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showing here, for the simple reason that no hearing has been ordered held for the purpose, contrary to the decisions I have cited above, which, curiously enough, are claimed to support the view of my brethren in the majority. I regret to say that I have not been able to find any precedent favoring their view.

For all these reasons, my vote is for the granting of the petition to prohibit the enforcement of the writ of possession in question, without prejudice to the holding of a hearing by the court *a quo* pursuant to this opinion which is based on the rulings in the very cases cited by the majority, namely, Saavedra, Omaña, Santiago, etc. as I have discussed above.

[G.R. No. L-24663. March 31, 1971]

SPOUSES RAMON A. GONZALES and LILIA YUSAY, ***plaintiffs-appellants,*** *vs.* **PROVINCE OF ILOILO,** ***defendant-appellee.***

SYLLABUS

1. **TAXATION; PROCEDURE AND JURISDICTION; REAL PROPERTY TAX; ASSESSMENT.**— A brief review of the existing laws and procedures concerning the assessment and taxation of real property will readily show the *primacy of the tax court's special jurisdiction over actions for refund of real estate taxes paid under a disputed assessment.* Under the Assessment Law, the assessment of all real property within the province or city, i.e., the listing and valuation of real property for purposes of taxation, is made by the provincial or city assessor. When a valuation is placed on property newly declared or when a value greater than that stated in the declaration required of the owner (under Section 1 of Commonwealth Act 530), or where an existing assessment is increased to an amount in excess of that so stated, the assessor must immediately give written notice of such assessment or increased assessment to the owner. A property owner not satisfied with the assessment must within sixty days from receipt of the written notice of assessment in the case of provinces and within the period for appeals stated in the charters in the case of cities, appeal to the corresponding board of assessment appeals, by filing

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a petition stating the grounds of his appeal. *If no appeal to the Board of Assessment Appeals is made by the property owner within the statutory period, the assessment becomes final and unappealable.* The owner cannot go to court to question any error in the assessment and to seek refund of the realty taxes paid, since as held in *Victorias Milling Co., Inc. vs. Court of Tax Appeals,* 22 SCRA 1008 (March 13, 1968) *"(B)y the doctrine of the primacy of administrative remedy, the Provincial Board of Assessment Appeals had jurisdiction over the dispute to the exclusion of the Court of First Instance"* ; and the party's resort to the court of first instance instead of appealing to the Board of Assessment Appeals was held fatal to its claim for refund. If the property owner has, however, timely appealed to the Board of Assessment Appeals and is not satisfied with its decision, he may within thirty days from receipt of the decision file an appeal to the Court of Tax Appeals, which under Section 7 (3) of Republic Act 1125, is vested with *exclusive appellate jurisdiction to review "decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property* or *other matters arising under the Assessment Law, including rules and regulations relative thereto."* The tax court's decision is reviewable only upon certiorari by this Court, upon petition filed at the instance of either party.

2. **ID.; TAX COURTS; JURISDICTION; REAL ESTATE ASSESSMENT; REFUND.**— *Where the right to a refund is necessarily dependent upon and a mere incident of the action contesting the decision upholding the real estate tax assessment, the case falls within the exclusive* and *special jurisdiction of the tax court, as in the case at bar.* The action in the lower court for refund of the realty taxes cannot be divorced from the action contesting the real estate tax assessment. In both actions, the essential and ultimate question for resolution is whether or not the assessment is erroneous or unlawful, as contended by them. The power and authority to determine such question falls within the exclusive and special jurisdiction of the tax court, and the resolution of this question would necessarily determine the merits of the action in the lower court for refund itself. Their separate action for refund of the realty taxes is necessarily dependent upon and merely incidental to the outcome of their pending appeal in the tax court. The special jurisdiction of the tax court over the correctness and validity of the assessment would unavoidably

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include with it *all incidental matters* connected thereto, more specifically, the refund of the taxes paid by them, if they were to be upheld in their appeal. The court has consistently held that a contrary rule, which would uphold plaintiffs-appellants' stand "would result in a 'split-jurisdiction,' which is not favored, and in multiplicity of suits, a situation obnoxious to the orderly administration of justice." A confused situation that would permit two courts of coordinate ranks, - whether they be of equal jurisdiction, much less than one is of general jurisdiction and the other is a collegiate Court of special jurisdiction - to take cognizance separately of the same question of legality of an assessment and right to refund of the realty taxes paid and to hand down possibly two conflicting and irreconcilable decisions, has never been favored by the Court, for being inimical to the orderly processes of justice.

3. **ID.; COURT OF TAX APPEALS; JURISDICTION; REAL ESTATE ASSESSMENTS.**— *This special and exclusive appellate jurisdiction of the tax court prevails to the exclusion of the courts of first instance whenever any real estate assessment is disputed, regardless of whether or not the corresponding real estate tax has been paid and a refund thereof is sought by the taxpayer.* In *Ollada vs. Court of Tax Appeals* (99 Phil. 604 [1956]) decided by the Court after the creation of the Court of Tax Appeals upon the enactment on July 16, 1954 of Republic Act 1125, the Court noted that "the primordial purpose behind the approval of said Act by Congress is to give to the *Court of Tax Appeals exclusive appellate jurisdiction 'over all tax, customs and real estate assessment cases* throughout the Philippines and to hear and decide them as soon as possible.'" We stressed therein that the case must involve an *"assessment or refund of any tax, fee or penalty"* in order to pertain to the tax court's special jurisdiction. The Court has adopted the more simple attest that *where an assessment is disputed for whatever ground or reason, be it that the assessment is unjust, erroneous or improper, illegal or void, or excessive or unreasonable,* the action challenging the assessment, after first exhausting the administrative remedy of appeal to the assessment appeals board, *and regardless of whether the corresponding real estate tax has been paid and a refund sought,* pertains to the exclusive and special jurisdiction of the tax court to the exclusion of the courts of first instance. Thus, in the recently decided case of *Board of Assessment Appeals of Zamboanga del Sur vs. Samar Mining Co. and Court of Tax Appeals,* (L-28034, February 27, 1971) the Court upheld the jurisdiction of the tax court to rule upon the

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legality and validity of the disputed real estate assessment, rejecting the contention therein that the property owner should first pay the questioned realty tax before lodging an appeal from the assessment appeals board's adverse decision to the tax court. Where the realty assessment alone is disputed, since the tax has not yet been paid, the tax court in its decision would rule upon the correctness and validity of the assessment. Where the tax has in addition already been paid and a refund thereof is sought, the tax court, if it rules *against the correctness and validity of the assessment*, would in addition order the refund of the tax paid by the property owner.

APPEARANCES OF COUNSEL

Roman A. Gonzales for plaintiffs-appellants.
Provincial Fiscal Alfonso B. Baguio for defendant-appellee.

D E C I S I O N

TEEHANKEE, *J.:*

Direct appeal on pure questions of law from an order of the Court of First Instance of Iloilo dismissing for lack of jurisdiction plaintiffs-appellants' complaint questioning the legality of the increased assessment on their real estate and seeking the refund of the 100% increase in real estate taxes paid by them under protest.

The background facts are thus narrated in the lower court's dismissal order: "Plaintiffs, spouses Ramon A. Gonzales and Lilia Yusay filed a complaint against the Province of Iloilo asking for a refund of taxes on real property they paid under protest for Lots Nos. 5733, 5886, 5666, 5913, 5669, 5735 of Pototan Cadastre located in the Municipality of Pototan, Province of Iloilo, and Lot No. 708, Dingle, Province of Iloilo, corresponding to the years 1963 and 1964. The refund of said taxes is based on the ground that the revised assessment on the property in the Municipalities of Pototan and Dingle, was null and void for it violates 'the constitutional injunction of equality and uniformity of taxes and equal protection of the law because, while the twenty one (21) municipalities of Iloilo

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Province including the Municipalities of Pototan and Dingle, where the plaintiffs' property is located, were reassessed, twenty-two (22) other municipalities of the same province were not reassessed.

"That with reference to Lot No. 708 located at Dingle, which the plaintiffs acquired through a contract of conditional sale executed on April 28, 1961, from the Development Bank of the Philippines payable in ten (10) years, the plaintiffs are not liable for the taxes of said lot which they paid under protest for the years 1962 and 1963 inclusive, because under the law creating the Development Bank of the Philippines, said DBP is exempted from realty taxes and as such, the plaintiffs are not liable to pay land taxes due the government while the said property is owned by the DBP.

"The refund prayed for by the plaintiffs represent the excess of taxes paid or the differential in the 1963-1964 taxes from the taxes of said property in 1962 as the revision and reassessment of said property took effect on Jan. 1, 1963. For the lots in Pototan, plaintiffs asked for a refund of P637.80 while for the lot in Dingle, plaintiffs asked a refund of the whole taxes for 1962-1963, in the amount of P988.09 and the differential for 1964 tax of P299.50 or a total of P1,289.59 for the Dingle property alone or a grand total of P1,925.39 for the total of the seven lots in Pototan and Dingle plus the legal rate of interest from the filing of this complaint and costs of action.

"To plaintiffs' complaint, defendant filed a corresponding answer upholding the validity of the reassessment on the two municipalities of Pototan and Dingle and as such the plaintiffs are not entitled to the refund prayed for in their complaint; and with regards to real property tax paid by the plaintiffs for the years 1962-1963 of the property in Dingle which the plaintiffs acquired from the DBP in 1961, the plaintiffs are not entitled to the refund of said taxes because the payment of said tax is part of the consideration of the sale executed by and between the plaintiffs and the Development Bank of the Philippines, x x x

"Defendant further alleges that this Court has no jurisdiction to the plaintiffs' complaint as the refund prayed for by the

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plaintiffs would involve a declaration of the legality of the assessment which can only be passed upon the Court of Tax Appeals pursuant to Sec. 7 of Republic Act No. 1125. This is aside from the fact that from the pleadings we find that the plaintiffs have already filed an appeal to the Court of Tax Appeals involving the legality of the assessment involved in the present case."

Since the issue of the lower court's lack of jurisdiction over the case as a court of first instance as against the exclusive appellate jurisdiction on the part of the court of tax appeals to review the challenged assessment had been squarely joined in connection with plaintiffs' motion for summary judgment, the lower court issued its order of March 1, 1965, dismissing the complaint before it and ruling that the court of tax appeals, before whom plaintiffs had a pending appeal likewise challenging the legality and validity of the assessment in question, had exclusive appellate jurisdiction over the question, as follows: "To our way of thinking, though the action is for refund of taxes, yet the main question is the legality or illegality of the assessment involved. Paragraph 3 of Sec. 7 of Rep. Act 1125 above-cited speaks clearly the intention of Congress to give to the Court of Tax Appeals the exclusive appellate jurisdiction to determine the legality of any assessment on real property arising under Assessment Law, otherwise known as Commonwealth Act No. 470 as amended before whose Court the validity of said assessment is at the present pending appeal as admitted by the plaintiffs. The plaintiff is now riding, figuratively speaking, on two horses, this Court and the Court of Tax Appeals The two laws, the Judiciary Act pursuant to Sec. 44(b),[1] and Republic

[1] "SEC. 44. Original jurisdiction. - Courts of First Instance shall have original jurisdiction:

x x x x

(b) In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost or assessment, except actions of forcible entry into and detainer or lands or buildings, original jurisdiction of which is conferred by this Act upon city and municipal court"; (Republic Act 296 as amended).

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Act 1125, Sec. 7(3), [2] both give jurisdiction to both the Courts of First Instance and the Court of Tax Appeals to decide on cases involving the legality of any tax or assessment involved. But while the Judiciary Act gives jurisdiction to Courts of First Instance to decide on the legality of any tax or assessment involved in a general way, Rep. Act 1125 which is a later Act than the Judiciary Act of 1948, provides for the specific kind of tax or assessment the Court of Tax Appeals can pass upon and among those specific taxes or assessment, is the assessment or taxation of real property or other matters arising under the Assessment Law, like the case at bar."

The Lower court, citing the cases of *Ollada vs. Court of Tax Appeals* [3] and *City of Cabanatuan vs. Hon. Magno L. Gatmaitan,*[4] went onto "hold that the action involving the legality of the assessment which is now before this Court and the Court of Tax Appeals should be decided by the Court, though the question of refund over which the Court of Tax Appeals has no jurisdiction, can be subsequently brought to the court having jurisdiction over the amount involved which in this case would fall under the Municipal Court of the municipality where payments were made."

Plaintiffs therefore filed this appeal, contending quite plausibly on the strength of the ruling in *Cabanatuan* that since they were constrained to pay the increased real estate taxes under protest, their action for refund had properly been instituted in the lower court, notwithstanding the pendency of their appeal to the tax court challenging the validity of the increased assessment, since the tax court had been held in *Cabanatuan* to have no jurisdiction over the refund of a real

[2] "SEC. 7. Jurisdiction.— The Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal, as herein provided:

'x x x x

'3. Decisions of provincial or City Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulation relative thereto.'" (Republic Act 1125).

[3] 99 Phil. 604 (1956).

[4] 7 SCRA 426 (Feb. 28, 1963).

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estate tax in appeals from an assessment appeals board "for the jurisdiction of that body. It is not extended to requiring the refund of the tax."

The ruling in *Cabanatuan,* however, is actually in conflict with prior and subsequent decisions of this Court in *Bislig Bay Lumber Co., Inc. vs. Prov. Gov't. of Surigao,*[5] *Prov. Treasurer of Negros Occ. vs. Azcona,*[6] *Francisco vs. City of Davao,*[7] and *Victorias Miling Co. Inc. vs. Court of Tax Appeals*[8] to the effect that disputed assessments over real estate of the provincial or city assessor must under the Assessment Law (Commonwealth Act 470) be appealed within the statutory period, *infra,* to the corresponding provincial or city Board of Assessment Appeals and the tax court has *exclusive appellate jurisdiction* to review the decisions of such boards and to order the refund of the real estate taxes paid if it upholds the appeal, subject only to this Court's power of review by certiorari.[9] The tax court's authority to order the refund of real estate taxes paid under a disputed assessment was *implicitly* upheld in these four cases decided by the Court during the period from 1956 to 1968, but the *explicit* pronouncement to the contrary in the 1963 case of *Cabanatuan* cast a cloud of uncertainty over the matter.

The case at bar, therefore, affords the Court with an opportunity to clarify definitely, in line with *Bislig, Azcona, Francisco* and *Victorias* that actions for refund of real estate taxes paid under a disputed assessment pertain to the exclusive appellate jurisdiction of the court of tax appeals and are beyond the jurisdiction of the courts of first instance.

1. A brief review of the existing laws and procedures concerning the assessment and taxation of real property will readily show *the primacy of the tax court's special jurisdiction over actions for refund of real estate taxes paid under a disputed assessment.*

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[5] 100 Phil. 303 (Nov. 13. 1956).

[6] 5 SCRA 634 (July 30, 1962).

[7] 12 SCRA 628 (Dec. 24, 1964).

[8] 22 SCRA 1008 (Mar. 13, 1968).

[9] Section 19, Rep. Act 1125.

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Under the Assessment Law, the assessment of all real property within the province or city, i.e., the listing and valuation of real property for purposes of taxation, is made by the provincial or city assessor.

When a valuation is placed on property newly declared or when a value greater than that stated in the declaration required of the owner (under Section 1 of Commonwealth Act 530), or where an existing assessment is increased to an amount in excess of that so stated, the assessor must immediately give written notice of such assessment or increased assessment to the owner.[10]

A property owner not satisfied with the assessment must within sixty days from receipt of the written notice of assessment in the case of provinces and within the period for appeals stated in the charters in the case of cities, appeal to the corresponding board of assessment appeals, by filing a petition stating the grounds of his appeal.[11]

If no appeal to the Board of Assessment Appeals is made by the property owner within the statutory period, the assessment becomes final and unappealable. The owner cannot go to court to question any error in the assessment and to seek refund of the realty taxes paid, since as held in *Victorias Milling Co., Inc. vs. Court of Tax Appeals,*[12] *(B)y the doctrine of the primacy of administrative remedy, the Provincial Board of Assessment Appeals had jurisdiction over the dispute to the exclusion of the Court of First Instance";* and the party's resort to the court of first instance instead of appealing to the Board of Assessment Appeals was held fatal to its claim for refund.

If the property owner has, however, timely appealed to the Board of Assessment Appeals and is not satisfied with its decision, he may within thirty days from receipt of the decision file an

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[10] Assessment Law (Com. Act 470), Sec,. 16.

[11] *Idem,* Sec. 17.

[12] 22 SCRA, 1008 (March 13, 1968).

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appeal[13] to the Court of Tax Appeals, which under Section 7 (3) of Republic Act 1125, is vested with *exclusive appellate jurisdiction to review "decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property* or *other matters arising under the Assessment Law, including rules and regulations relative thereto."* The tax court's decision is reviewable only upon certiorari by this Court, upon petition filed at the instance of either party. [14]

2. *This special and exclusive appellate jurisdiction of the tax court prevails to the exclusion of the courts of first instance whenever any real estate assessment is disputed, regardless of whether or not the corresponding real estate tax has been paid and a refund thereof is sought by the taxpayer.*

In *Ollada*[15] decided by the Court after the creation of the Court of Tax Appeals upon the enactment on July 16, 1954 of Republic Act 1125, the Court noted that "the primordial purpose behind the approval of said Act by Congress is to give to *the Court of Tax Appeals exclusive appellate jurisdiction 'over all tax, customs and real estate assessment cases* throughout the Philippines and to hear and decide them as soon as possible'." We stressed therein that the case must involve an *"assessment or refund of any tax, fee or penalty"* in order to pertain to the tax court's special jurisdiction.[16]

In *Bislig*,[17] involving a disputed land tax assessment of P595.92 on the public road built within Bislig's concession, paid by it under protest and *refund* of which was sought by it in the court of first instance, the Court held that the case came under the tax court's exclusive and special jurisdiction, but nevertheless deemed

[13] Appeal may likewise be taken by the city or municipality adversely affected by the Board's decision. City of Manila *vs.* Board of Assessment Appeals, 10 SCRA 767 (April 30, 1964).

[14] Rep. Act 1125, Sec. 19.

[15] See fn. 3.

[16] *See* Ledesma *vs.* CTA, 102 Phil. 931 (Jan. 29, 1958).

[17] See fn. 5.

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it "more expeditious" to resolve it on the merits on appeal (instead of ordering its remand to the tax court) and to affirm the judgment ordering refund, since the tax imposed on the public road built by Bislig was clearly improper, as decided by the court of first instance. This early 1956 case was an action for *refund* of real estate tax paid under a disputed assessment already filed and pending with the court of first instance at the time of the enactment on June 16, 1954 of Republic Act 1125 creating the tax court, and the Court held that it should have been properly certified and remanded to the tax court *"for final disposition thereof"* as ordained by Section 22 of said Act, thus:

"It is true that under Section 22 of said Act the only cases that are required to be certified and remanded to the Court of Tax Appeals which upon its approval are pending determination before a court of first instance are apparently confined to those involving disputed assessment of internal revenue taxes or custom duties, and the present case admittedly refers to an assessment of land tax, but it does not mean that because of the apparent omission or oversight the instant case should not be remanded to the Court of Tax Appeals, for in interpreting the context of the section above adverted to we should not ignore Section 7 of the same act which defines the extent and scope of the jurisdiction of said court. *As we have held in a recent case, 'Section 22 of Republic Act No. 1125 should be interpreted in such a manner as to make it harmonize with Section 7 of the same Act and that the primordial purpose behind the approval of said Act by Congress is to give to the Court of Tax Appeals exclusive appellate jurisdiction 'over all tax, customs, and real estate assessment cases throughout the Philippines and to hear and decide them as soon as possible"* (Ollada *vs.* The Court of Tax Appeals, 99 Phil., 604). Considering this interpretation of the law, it logically follows that the lower court did not act properly in denying the motion to remand the instant case to the Court of Tax Appeals."

In *Francisco*,[18] a 1964 case decided after *Cabanatuan* involved an action for *refund* of a protested land tax under a disputed assessment filed by the taxpayer with the court of first instance in May, 1955 (when the tax court was already functioning), while her appeal from the disputed assessment was still pending with

[18] See fn. 7.

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the appeals assessment board. The Court, through the now Chief Justice, similarly upheld the court of first instance's judgment of refund of the excessive land tax assessed, to serve "the ends of justice" since the case had already lasted nine years and "the assessment complained of is manifestly violative of the clear and express provisions of the law,"[19] but specifically pointed out that the taxpayer's claim for *refund* pertained to the tax court's exclusive and special jurisdiction:

"We have not overlooked the fact that, *it would have been better had plaintiffs pursued their claim pursuant to Republic Act No. 1125, by waiting for the decision of the City Board of Assessment Appeals, and/or taking up the matter with the Court of Tax Appeals, to seek, thereafter, if necessary, the intervention of this Court, instead of instituting this case in the Court of First Instance of Davao.* We note, however, that the defendants had advanced this view in a motion to dismiss by them filed with the lower court (pp. 7-8 Record on Appeal), and that the same denied the motion (pp. 18-21, Record on Appeal), and, consequently decided the case on the merits (pp. 25-29, Record on Appeal). *The ends of justice would not be served, if we now dismiss the case — over nine (9) years after it had been initiated — and bade the plaintiffs to start all over again, following the procedure that the defendants had asked the lower court, but which the latter refused, to require.* At any rate, since the legal question raised in the pleadings has reached this Court, and the assessment complained of is manifestly violative of the clear and express provision of the law, it is best that we decide said question, instead of further deferring its resolution." (Italics furnished)

In the 1962 case of *Azcona,*[20] precursor case of *Victorias,*[21] the Court took a firm stand in the absence of the special consideration that moved it in *Bislig* and *Francisco,* and *voided on certiorari proceedings the refund judgment of the court of first instance* and stopped the sheriff from enforcing the writ

[19] Sec. 115 of Com. Act 141 fixing real estate taxes on public lands granted by the State "on the basis of the value fixed in the contract" granting the land.

[20] See fn. 6.

[21] See fn. 12.

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issued by the court of first instance for execution of its final judgment *for refund* of realty taxes paid by Victorias Milling Co., Inc. to the province of Negros Occidental. We declared that the denial by said Court of the motion challenging its jurisdiction and its "open disregard" of its duty to certify and remand, under section 22 of Republic Act 1125, the pending case before it involving disputed assessments of real property taxes and refund thereof, to the then newly created Court of Tax Appeals, "rendered null and void" its decision, handed down eighteen months after the creation of the tax court. The tax case for *refund* was thereupon ordered remanded to the tax court for proper proceedings and decision.

In the sequel case of *Victorias*, decided in 1968, the tax court, acting upon the *refund* case as thus remanded to it, had found that the disputed assessments on Victorias Milling's machineries were erroneously based on the "fixed percentage of diminishing book value method" instead of the "straight-line method" as directed in the finance secretary's circular issued under the Assessment Law and which was more favorable to the property owner, *but ordered the dismissal of the case for failure of the taxpayer to prosecute its appeal administratively first in the Provincial Board of Assessment Appeals before resorting to judicial action.* The Court affirmed the tax court's dismissal of the *refund* claim, and held that the assessment, erroneous though it may have been, had become final and unappealable by virtue of the taxpayer's failure to timely question on appeal the assessment before the Appeals Assessment Board, thereby forfeiting its right of recourse to the tax court.[22]

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[22] Failure likewise to timely appeal to the tax court from decisions on disputed assessments of the tax and customs commissioners make the decisions final and executory, and the taxpayer is barred from suing under Sec. 306 of the tax code for refund of the taxes paid and questioning anew the final assessments, under the principle of *res judicata*. *See* Commissioner of Int. Rev. *vs.* Concepcion, 22 SCRA 1058 (March 15, 1968); Republic *vs.* Ledesma, 19 SCRA 455 (Feb. 28, 1967); Filipinas Investment & Finance Corp. *vs.* Commissioner of Int. Rev., 20 SCRA 50 (May 16, 1967) and Auyong Hian *vs.* Commissioner of Int. Rev., 21 SCRA 749 (Oct. 31, 1967); Auyong Hian *vs.* CTA, 19 SCRA 10 (1967); Com. of Customs *vs.* Cloribel, 19 SCRA 234 (1967); Acting Collector of Customs *vs.* Caluag, 20 SCRA 208 (1967).

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3. The Court, therefore, holds that the proper criterion for determining whether an action for refund of real estate taxes paid should be pursued before the tax court or the competent court of first instance as the court of proper jurisdiction is whether the action for refund is based and dependent on the outcome of a disputed assessment. *Where the right to a refund is necessarily dependent upon and a mere incident of the action contesting the decision upholding the real estate tax assessment, the case falls within the exclusive and special jurisdiction of the tax court, as in the case at bar.*

Here, plaintiffs concededly questioned the legality and validity of the increased assessment against the real properties on the ground that it violated the uniformity of taxation and equal protection clauses of the Constitution and with respect to a certain lot at Dingle, which they had merely conditionally purchased from the Development Bank of the Philippines, that the institution's exemption from realty taxes inured to their benefit, and therefore filed their appeal before the tax court, after being turned down by the appeals assessment board. The mere fact that they paid the realty taxes under protest during the pendency of their appeal before the tax court did not entitle them to file a separate and independent action for refund before the court *a quo* nor did it confer upon said court jurisdiction to act upon their complaint for refund.

It is self-evident that their action in the lower court for refund of the realty taxes cannot be divorced from the action contesting the real estate tax assessment. In both actions, the essential and ultimate question for resolution is whether or not the assessment is erroneous or unlawful, as contended by them. The power and authority to determine such question falls within the exclusive and special jurisdiction of the tax court, and the resolution of this question would necessarily determine the merits of the action in the lower court for refund itself. Their separate action for refund of the realty taxes is necessarily dependent upon and merely incidental to the outcome of their pending appeal in the tax court. The special jurisdiction of the tax court over the correctness and validity of the assessment would unavoidably

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include with it *all incidental matters* connected thereto, more specifically, the refund of the taxes paid by them, if they were to be upheld in their appeal.

The court has consistently held that a contrary rule, which would uphold plaintiffs-appellants' stand "would result in a 'split-jurisdiction,' which is not favored, and in multiplicity of suits, a situation obnoxious to the orderly administration of justice."[23] A confused situation that would permit two courts of coordinate ranks, - whether they be of equal jurisdiction, much less when one is of general jurisdiction and the other is a collegiate court of special jurisdiction - to take cognizance separately of the same question of legality of an assessment and right to refund of the realty taxes paid and to hand down possibly two conflicting and irreconcilable decisions, has never been favored by the Court, for being inimical to the orderly processes of justice.[24]

Again, for the same reason that the resolution of the claim for refund would depend entirely upon the determination of the basic question of correctness and validity of the assessment, and jurisdiction to decide this question is lodged exclusively within the special jurisdiction of the tax court, any resolution by the lower court of the question of refund - which would necessarily call for and involve a resolution of the basic question of correctness and validity of the assessment itself - would tend to encroach upon, and render futile, the jurisdiction of the tax court conferred by Section 7-(3) of Republic Act 1125. Thus in the analogous case of *Pacis vs. Averia,*[25] the Court held that courts of first instance have no jurisdiction to issue writs of replevin for personal property which is the subject of forfeiture proceedings in the Bureau of Customs, since the exercise of such general jurisdiction

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[23] Republic *vs.* Central Surety & Ins. Co., 25 SCRA 641 (Oct. 26, 1968). See Talisay-Silay Milling Co. *vs.* CIR, 18 SCRA 894 (Nov. 29, 1966) and Rheem of the Philippines, Inc. *vs.* Ferrer, 19 SCRA 130 (Jan. 27, 1967).

[24] See De Leon *vs.* Salvador and Bernabe *vs.* Cruz, 36 SCRA 567 (Dec. 28, 1970) and cases cited.

[25] 18 SCRA 907 (Nov. 29, 1966). See also Com. of Customs *vs.* Cloribel, 19 SCRA 234 (Jan. 31, 1967).

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"tends to encroach upon and to render futile the jurisdiction of the Collector of Customs in seizure and forfeiture proceedings" as well as the exclusive appellate jurisdiction of the tax court to review in due course the Commissioner's decision on the collector's action.

Plaintiffs-appellants in their reply brief have informed the Court that their pending case in the tax court[26] was dismissed by the tax court in its resolution of October 22, 1965 for non-appearance and failure to prosecute on their part, and now contend that there is no more basis for the lower court's ruling that the main question of legality of the reassessment or increased assessment pertains to the exclusive jurisdiction of the tax court in said case, implying that the lower court may now alone rule on their claim for refund. Contrary to plaintiffs' impression, however, the dismissal of their case disputing the assessment before the tax court as the court of exclusive jurisdiction has now made the assessment final and conclusive, and bars them from seeking the refund of the taxes paid.[27]

4. *After reexamination and thorough analysis and consideration of the law and precedents on the question, the Court therefore states, for the guidance of bench and bar, that the Court of Tax Appeals, to the exclusion of the courts of first instance, has special and exclusive appellate jurisdiction over all cases where a real estate assessment is disputed as unjust, erroneous and improper, illegal or void, or excessive or unreasonable,[28] after*

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[26] CTA Case No. 1525. entitled "Gonzales *vs.* Board of Assessment Appeals."

[27] *Victorias.* cited in paragraphs 1 and 2, *supra.*

[28] Sec. 19 of Com. Act 470, as amended, provides: "The Board of Assessment Appeals shall have the power to review, on its own motion, assessments found to be *unjust, erroneous or unlawful or not in accordance with the provisions of Section 4 of this Act,* (referring to valuation and assessment of realty at its "true and full value) and any reassessment then made shall be appealable to the Court of Tax Appeals as provided in the preceding section." (Italics and notes in parenthesis supplied).

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recourse to the corresponding board of assessment appeals has failed, and even though the disputed real estate tax has been paid.

This restatement of doctrine overrules the holding in *Cabanatuan* that a taxpayer who is pressed for payment of real estate tax under a disputed assessment upon pain of forfeiture of its properties and pays the tax under protest, may forego the administrative remedy of appeal to the assessment appeals board and eventual appeal to the tax court, and instead directly bring an action for refund in the court of first instance on the premise - which the Court now expressly rejects - that "if the real estate tax has already been paid it is futile for a taxpayer to take the matter to the City Board of Assessment Appeals for the jurisdiction of that body is merely confined to the determination of the reasonableness of the assessment or taxation of the property and is not extended to the authority of requiring the refund of the tax unlike cases involving assessment of internal revenue taxes."[29]

In upholding the contrary precedents of *Azcona*,[30] *Victorias* and the other precedents above discussed, the Court, aside from the considerations discussed in the preceding paragraph, has been guided by the considerations that to require a piece-meal resort to the tax court for a resolution of the issue only of the correctness and validity or legality of the disputed assessment and another piece-meal resort to the court of first instance for an award of the resulting refund, predicated upon the same issue, would sanction a procedure gravely detrimental to the orderly administration of justice with unnecessary waste and duplication of time, effort and expense, as well as render nugatory the

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[29] 7 SCRA 426, 430.

[30] 5 SCRA 634. In this case the Court rejected the contention that *an original action for refund under a disputed assessment* "should be remanded to the Court of Tax Appeals because it does not involve an appeal from the decision of a Board of Assessment Appeals upon the theory that said Court is merely given appellate jurisdiction to review by appeal, while the present case is an original action instituted to test the legality of an assessment on the strength of our ruling in the case of Roxas v. Rafferty, 37 Phil. 957, the reason therefor being that the oft-repeated Section 22 *refers to all cases involving disputed assessments without distinction.*"

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primordial purpose of the creation and grant of exclusive and special jurisdiction to the tax court of providing a vehicle for "the expeditious determination of disputed tax assessments" both in the interest of "prompt collection of taxes" as well as of "the taxpayer and businessman (who) is as much interested as the Collector in the early and final determination of his assessment."[31]

5. The tentative test for determining the proper court of jurisdiction essayed in *Victorias* must be accordingly modified. The test therein stated was that "where an assessment is illegal and void, the remedy of a taxpayer, who has already paid the realty tax under protest, is to sue for refund in the competent court of first instance. On the other hand, where the assessment is merely erroneous, his recourse is to file an appeal in the Provincial Board of Assessment Appeals within 60 days from receipt of the assessment," adding the distinction that "(A)n assessment is illegal and void when the assessor has no power to act at all. It is erroneous when the assessor has the power but errs in the exercise of that power." It is difficult to find adequate support for this tentative test between illegality and error of the assessment in Section 7 of Republic Act 1125 which confers exclusive appellate jurisdiction upon the tax court to review, without distinction, "decisions of provincial or city boards of assessment appeals in cases involving *the assessment and taxation of real property or other matters arising under the Assessment Law*, including rules and regulations relative thereto." Furthermore, this test could not be applied with practicality, since the property owner, in choosing the forum, would have to anticipate as to what would ultimately be ruled by the courts as to whether the assessment is illegal and void for lack of power on the part of the assessor or whether the assessor merely erred in exercising his power, besides the fact that an assessment is disputed many times for being both "illegal and void" as well as "erroneous." as in the case at bar.

6. The Court has therefore adopted the more simple test that *where an assessment is disputed for whatever ground or reason,*

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[31] Ledesma *vs.* CTA, 102 Phil. 931, 935-936.

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be it that the assessment is unjust, erroneous or improper, illegal or void, or excessive or unreasonable, the action challenging the assessment, after first exhausting the administrative remedy of appeal to the assessment appeals board, and *regardless of whether the corresponding real estate tax has been paid and a refund sought,* pertains to the exclusive and special jurisdiction of the tax court to the exclusion of the courts of first instance. Thus, in the recently decided case of *Board of Assessment Appeals of Zamboanga del Sur vs. Samar Mining Co. and Court of Tax Appeals,*[32] the Court upheld the jurisdiction of the tax court to rule upon the *legality and validity* of the disputed real estate assessment, rejecting the contention therein that the property owner should first pay the questioned realty tax before lodging an appeal from the assessment appeals board's adverse decision to the tax court.

Where the realty assessment alone is disputed, since the tax has not yet been paid, the tax court in its decision would rule upon the correctness and validity of the assessment. Where the tax has in addition already been paid and a refund thereof is sought, the tax court, if it rules *against* the correctness and validity of the assessment, would in addition order the refund of the tax paid by the property owner.[33]

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[32] L-28034, Feb. 27, 1971. The *dictum* in this case citing *Cabanatuan's* ruling that the tax court's jurisdiction is confined to the "reasonableness or legality" of the disputed assessment is of course modified and clarified by the present decision.

[33] With the criterion and test of jurisdiction given in this decision, the writer of the opinion believes that there would be hardly any case for refund of realty taxes that may hereafter be filed with the courts of first instance as ordinary actions for recovery of a sum of money due to the property owner, since such refund cases invariably are essentially linked to a disputed assessment or are brought to avoid and defeat the assessment itself and would therefore pertain to the tax court's exclusive and special jurisdiction after proper recourse to the assessment appeals board. It would be *quaere* if a case such as NWSA *vs.* Quezon City, 23 SCRA 286 (1968) where NWSA filed an action *in the court of first instance* for recovery of realty taxes totalling P984,494.51 from 1951 to 1962 "innocently paid (by it) despite its exemption, believing it was not exempt" and was awarded a judgment of P55,160.15 representing the recovery of only the 1961 realty tax duly paid under protest, (those paid for the other years having been held to have prescribed after six years or to be non-recoverable for lack of protest) would prosper now. The action was filed after it had been held in an earlier case

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ACCORDINGLY, the order of dismissal appealed from is hereby affirmed for the considerations and reasons above stated. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-24898. March 31, 1971]

GO OH, HELEN GOOH, JAMES GOOH, WILLIAM GOOH,* HENRY GOOH, the last fourth as represented by GO OH, *petitioners-appellees, vs.* MARTINIANO VIVO, VIRGILIO GASTON and MARCIAL RAÑOLA, in their capacity as Commissioner and Associate Commissioners, respectively, composing the Board of Commissioners of the Bureau of Immigration, *respondents-appellants.

SYLLABUS

1. **POLITICAL LAW; PHILIPPINE IMMIGRATION ACT (C.A. 613): DECISION OF BOARD OF SPECIAL INQUIRY; MAY *BE REVIEWED BY BOARD OF COMMISSIONERS.*—** Pursuant to Paragraphs (b) and (c) of Section 27 of Commonwealth Act No. 613, as amended by Section 9 of Republic Act No. 503, the decision of the Board of Special Inquiry may be reviewed by the Board of Commissioners, either on appeal taken by an alien excluded by said decision, or *motu proprio* "within one year from

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properly instituted with the tax court, *Board of Assessment Appeals of Laguna vs. CTA and NWSA,* 8 SCRA 225 (1963) that NWSA properties were exempt by law from realty taxes, and hence, the refund action was treated as a simple suit in the court of first instance for recovery of sums of money representing the realty taxes "innocently paid" on exempt properties and apparently involving no disputed assessment. On the other hand, the questions of NWSA's failure to appeal the assessment to the appeals assessment board within the statutory period and consequent forfeiture of any right to claim refund, under *Victorias,* and as to whether the court of first instance as against the tax court had jurisdiction to take cognizance of the case, were not raised at all therein.