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be void and the Court of Appeals would have been duty-bound to strike it down. Thus, the appellate court erred when it brushed aside this duty and dismissed the case outright based on a strict interpretation of technical rules.

WHEREFORE, the petition is hereby **GRANTED**. The Resolutions dated April 30, 2009 and May 25, 2010 of the Court of Appeals in CA-G.R. SP No. 107949 are **SET ASIDE**. The Court of Appeals is directed to **REINSTATE** the Petition for Annulment of Judgment in CA-G.R. SP No. 107949 and to proceed hearing the same with dispatch.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192536. March 15, 2017]

DEMETRIO R. ALCANTARA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, THRU ITS AGENCY, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 11-B, DAVAO CITY; AMERIGO D. VILLEGAS, REVENUE ENFORCEMENT OFFICER, REVENUE REGION NO. 11-B; TEODORICA R. ARCEGA, ASSISTANT REGIONAL DIRECTOR, BIR REVENUE REGION NO. 11-B; JOSE C. BATAUSA, REGIONAL DIRECTOR, BIR REVENUE REGION NO. 11-B; THEMISTOCLES R. MONTALBAN, ASSISTANT COMMISSIONER, COLLECTION SERVICE OF BIR; REGISTER OF DEEDS OF DAVAO CITY; and MAXIMO LAGAHIT,** *respondents.*

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SYLLABUS

1. **TAXATION; TAX REMEDIES; DISPUTE ASSESSMENT; PRIOR RESORT TO ADMINISTRATIVE REMEDIES WAS NECESSARY BEFORE SEEKING JUDICIAL RECOURSE; FAILURE TO COMPLY RENDERED THE ASSESSMENT FINAL.—** The remedies available to a taxpayer like Alcantara were laid down by law. Section 229 of Presidential Decree (P.D.) No. 1158, the law in effect at the time of the disputed assessment, stated that prior resort to the administrative remedies was necessary; otherwise, the assessment would attain finality[.] x x x Section 230 of P.D. No. 1158 allowed Alcantara to file his claim for refund for the erroneously or illegally paid taxes. In this regard, such claim for refund was also a prerequisite before any resort to the courts could be made to recover the erroneously or illegally paid taxes[.] x x x Yet, Alcantara immediately invoked the authority of the courts to protect his rights instead of first going to the Commissioner of Internal Revenue for redress of his concerns about the assessment and collection of taxes. His judicial recourse thus suffered from fatal prematurity because his doing so rendered the assessment final. Alcantara argues that the resort to administrative remedies was futile for him because he could not have sought reconsideration or filed a claim for refund during the period required of him by the Tax Code due to his being then out of the country. Such argument did not excuse Alcantara from complying with the specific provisions of law on his remedies. Even assuming to be true that he had not received the assessment, there was greater reason for him to have first resorted to the Commissioner of Internal Revenue for the reconsideration of the assessment before it attained finality. Section 229 of P.D. No. 1158 declared the finality of the assessment upon the lapse of 30 days from receipt of it.

2. **ID.; ID.; ID.; PRIOR TO REPUBLIC ACT NO. 9282, AN ACT AMENDING REPUBLIC ACT NO. 1125, THE COURT OF TAX APPEALS HAD EXCLUSIVE APPELLATE JURISDICTION OVER THE APPEALS OF THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE; ERRONEOUS APPEAL TO THE COURT OF APPEALS DESERVES DISMISSAL OF THE APPEAL.—**

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The complaint was brought to assail the assessment and collection made by the Commissioner of Internal Revenue. Based on Republic Act No.1125, prior to its amendment by Republic Act No. 9282, the CTA had exclusive appellate jurisdiction over the appeal of the decisions of the Commissioner of Internal Revenue, to wit: **Section 7. *Jurisdiction*.** – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided. (1) **Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue**; x x x x Accordingly, the CA correctly dismissed Alcantara's appeal on the ground of lack of jurisdiction to entertain the same. The erroneous appeal deserved no fate but dismissal. Section 2, Rule 50 of the *Rules of Court* expressly states: "*An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright*." In *Balaba v. People*, the Court affirmed the CA's dismissal of the appeal because the appeal had been erroneously taken to the CA instead of to the Sandiganbayan.

APPEARANCES OF COUNSEL

Alabastro & Olaguer for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

An action directly brought in the Regional Trial Court (RTC) ostensibly to demand reconveyance of property sold upon forfeiture for non-payment of a tax assessment is to be dismissed for failure of the plaintiff to claim for refund or credit with the Commissioner of Internal Revenue. The failure to resort to administrative remedies rendered the assessment final.

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The Case

Under review are the decision promulgated on November 4, 2009[1] and resolution promulgated on May 13, 2010,[2] whereby the Court of Appeals (CA) in CA-G.R. CV No. 79261 respectively dismissed the appeal of the petitioner and denied his motion for reconsideration.

As a consequence, the decision rendered on February 28, 2003 by the RTC in Davao City in Civil Case No. 25,401-97 entitled *Demetrio Alcantara v. Republic of the Philippines, et al*.[3] dismissing the petitioner's complaint for declaration of nullity of notice of seizure of real property, declaration of forfeiture of real property, deed of sale and for specific performance for reconveyance of real property stands.

Antecedents

The CA summarized the facts as follows:

Plaintiff-appellant Demetrio R. Alcantara (hereinafter, appellant) was the owner of a parcel of land, 301 square meters in area, situated at Panorama Homes, Buhangin, Davao City, and covered by Transfer Certificate of Title (TCT) No. T-113015.

Defendants-appellees (hereinafter, appellees) are: The Republic of the Philippines thru its agency, Bureau of Internal Revenue (BIR), Revenue Region No. 11-B, Davao City and the following officers of the said Revenue Region: Region Enforcement Officer Amerigo D. Villegas, Assistant Regional Director Teodorica R. Arcega, and Regional Director Jose C. Batausa; Themistocles R. Montalban, Assistant Commissioner for Collection Service of the BIR; the Register of Deeds of Davao City; and Maximo Lagahit.

On April 15, 1983 and April 16, 1984, appellant filed his income tax returns for, respectively, the years 1982 and 1983.

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[1] *Rollo*, pp. 33-51; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justice Elihu A. Ybañez and Associate Justice Danton Q. Bueser.

[2] *Id*. at 63-65.

[3] Records, pp. 499-506.

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On December 14, 1987, Crispin Vallejo, Jr., Assistant Regional Director of the Revenue Region No. 11-B of the BIR, Davao City, wrote appellant informing him that ₱32,076.52 was still due from him representing deficiency income tax and fixed tax, surcharge, interest and compromise penalty for late payment, and inviting him to call at "the Chief, Assessment Branch Room 107 Milagros Building Ilustre Street, this City for an informal conference to enable" appellant "to go over our findings and present objections thereto, if any".

The letter was addressed thus:

Mr. Demetrio R. Alcantara
Ecoland Subdivision, Matina
Davao City

There was no response from appellant.

On February 15, 1988, the BIR issued two (2) demand letters – with respective accompanying income tax assessment notices – to appellant at the same address. The demand letters were signed by Vallejo for Commissioner of Internal Revenue (CIR) Bienvenido A. Tan Jr.

The first letter reads:

> This is to inform you that in the investigation conducted by an examiner of this Office on your 1982 & 1983 income and other internal revenue tax liabilities, it was ascertained that there is still due from you the total amount of THIRTY THOUSAND SEVEN HUNDRED NINETY SEVEN & 36/100 (₱30,797.36) representing deficiency income taxes and interests for late payment.
>
> The amount due is computed as follows:

1982 Deficiency Income Tax Due	₱ 7,530.81
Add: Interest from 04-16-83 to 02-15-88	4,518.49
T O T A L	₱ 12,049.30
1983 Deficiency Income Tax Due	₱ 11,717.54
Add: Interest from 04-16-84 to 02-15-88	7,030.52
T O T A L	₱ 8,748.06
TOTAL AMOUNT DUE & COLLECTIBLE	₱ 30,797.36

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In view of the foregoing, demand is hereby made upon you to pay the total amount of ₱30,797.36 to the Collection Agent thereat on or before March 15, 1983, so that this case may be considered closed and terminated.

The second letter was for the amount of ₱1,294.70, representing deficiency fixed tax, surcharge, interest and compromise penalty for late payment.

Still there was no response.

On August 12, 1991, the CIR, through appellee Montalban, issued a Warrant of Distraint and/or Levy against the properties of appellant. The address of the appellant in the said Warrant was the same as in the above-cited communications to him. In the lower portion of the warrant, appellee Villegas certified that —

X X X ON THE 17th DAY OF OCTOBER 1991, A COPY OF THE WARRANT OF DISTRAINT AND/OR LEVY WAS:

A SERVED TO THE TAX PAYER OR HIS REPRESENTATIVE AS ACKNOWLEDGED HEREUNDER:

_____
TAXPAYER OR HIS REPRESENTATIVE

B SERVED CONSTRUCTIVELY BECAUSE THE TAXPAYER OR HIS REPRESENTATIVE REFUSED TO ACKNOWLEDGE THE SERVICE OF THE WARRANT, OR WAS NOT IN THE PREMISES.

There were no entries in either of the two boxes above. Neither the taxpayer's name nor that of his representative printed above the line provided therefor. Nor was there any signature above the said line.

Subsequently, Villegas issued to appellant at the same address a Notice of Seizure of Real Property notifying him that his property, covered by TCT No. T-113015, had been levied upon to satisfy the sum of ₱32,076.52 as internal revenue tax, surcharge and interest and would be sold "for cash, to the highest bidder at the Lobby, main building, City [*sic*] of Davao City, Municipality of Davao City [*sic*] on the 30th day of April 1992, beginning at 10:00 o'clock a.m. of the said day". At the bottom of the Notice, Villegas certified that —

x x x I have on this date served a copy of this notice to Mr. Baldovino S. Lagbao, Mgr. Of Panorama Home on this 6th day of March, 1992 at 1o:45 A.M.

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On May 4, 1992, Villegas issued a Declaration of Forfeiture of Real Property declaring that since "no bidder appeared or the highest bid is insufficient to pay taxes", the levied property was "forfeited to the Government of the Republic of the Philippines in satisfaction of the tax/taxes" due.

On May 13, 1993, appellee Arcega wrote the Register of Deeds of Davao City requesting that, in view of the lapse of the one-year redemption period for appellant to redeem the property, a new title issue over the subject property in the name of the Republic of the Philippines. Thus, on May 18, 1993, appellee Register of Deeds of Davao City cancelled TCT No. T-113015 and issued a new TCT No. T-195677 in the name of Republic of the Philippines.

Subsequently, the BIR, through apppellee Batausa, issued a Notice of Sale informing the public of a resale, pursuant to Section 217 of the National Internal Revenue Code, of the above property through public auction to be held on June 9, 1995. In the said resale, appellee Maximo Lagahit was proclaimed the winning/highest bidder. On June 29, 1995, a deed of sale was executed by and between the CIR through Director Batausa and appellant Lagahit for the sale of the said property. On the same day, a new title – TCT No. T-244532 – was issued in the name of appellee Lagahit.

On June 6, 1997, appellant instituted the action below before the RTC of Davao City where it was docketed as Civil Case No. 25,401-97 and raffled to Branch 11. In his complaint, appellant alleged that when he wanted to pay the realty tax on his Buhangin property for the year 1997, "his payment was not accepted by the Assessor's Office in Davao City for the reason that the owner of said property is no longer the plaintiff but a certain MAXIMO LAGAHIT – which fact brought shock waves to the plaintiff; that upon verification from the Register of Deeds of Davao City, appellant was surprised to find that his certificate of title was cancelled on May 18, 1993 and that TCTs were subsequently issued in the name of the Republic of the Philippines and then to Maximo Lagahit; that appellant found that he was deprived of his property when the BIR "made it appear falsely" in the Income Tax Assessment Notices that he "was residing at Ecoland Subdivision, Matina, Davao City", when, in fact, he and his family had left Davao City for the United States in August 1985; that as a result of assessment notices which were not validly served on appellant, appellees Montalban and Villegas pursued their illegal acts of levying and seizing appellant's property by issuing a "farcical" Warrant of Distraint and/or Levy, Notice of Seizure of Real Property, Declaration

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of Forfeiture of Real Property, all without notice or service of the same whatsoever to appellant; that appellant "felt extremely aggrieved" due to appellees' "unlawful acts and irregularities" committed, which deprived the former of his property without due process of law. Thus, appellant prayed for the declaration as null and void *ab initio* of the above-mentioned notices of assessment, the notice of seizure of real property, the declaration of forfeiture of real property, and the deed of sale. He also prayed that defendants be ordered to reconvey to him the subject property or that the BIR and its officers involved be compelled to reacquire the said property from Lagahit at their own expense. Finally, appellant prayed for ₱300,000.00 as moral damages, ₱100,000.00 as exemplary damages, ₱50,000.00 as attorney's fees plus ₱1,000.00 per appearance fee, ₱5,000.00 initially as expenses, and costs of the suit.

In their answer, appellees alleged that —

16. That defendant Bureau of Internal Revenue knows that TCT No. T-113015 was cancelled with due process and that the defendants have not committed unlawful acts and irregularities, but on the contrary, the forfeiture of plaintiff's real property was done legally and regularly after complying with the requisite due process.

16-1. That the defendants maintain that the assessment for his 1982 and 1983 deficiency income tax of ₱32,076.52 (Exhibit "C") was legally assessed including interest of ₱32,076.52, not ₱30,797.36 x x x at the time of auction sale last June 9, 1995 (Exhibit "E", "E-1", "E-2" and "E-3"), as published in a newspaper of general circulation;

16-2. That on the basis of the legal assessment made by defendants within the period provided by law, with notice to his last known address at Ecoland, City Hall of Davao City, defendants Bureau of Internal Revenue, Themistocles R. Montalban and Amerigo D. Villegas, pursued their legal acts of levying and seizing plaintiff's real property above-described by issuing x x x:

(a) A legal warrant of distraint and levy (Exhibit "F") wherein they truly stated that plaintiff "failed and refused and still fails and refuses to pay" the deficiency income taxes of ₱32,076.52 notwithstanding the demands made by them and defendant Amerigo D. Villegas also truly certified thereunder that "a copy of warrant of distraint and/or levy was served to the taxpayer or his representative" as acknowledged hereunder served

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constructively on the 6th day of March 1992 and warrant of distraint and/or levy on the 17th day of October 1991 witnessed by Severina Reyes and Narciso Apolinario.

(b) A genuine Notice of Seizure of real property dated March 6, 1992 indicating his last known address at Ecoland, Matina, Davao City … Although defendant Amerigo D. Villegas knew that the taxpayer migrated to the United States, he was informed by Ms. Aleta Zerrudo that she cannot give the address of Mr. Demetrio R. Alcantara in the United States. He made a certification therein that he served a copy thereof to Mr. Valdovino S. Lagbao of Panorama Homes, Buhangin, Davao City, on the 6th day of March 1992 at 10:00 o'clock A.M. pursuant to Section 224, wherein the suspension of the running of statute of limitation shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected; xxx xxx xxx; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, xxx; and when the taxpayer is out of the Philippines.

(c) A declaration of forfeiture of real property on May 6, 1992 with due notice, filed a notice of tax lien on August 12, 1991 (Exhibits "J", "J-1", "J-3" and "J-4");

16-3. That on May 13, 1993, defendant Teodorica R. Arcega wrote a letter to the Register of Deeds of Davao City requesting the latter to issue a new title of the subject property in the name of the Republic of the Philippines and TCT No. T-195677 was issued. Such act was a legal and lawful performance of her duties. The procedures undertaken were in compliance with due process of law ...

16-4. That after acquiring a new title to the property in the name of the Republic of the Philippines and pursuant to the requirements and conditions provided by law, defendant Jose C. Batausa conducted a resale at public auction and legally and lawfully sold plaintiff's above-described real property in favor of the highest bidder, Maximo Lagahit, pursuant to Sec. 217 of the Tax Code at a conscionable and sufficient consideration of ₱73,500.00 and the Commissioner of Internal Revenue, represented by Regional Director Jose C. Batausa, had the absolute right to conduct a resale of real property under Section 315, now 216, 217 and Consulta 832 of the Land Registration Commission.

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16-5. The aforesaid Deed of Sale is legally sufficient in form and defendants maintain that due process and due notice had been complied with by defendants [*BIR*] and its' officers in levying and seizing plaintiff's above-described property. Defendant Register of Deeds of Davao City, was lawfully performing their duties in giving due course and issuing Transfer Certificate of Title No. T-244532 in the name of defendant Maximo Lagahit, the highest bidder in the auction, and who is a buyer in good faith for value.

x x x x x x x x x

20. That defendants acted with justice and had observed honesty and good faith in doing their duties of levying plaintiff's real property and deny specifically that they have prejudiced the herein plaintiff. As a consequence, no unlawful acts and irregularities had been committed and therefore, they are not liable for exemplary damages as government officers doing their duties of levying the real property of the plaintiff;

On March 10, 1999, the RTC, Branch 11, upon being apprised of the fact that the present controversy involved tax matters under the Internal Revenue Code, ordered the transfer of the case to the "designated special courts to take cognizance of tax matters and all matters relating to Internal Revenue Code". The case was reassigned to Branch 16, one of the two branches of the RTC of Davao City so designated.[4]

Judgment of the RTC

After trial, the RTC dismissed the complaint, holding that the respondents could not be faulted for Alcantara's failure to receive the assessment because the BIR and its officials had only relied on the address indicated in his tax returns; and that he had never informed the respondents of any change of his address.[5]

Decision of the CA

The same fate awaited Alcantara's appeal. The CA dismissed the appeal on the ground that the RTC had no jurisdiction over the complaint because he was thereby seeking to challenge the

[4] *Rollo*, pp. 34-42.

[5] *Supra* note 3.

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validity of the assessment made by the BIR. According to the CA, the Tax Code mandated that the taxpayer should administratively protest the assessment with the Commissioner of Internal Revenue before going to court, but he did not do so; hence, he did not exhaust his administrative remedies, rendering his action dismissible. The CA observed that even assuming that the RTC had jurisdiction over the complaint, the CA did not have jurisdiction over the appeal because it was the Court of Tax Appeals (CTA) that had the authority to entertain the same as provided for by Republic Act 1125, as amended.[6]

Issues

Alcantara now insists on the competence of the RTC to take cognizance of his complaint. He insists that his complaint is one for the declaration of the nullity of TCT No. T-195677 and TCT No. T-244532 and for the reconveyance of property that fell within the exclusive and original jurisdiction of the RTC as provided for in Batas Pambansa Blg. 129, as amended, due to such causes of action being incapable of pecuniary estimation and involving title to, or possession of, real property, or any interest therein; that the CA erred in requiring him to exhaust administrative remedies before going to the RTC; and that because the CTA had no jurisdiction, and, as such, had no power to declare certificate of titles as null and void, the CA was the proper appellate forum for him.

Countering, the respondents, through the Office of the Solicitor General, aver that the action of Alcantara was a suit against the State; hence, conformably with the doctrine of state immunity from suit, the same should be dismissed because the State did not consent to the action; the CA's ruling that neither the RTC nor the CA had jurisdiction, original and appellate, respectively, to act on the complaint was not erroneous; and that they (individual respondents) could not be liable for damages due to having acted in good faith in levying on and auctioning Alcantara's property.[7]

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[6] *An Act Creating the Court of Tax Appeals*.

[7] *Rollo*, pp. 72- 96.

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The decisive issues are, therefore: (a) whether or not the CA erred in ruling that the RTC had no jurisdiction to try and decide Alcantara's complaint; and (b) whether or not the CA erred in ruling that the proper appellate authority to question the decision of the RTC was the CTA.[8]

Ruling of the Court

The appeal lacks merit.

The allegations in the complaint and the character of the relief sought determine the nature of an action as well as which court has jurisdiction over the action. The nature of a pleading is determined by allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same.[9] Accordingly, a review of the allegations is proper in order to determine the real nature of the cause of action pleaded in the complaint.

The complaint pertinently alleges as follows:

11. That the above-described real property was purchased by the plaintiff with his hard-earned money on instalment basis from its former owner with the plan to put up his own residential house thereon where he could spend the rest of his life upon his return from the United States of America after retirement; Thus before he left Davao City for the United States of America in August 1985 he had it titled in his name in order that he could "*rest secure, without the necessity of waiting in the portals of the court, or sitting in the* ***mirador de su casa*** *to avoid the possibility of losing his land."* [Registration of Land Titles and Deeds, by Narciso Peña, p. 24]

12. That the plaintiff's ownership of the above-described real property is evidenced by a Transfer Certificate of Title No. T-113015 issued in his name by the Register of Deeds of Davao City, a machine copy of which is attached hereto as ANNEX "A" to form part hereof;

13. That being the absolute owner of the above-described property, the plaintiff [thru his authorized representative] has religiously paid

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[8] *Id*. at 19.

[9] *Villanueva v. Philippine Daily Inquirer, Inc.*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 10-11.

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the corresponding realty taxes therefor and this fact is evidenced by the following **Official Receipts of the Republic of the Philippines** issued to the plaintiff during the last five years [from 1992 to 1996], to wit:

13.1 Official Receipts Nos. 4629172 Q and 4628422 Q all **dated 1-17-96** machine copies of which are attached hereto as ANNEXES "B" and "B-1";

13.2 Official Receipts Nos. 8671852 P and 8669352 P all **dated 3-27-95** machine copies of which are attached hereto as ANNEXES "C" and "C-1";

13.3 Official Receipts Nos. 7533667 P and 7532042 P all **dated 3-29-94** machine copies of which are attached hereto as ANNEXES "D" and "D-1";

13.4 Official Receipt No. 3863896 P **dated 3-18-93** a machine copy of which is attached hereto as ANNEX "E"; and

13.5 Official Receipt No. 7519929 O **dated 3-17-92** a machine copy of which is attached hereto as ANNEX "F" to form part hereof;

14. That however, when the plaintiff [thru his authorized representative] wanted to pay the realty tax for this year [1997] for the above-described property, his payment was not accepted by the office of the Davao City Assessor for the reason that the owner of the said property is no longer the plaintiff but a certain MAXIMO LAGAHIT – which fact brought shock waves to the plaintiff;

15. That upon hearing the shocking information that his above-described property is already owned by a certain MAXIMO LAGAHIT, the plaintiff caused the verification of the existence of his aforesaid TCT No. T-113015 with the Office of the Register of Deeds of Davao City and he was surprised to find out that it was **cancelled on 5-18-93** by the Register of Deeds of Davao City without giving him due process of law and a new TCT No. T-195677 was issued in the name of the Republic of the Philippines; A CERTIFIED TRUE COPY of the cancelled TCT No. T-113015 is attached hereto as ANNEX "G";

16. That after knowing that his said TCT No. T-113015 was cancelled without giving him due process of law, plaintiff further caused the verification of the same and he found out that the defendants committed the following unlawful acts and irregularities as their basis

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for depriving the plaintiff of his property without due process of law, namely:

16.1 *Beyond the period of limitation prescribed by law* [See *Sec. 203, NIRC*] and long after the plaintiff had left Davao City for the United States of America, the BIR made it appear that it assessed plaintiff's income tax returns for 1982 and 1983 with alleged deficiency income taxes and interests amounting to ₱30,797.36; Worse, the BIR falsely made it appear in its alleged INCOME TAX ASSESSMENT NOTICES that the plaintiff was residing at Ecoland Subdivision, Matina, Davao City, altho the truth was that he and his family left Davao City in August 1985 for the United States of America; Neither were the alleged INCOME TAX ASSESSMENT NOTICES published in a newspaper of general circulation; Machine copies of the alleged INCOME TAX ASSESSMENT NOTICES are attached hereto as ANNEXES "H" and "H-1";

16.2 On the basis of the aforesaid illegal assessment made beyond the period of limitation prescribed by law and altho NO NOTICE thereof whatsoever was validly served on the plaintiff, defendants BIR, Themistocles R. Montalban, and Amerigo D. Villegas pursued in their illegal acts of levying and seizing plaintiff's above-described property by issuing

(a) A farcical WARRANT OF DISTRAINT AND/OR LEVY wherein they FALSELY stated that the plaintiff "*failed and refused and still fails and refuses to pay the deficiency income taxes of ₱32,076.52 notwithstanding the demands made by them*" and defendant AMERIGO D. VILLEGAS also FALSELY certified thereunder that "*a copy of the warrant of distraint and/or levy was [A] served to the taxpayer or his representative as acknowledged hereunder [B] served constructively because the taxpayer or his representative refused to acknowledge the service of the warrant, or was not in the premises.*" A machine (sic) of the WARRANT OF DISTRAINT AND/OR LEVY is attached hereto as ANNEX "I";

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(b) A farcical NOTICE OF SEIZURE OF REAL PROPERTY **dated March 6, 1992** indicating FALSELY plaintiff's address as being at Ecoland, Matina, Davao City, a machine copy of which is attached as ANNEX "J"; Altho defendant AMERIGO D. VILLEGAS knew very well that the plaintiff had emigrated to the United States of America per his letter **dated February 27, 1989**, a machine copy of which is attached hereto as ANNEX "K", he FALSELY made it appear in the said NOTICE OF SEIZURE OF REAL PROPERTY that the plaintiff's address was at Ecoland, Matina, Davao City; Worse, he made an empty certification therein that he served a copy thereof to a certain Mr. Baldovino S. Lagbao who had absolutely NO CONTACT with the plaintiff and which kind of service was not authorized by law [*See Sec. 213. NIRC*].

(c) A DECLARATION OF FORFEITURE OF REAL PROPERTY on May 6, 1992 without any notice whatsoever to the plaintiff, a machine copy of which is attached hereto as ANNEX "L";

16.3 On May 13, 1993 defendant TEODORICA R. ARCEGA wrote a letter to the Register of Deeds of Davao City requesting the latter to issue a new title of the subject property in the name of the Republic of the Philippines altho, as clearly shown in the foregoing facts, the proceedings undertaken by the public defendants are *null* and *void* ***ab initio*** for lack of the requisite due process of law; A machine copy of the letter is attached hereto as ANNEX "M";

16.4 Without complying with the requirements and conditions provided under the law, defendant JOSE C. BATAUSA illegally sold plaintiff's above-described property in favor of defendant MAXIMO LAGAHIT at an *unconscionable* and *measly* consideration of only **₱73,500.00** altho, under the law [*See Sec. 217, NIRC*], defendant JOSE C. BATAUSA did not have the authority to sell the same; This fact is evidenced by a Deed of Sale a machine copy of which is attached hereto as ANNEX "N";

16.5 Altho the aforesaid Deed of Sale [Annex N] is manifestly insufficient in form and despite the nullity of the proceedings undertaken by the BIR and its officers in levying or seizing plaintiff's above-described property, defendant Register of Deeds of Davao City gave due course thereto and issued Transfer Certificate of Title No. T-244532 in the name of defendant MAXIMO LAGAHIT, who was obviously not a buyer in good faith for value;

17. That having felt extremely aggrieved of the unlawful acts and irregularities committed by the defendants in depriving him of his property without due process of law, plaintiff had to fly to Davao City from the United States of America to institute appropriate action to compel the defendants to reconvey his above-described property to him; And when he arrived in Davao City he discovered that a BIG **For Sale** sign has been erected at the site of his above-described property, which prompted him to file a NOTICE OF ADVERSE CLAIM with the defendant Register of Deeds of Davao City; A machine copy of the NOTICE OF ADVERSE CLAIM is attached hereto as ANNEX "O";

But for reasons not in accordance with law [*See Sec. 70, P.D. 1529*] the defendant Register of Deeds refused to register plaintiff's aforesaid NOTICE OF ADVERSE CLAIM [Annex O] as per letter dated May 29, 1997, a machine copy of which is attached hereto as ANNEX "P";

18. That before the plaintiff resorted to this action, he went to the defendant BIR for possible amicable settlement regarding the reconveyance of his above-described property to him and he was able to personally talk with Atty. Mercelinda O. Yap who in turn suggested to him to see defendant MAXIMO LAGAHIT on the matter; In this light, a representation was made to Mr. & Mrs. Maximo Lagahit at their business stall at the Agdao Public Market, Davao City, who immediately admitted plaintiff's ownership of the property; As put it by both spouses, they were even surprised why the Republic of the Philippines owned a residential lot situated at the Panorama Homes Subdivision, Buhangin, Davao City; And when Mr. & Mrs. Maximo Lagahit were asked about plaintiff's willingness [for purposes of buying peace] to get back the property from them at the consideration they acquired plus cost of money and the attendant expenses, their reaction was that they were selling it at **₱3,000.00**

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per square meter [or a total price of **₱903,000.00]**, which shocked the plaintiff; [10]

x x x x x x x x x

It is clear from the foregoing allegations that despite assailing the supposedly illegal confiscation of his property in order to satisfy his tax liabilities, Alcantara was really challenging the assessment and collection of taxes made against him for being in violation of his right to due process. As such, the complaint concerned the validity of the assessment and eventual collection of the taxes by the BIR. The declaration of nullity of the sale and reconveyance was founded on the validity of the assessment and eventual collection by the BIR. That the main relief sought by his complaint was "*to declare the assessments conducted by the BIR on the Income Tax Returns of [Alcantara] for 1982 and 1983 as null and void ab initio"* as well as to declare all notices and deeds in relation to collection of the assessed taxed liabilities as null and void[11] bolsters this conclusion.

Accordingly, the CA correctly determined that the RTC had no jurisdiction to resolve the issues raised in Alcantara's complaint.

The remedies available to a taxpayer like Alcantara were laid down by law. Section 229 of Presidential Decree (P.D.) No. 1158,[12] the law in effect at the time of the disputed assessment, stated that prior resort to the administrative remedies was necessary; otherwise, the assessment would attain finality, *viz*.:

Sec. 229. Protesting of assessment. — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice.

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[10] Records, pp. 4-8.

[11] *Id*. at 9.

[12] *A Decree to Consolidate and Codify All Internal Revenue Laws of the Philippines*.

If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable. [Emphasis Supplied]

Section 230 of P.D. No. 1158 allowed Alcantara to file his claim for refund for the erroneously or illegally paid taxes. In this regard, such claim for refund was also a prerequisite before any resort to the courts could be made to recover the erroneously or illegally paid taxes, to wit:

Sec. 230. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress**.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Forfeiture of refund. — A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited

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in favor of the government and the amount thereof shall revert to the General Fund. [Bold emphasis supplied]

Yet, Alcantara immediately invoked the authority of the courts to protect his rights instead of first going to the Commissioner of Internal Revenue for redress of his concerns about the assessment and collection of taxes. His judicial recourse thus suffered from fatal prematurity because his doing so rendered the assessment final.

Alcantara argues that the resort to administrative remedies was futile for him because he could not have sought reconsideration or filed a claim for refund during the period required of him by the Tax Code due to his being then out of the country.

Such argument did not excuse Alcantara from complying with the specific provisions of law on his remedies. Even assuming to be true that he had not received the assessment, there was greater reason for him to have first resorted to the Commissioner of Internal Revenue for the reconsideration of the assessment before it attained finality. Section 229 of P.D. No. 1158 declared the finality of the assessment upon the lapse of 30 days from receipt of it.

Alcantara contends that the CA erred in ruling that the proper appellate court to bring his appeal to was the CTA; that following Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, the CTA had no jurisdiction to declare the certificate of titles null and void; and that the CA was instead the proper appellate court to review the adverse decision of the RTC in his case.

The contention lacks persuasive force.

The complaint was brought to assail the assessment and collection made by the Commissioner of Internal Revenue. Based on Republic Act No.1125, prior to its amendment by Republic Act No. 9282, the CTA had exclusive appellate jurisdiction over the appeal of the decisions of the Commissioner of Internal Revenue, to wit:

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Section 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) **Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue**;

x x x x x x x x x

Accordingly, the CA correctly dismissed Alcantara's appeal on the ground of lack of jurisdiction to entertain the same. The erroneous appeal deserved no fate but dismissal. Section 2, Rule 50 of the *Rules of Court* expressly states: "*An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright*." In *Balaba v. People*,[13] the Court affirmed the CA's dismissal of the appeal because the appeal had been erroneously taken to the CA instead of to the Sandiganbayan.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on November 4, 2009 by the Court of Appeals; and **ORDERS** the petitioner to pay the cost of the suit.

SO ORDERED.

Velasco, Jr. (Chairperson), Reyes, Jardeleza, and *Tijam, JJ.,* concur.

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[13] G.R. No. 169519, July 17, 2009, 593 SCRA 210, 215.