John Hay* on 29 March 2005 and before the finality of *John Hay* on 17 November 2005.

There is no showing that CJHDC ever complied with the requirements of Section 206[11] of the Local Government Code in claiming tax exemption; hence, the City Assessor of Baguio acted well within her power to assess the subject properties. There was no need for CJHDC to wait for an assessment before submission of its proofs of tax exemption.[12] Had CJHDC submitted proofs of its tax exemption to the City Assessor, there would have been no need for CJHDC to pay under protest. CJHDC could question in court any adverse decision of the City Assessor, the Local Board of Assessment Appeals, and the Central Board of Assessment Appeals denying its tax exemption, without paying any tax assessment under protest, due to its claim of tax exemption under Proclamation No. 420.

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[10] *Rollo*, p. 17.

[11] Sec. 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

[12] See *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, 29 June 2004, 433 SCRA 119.

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However, once the tax exemption in Proclamation No. 420 was declared with finality as unconstitutional by this Court on 17 November 2005, CJHDC no longer had any legal basis for claiming tax exemption. CJHDC could then only question the correctness of the amount of the tax assessment, not the lack of legal authority by the City Assessor to impose or assess any realty tax on CJHDC. Payment under protest under Sections 231 and 252 of the Local Government Code thus applied to CJHDC as of 17 November 2005. Thereafter, any question by CJHDC on realty assessment can only refer to the correctness of the amount of the assessment, and not to the City Assessor's legal authority to impose or issue the assessment.

Once the non-tax-exempt status of the taxpayer is settled with finality, or if the same is not in issue, any dispute on the realty assessment only raises questions on the correctness of the amount of the assessment, thus necessitating prior payment of the assessment under protest. To repeat, any protest that CJHDC files or pursues after 17 November 2005 necessarily refers only to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest. The present petition should be denied because JHSEZ can no longer claim tax exemption, with the finality of this Court's ruling in *John Hay*. CJHDC's doctrine of operative fact argument is a defense it may raise before the Local Board of Assessment Appeals, to where this case is being remanded.

The facts in the present case are different from *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[13] (*Napocor*). The province of Quezon assessed Mirant Pagbilao Corporation (Mirant) realty taxes for its machineries in Pagbilao, Quezon. A copy of the tax assessment was also sent to Napocor, with whom Mirant had a Build-Operate-Transfer Agreement. Napocor, and not Mirant, protested the assessment and claimed tax exemption under Section 234(c) and (e) of the

[13] G.R. No. 171586, 25 January 2010, 611 SCRA 71.

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Local Government Code.[14] *Napocor* is different from the present case because *Napocor* is not a case of tax exemption by law but a case of assumption of tax by another entity – where Napocor, a tax-exempt entity, assumed by contract to pay all taxes that may be incurred (including realty taxes) by Mirant, a taxable entity. In *Napocor*, the Court held that payment of the tax under protest was required to contest the assessment.

I vote to **DENY** petitioner Camp John Hay Development Corporation's Petition for Review on *Certiorari* and **AFFIRM** the Court of Tax Appeals' Decision of 27 July 2005 remanding the case to the Local Board of Assessment Appeals subject to payment under protest of the assailed assessment.

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[14] Sec. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of real property tax:

x x x x

(c) All machineries and equipment that are actually, directly, and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x

(e) Machinery and equipment used for pollution control and environmental protection;

x x x x