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issued by the Court is hereby made permanent. Respondent court is hereby directed to dismiss the case for damages with preliminary injunction before it, Civil Case No. 1637, without prejudice. With costs against private respondent. SO ORDERED.

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

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**[G.R. No. L-20550. April 30, 1971]**

**THE TREASURER-ASSESSOR, THE BOARD OF TAX APPEALS OF BASILAN CITY AND THE CITY OF BASILAN, *petitioners, vs.* UNIVERSITY OF THE PHILIPPINES AND THE HONORABLE COURT OF TAX APPEALS, *respondents.***

**SYLLABUS**

1. **TAXATION; JURISDICTION OF THE COURT OF TAX APPEALS; DEFINED UNDER SEC. 7 OF R.A. 1125; NO REQUIREMENT FOR THE TAXES TO BE PAID UNDER PROTEST.**— The jurisdiction of the Court of Tax Appeals is defined in Section 7 of Republic Act 1125 - the act creating the Court of Tax Appeals. It is clear from the provision of Section 7 of R.A. 1125 that any decision of the provincial or city board of assessment appeals relating to the assessment and taxation of real property is appealable to the Court of Tax Appeals. There is no provision in R.A. 1125 which imposes the condition, or the prerequisite, that before the Court of Tax Appeals entertains any appeal from the decision of the provincial or city board of assessment appeals that the taxes assessed against the appealing taxpayer should first be paid under protest. In the recent case of The Board Of Assessment Appeals Of Zamboanga Del Sur, et al. *vs.* Samar Mining Co., Inc. and Court of Tax Appeals, G.R. No. L-28034, February 27, 1971, this Court affirmed the decision of the Court of Tax Appeals which ruled that said court can entertain and give due course to an appeal assailing the legality and validity of a real

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property tax assessment without paying first the disputed real property tax as required by Section 54 of the Assessment Law (C.A. 470). Indeed, the question that may be brought before the city or provincial board of assessment appeals is one that relates to the reasonableness or legality of the realty tax that is assessed against a taxpayer. It would be unjust to require the realty owner to first pay the tax, which he precisely questions, before he can lodge an appeal to the Court of Tax Appeals. We believe that it was not the intendment of R.A. 1125 that in questioning before the Court of Tax Appeals the validity or reasonableness of the assessment approved by the city or provincial board of assessment appeals the taxpayer should first pay the tax arising from the questioned assessment.

2. ID.; ID.; **POWER TO ORDER REFUND OF TAXES DECLARED ILLEGAL, INCIDENT TO ITS EXCLUSIVE APPELLATE JURISDICTION.**— We believe that the power of the Court of Tax Appeals to order the refund of realty taxes collected on the basis of the assessment that said court declared invalid is incidental to its exclusive appellate jurisdiction to review by appeal "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...*" (Par. (3), Section 7 of Republic Act 1125) This incidental jurisdiction is embraced within the phrase "other matters arising under the Assessment Law." When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its finding that the appealed assessment is illegal or unreasonable. The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under the invalid assessment but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits. Certainly Congress, in enacting R.A. 1125, did not intend to promote multiplicity of suits. This question, of whether or not the Court of Tax Appeals has the

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power to order the refund of taxes collected in connection with a tax assessment case brought before it by way of an appeal from the decision of the provincial or city board of assessment appeals, has been squarely settled in the decision of this Court in the recent case of Ramon A. Gonzales, et al. *vs.* Province of Iloilo, G.R. No. L-24663, March 31, 1971. This Court, speaking thru Mr. Justice Teehankee, among others, held: "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, after recourse to the corresponding board of assessment appeals has failed, and even though the disputed real estate tax has been paid. "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."

3. **ID.; TAX EXEMPTION; GOVERNMENT PROPERTY, EXEMPTED FROM PAYMENT OF REAL PROPERTY TAX; CASE AT BAR.**— It is very apparent that the purpose of the law in bestowing to the U.P. an endowment in the form of a grant of land from the public domain was to provide the U.P. with a piece of public property in order to raise additional income to support the U.P. in performing the functions for which it was established by law. Every income derived from this land grant goes to the general fund of the U.P. The U.P. Basilan Land Grant is part of the property administered by the Board of Regents of the U.P. and the land grant is exploited in order to derive income to augment the funds of the U.P. The U.P. is an instrumentality for the government of the Republic of the Philippines, performing a governmental function, and the property it possesses and administers, through its governing body which is the Board of Regents, is the property of the government. We hold, therefore that the U.P. Basilan Land Grant is a government property and as such it is exempt from the payment of real property tax, as provided in Section 3, of C.A. 470, which reads as follows: "SEC. 3. -

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*Property exempt from tax.* - The exemption shall be as follows: "(a) Property owned by the Republic of the Philippines, any province, city, municipality or municipal district."

**APPEARANCES OF COUNSEL**

*Acting City Fiscal Emilio C. Andrion* for petitioner.
*Solicitor General Arturo A. Alafriz, Solicitor Camilo D. Quiason* and *Special Counsel Perfecto V. Fernandez* for respondents.

**DECISION**

**ZALDIVAR, *J.:***

The undisputed facts in this case are as follows:

Respondent University of the Philippines — hereinafter referred to as U.P. — is a non-stock and non-profit corporation duly established in accordance with Act No. 1870 of the Philippine Legislature, as amended, to provide advanced instruction in literature, philosophy, sciences and arts, and to give professional and technical training. The Philippine Legislature, on February 8, 1930, approved Act No. 3608 granting and ceding to the U.P. such portion or portions of the public domain, not exceeding 10,000 hectares, to be held and administered as a permanent endowment for the additional support and maintenance of said institution. Said Act 3608 provides that the control and administration of the land or lands thus granted are vested permanently in the Board of Regents of the U.P., but the Board is not empowered to sell or alienate all or any portions of these lands without the previous consent of the Philippine Legislature; that the income, receipts and profits derived from the administration of the land grants shall form part of the general fund of the U.P. and be subject to appropriation by the Board of Regents and devoted only for the purposes for which the U.P. was established; and that such portion or portions of these lands which are not developed, cultivated, leased, or otherwise disposed of, after the lapse of ten years from the time when such lands had been ceded, conveyed and transferred, shall revert to the public domain and shall be open for

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settlement and disposition in accordance with the provisions of the Public Land Act.[1]

Pursuant to the provisions of Act No. 3608 the U.P., in 1940, took possession of about 5,000 hectares of public land located in Balactasan, Basilan City, and that area is now known as the "U.P. — Basilan Land Grant." The U.P. converted major portions of that land into plantations dedicated to the raising of agricultural crops such as coffee, rubber, cacao, etc. None of the income realized from the cultivation of the land inured to the benefit of any private individual or private institution, the same have been wholly and exclusively devoted to the purposes for which the U.P. was created.

From 1940 to 1955 the property in question was not placed in the list of real property for tax assessment purposes, and was not subjected to the payment of real property tax. In a letter dated May 31, 1955, petitioner City Treasurer and Assessor of Basilan City — hereinafter referred to as City Treasurer-Assessor — for the first time, asked the U.P. to justify its claim of tax exemption on the land comprised in the U.P. - Basilan Land Grant. Thereafter the U.P. received a copy of land tax declaration No. 7245 from the City Treasurer-Assessor with a notice that the tax due thereon in the amount of P 7,936.70 is based on the assessed value of the land grant fixed at P 792,670.00, and that the tax liability commenced with the year 1956. Demands by the City Treasurer-Assessor for the payment of the real property tax in question followed. The U.P. at first resisted the demands for payment, but when the City Treasurer-Assessor threatened to adopt drastic measures in order to enforce tax collection the U.P. paid under protest the amount of ₱7,936.70 and P2,066.40 on July 10, 1956, and the amount of ₱8,585.18 on June 23, 1957. In the meantime U.P. requested the Secretary of Justice for opinion as to whether or not the land comprised in the U.P. - Basilan Land Grant is exempt from the payment of real property tax. The Secretary of Justice rendered an opinion that the property in question is not subject to the payment of real property tax. On the strength of the opinion of the Secretary

[1] Sections 3, 4 and 5 of Act 3608.

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of Justice the U.P. refused to make further payments of real property tax and then requested the City Treasurer-Assessor to cancel the assessment of real estate tax on the land grant and to refund the amount it had already paid as real property taxes. The City Treasurer-Assessor denied the request for cancellation and refund, and on June 24, 1960 he demanded from the U.P. the payment of the sum of ₱56,191.80 representing alleged unpaid realty taxes on the land grant, including penalties.

On July 14, 1960 the U.P. appealed to the Board of Assessment Appeals of Basilan City from the decision of the City Treasurer-Assessor denying its request for the cancellation of the assessment and for the refund of taxes paid, but the Board of Assessment Appeals, in its Resolutions Nos. 1 and 2, both dated August 1, 1960, dismissed the appeal. On August 25, 1960, the U.P., without paying under protest the current taxes assessed on the land grant, appealed to the Court of Tax Appeals from the decision of the Board of Assessment Appeals of Basilan City. The appeal before the Court of Tax Appeals was docketed as C.T.A. Case No. 936, and the City Treasurer-Assessor of Basilan City, the Board of Assessment Appeals of Basilan City, and Basilan City were named respondents therein. On September 26, 1962, the Court of Tax Appeals rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the decision of the respondent Board of Assessment Appeals of Basilan City is hereby reversed. The U.P. - Basilan Land Grant is declared exempt from the payment of realty tax; the real estate tax assessments covering the same are cancelled; and the respondents Basilan City and City Treasurer are ordered to refund to the petitioner University of the Philippines the amounts of ₱7,936.70, ₱2,066.40 and ₱8,585.16, or a total of ₱18,588.26, representing realty taxes illegally collected, without special pronouncement as to costs."

Herein petitioners, the City Treasurer and Assessor of Basilan City, the Board of Tax Appeals of Basilan City, and Basilan City, have appealed to this Court from the decision of the Court of Tax Appeals.

In this appeal the petitioners contend that the Court of Tax Appeals erred:

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1 In not dismissing the petition for review of respondent U.P. when it failed to pay the taxes assessed before filing the suit, or before filing its appeal before the Court of Tax Appeals from the decision of the Board of Assessment Appeals of Basilan City.

2. In ruling that the U.P. Basilan Land Grant is exempt from the payment of real estate taxes; and

3. In ordering the refund of the real estate tax already collected by the petitioners.

1. The petitioners contend that the Court of Tax Appeals should not have entertained the appeal of the U.P. from the decision of the Board of Assessment Appeals of Basilan City because the U.P. did not first pay under protest the real estate taxes that had been assessed against it. The petitioners invoke the provision of Section 54 of Commonwealth Act 470, known as the Assessment Law, the pertinent portion of which reads as follows:

"Sec. 54. *Restriction upon power of the court to impeach tax.* - No court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him,...."

The contention of the petitioners cannot be sustained. The jurisdiction of the Court of Tax Appeals is defined in Section 7 of Republic Act 1125 — the act creating the Court of Tax Appeals — the pertinent portion of which reads as follows:

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

(1) x x x

(2) 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 regulations relative thereto."

It is clear from the above-quoted provision of Section 7 of R.A. 1125 that any decision of the provincial or city board of assess-

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ment appeals relating to the assessment and taxation of real property is appealable to the Court of Tax Appeals. There is no provision in R.A. 1125 which imposes the condition, or the prerequisite, that before the Court of Tax Appeals entertains any appeal from the decision of the provincial or city board of assessment appeals that the taxes assessed against the appealing taxpayer should first be paid under protest.

Let it be noted that before the enactment of R.A. 1125, an appeal from the decision of the provincial or city board of assessment appeals could be brought to the Secretary of Finance, as provided in Sec. 18 of Commonwealth Act No. 470 (the Assessment Law). There is no provision in C.A. 470 requiring previous payment under protest of real or property tax due before the Secretary of Finance could entertain any appeal from the decision of the provincial or city board of tax appeals (now known as board of assessment appeals). R.A. 1125 has modified, or impliedly amended, the provision of C.A. 470 regarding appeal from the decision of the provincial or city board of tax appeals (now board of assessment appeals) to the Secretary of Finance. Under R.A. 1125 it is the Court of Tax Appeals that has now exclusive jurisdiction to review decisions of provincial or city board of assessment appeals.

The provision of Section 54 of C.A. 470, invoked by the petitioners, refers to judicial proceedings before the regular court questioning the validity or reasonableness of a tax assessed under the Assessment Law. Before the passage of R.A. 1125 the validity or reasonableness of the assessment of any tax may be brought before the regular courts in ordinary judicial proceedings. This was the procedure contemplated in the provisions of Section 54 of C.A. 470. But after the enactment of R.A. 1125 the validity or reasonableness of the assessment and taxation of real property may be assailed only before the Court of Tax Appeals. Of course, before the question regarding the assessment and taxation of real property is brought to the Court of Tax Appeals the matter must first be acted upon by the provincial or city assessor, as the case may be, and that an appeal from the action of the provincial or city assessor had been brought to the proper board of assessment

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appeals; and the taxpayer who is not satisfied with the decision of the board of assessment appeals elevates the case to the Court of Tax Appeals. As We have adverted to, R.A. 1125 does not impose the condition of payment under protest of real estate taxes due before the Court of Tax Appeals could entertain the appeal from the decision of the provincial or city board of assessment appeals. Before the passage of R.A. 1125 the impeachment of a realty tax before the court is conditioned upon prior payment under protest of the taxes. However, after the passage of R.A. 1125 the taxpayer does not go to the regular courts to assail the validity of the assessment and taxation of real property but to the Court of Tax Appeals.

In the recent case of the Board of Assessment Appeals of Zamboanga del Sur, et al., *vs.* Samar Mining Co. Inc. and Court of Tax Appeals, G.R. No. L-28034, February 27, 1971, this Court affirmed the decision of the Court of Tax Appeals which ruled that said court can entertain and give due course to an appeal assailing the legality and validity of a real property tax assessment without paying first the disputed real property tax as required by Section 54 of the Assessment Law (C.A. 470). Indeed, the question that may be brought before the city or provincial board of assessment appeals is one that relates to the reasonableness or legality of the realty tax that is assessed against a taxpayer. It would be unjust to require the realty owner to first pay the tax, which he precisely questions, before he can lodge an appeal to the Court of Tax Appeals. We believe that it was not the intendment of R.A. 1125 that in questioning before the Court of Tax Appeals the validity or reasonableness of the the assessment approved by the city or provincial board of assessment appeals the taxpayer should first pay the tax arising from the questioned assessment.

We reiterate what We said in the case of the Board of Assessment Appeals of Zamboanga del Sur, et al. *vs.* Samar Mining Co. Inc. et al., *supra* that in so far as an appeal from the decision or resolution of the provincial or city board of assessment appeals Section 54 of C.A. 470 does not apply, and that said section is impliedly repealed by Sections 7, 11 and 21 of R.A. 1125.

2. The petitioners also contend that the land grant to the U.P. is not exempt from taxation because Act No. 3608 did not provide

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that said land grant shall be exempt from the payment of real estate taxes, such that the provision of Section 1, of Republic Act No. 104 should apply. Said Section provides as follows:

"SECTION 1. - All corporations, agencies or instrumentalities owned or controlled by the Government shall pay such duties, taxes, fees and other charges upon their transaction, business, industry, sale or income as are imposed by law upon individuals, associations or corporations engaged in any taxable business, industry or activity, except on goods or commodities imported or purchased and sold or distributed for relief purposes as may be determined by the President of the Philippines."

This contention of the petitioners is untenable. The above-cited Section 1 of R.A. 104 refers to corporations, agencies or instrumentalities owned or controlled by the Government which exercise proprietary functions and are engaged in business for profit. That provision of the law can not be applied to the U.P. because this institution performs a function imposed upon it by the government in the implementation of a provision of the Constitution. The U.P. received this land grant pursuant to Act No. 3608 of the Philippine Legislature, and it is specifically provided in Section 4 of said Act that "All incomes, receipts and profits derived from the administration from these land grants shall form part of the general funds of the University of the Philippines and be subject to appropriation by the Board of Regents of said institution and devoted only for the purposes for which said University was established." It is also provided in said Act that "the control, and administration of these land grants is vested permanently in the Board of Regents of the University of the Philippines: *Provided, however*, that said control and administration shall not empower said Board to sell or alienate all or any portion of these lands without the previous consent of the Philippine Legislature...." The law further provides that "such portion or portions of the land herein granted which are not developed, cultivated, leased or otherwise disposed of, after the lapse of ten years from the date in which such lands have been ceded, conveyed and transferred in accordance with this Act shall revert to the public domain...." These provisions of Act 3608 are indicative of the ownership by the State of the land grants in question.

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It is very apparent that the purpose of the law in bestowing to the U.P. an endowment in the form of a grant of land from the public domain was to provide the U.P. with a piece of public property in order to raise additional income to support the U.P. in performing the functions for which it was established by law. Every income derived from this land grant goes to the general fund of the U.P. The U.P. Basilan Land Grant is part of the property administered by the Board of Regents of the U.P. and the land grant is exploited in order to derive income to augment the funds of the U.P. The U.P. is an instrumentality of the government of the Republic of the Philippines, performing a governmental function, and the property it possesses and administers, through its governing body which is the Board of Regents, is the property of the government.

The following citations from decisions of the Supreme Courts of the different states of the United States are pertinent in the resolution of the question now before Us.

*In the case of Walsh vs. University of Texas, 169, 8, W. 2d. 993,* the Court of Civil Appeals of Texas held:

"The University and the Board of Regents are institutions of the State, and neither has any existence independent of the State. The petition makes perfectly clear that there is no effort to sue the named defendant as individual. *Property belonging to the University of Texas is the property of the State.* York *vs.* Alley, Tex. Civ. Apl. 258, W. 2d. 193, writ refused. x x x." (*Italics* supplied).

In the case of People *vs.* Brooks, 194 N.W. 602, the Supreme Court of Michigan said:

"x x x. While it is true that the Regents of the University of Michigan, more commonly called the 'board of regents,' is a separate entity, independent of the state as to the management and control of the University and its property, it is nevertheless a department of the State government, created by the Constitution to perform state functions, *and the real estate which it holds or acquired is public property belonging to the state, held by the corporation in trust for the purposes of the University, which are public purposes."* See Auditor General *vs.* Regents, 83 Mich. 468, 47 N.W. 440, 10 LRA 376." (*Italics* supplied).

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In the case of Coleman, et al. *vs.* Whipple, et al. 2 Sc. 2d. 566, the Supreme Court of Mississippi said:

"The Act of February 28, 1944, by which the University of Mississippi was created, designated certain individuals as trustees and constituted them and their successors as a body politic to be known as 'The University of Mississippi,' such trustees were not such as defined by the law of trusts. They were the managing board or head of the University, and then and now constitute the University of Mississippi operated by the State through its legislature which, under its act of creation (Sec. 5) retains the right to repeal the entire act; *its property is owned by the State and itself.* State *vs.* Vicksburg & N.B.R. Co., 51 Miss. 361, 365; Oklahoma, etc., College *v.* Willis, 6 Okl. 593, 52 P. 921, 40 L.R.A. 677; McDonald *vs.* University of Kentucky, 225, Ky. 205, 5 S.W. 2d. 1046; University of Woltchy, 43 S.C. 257; Trustees of University of Alabama *vs.* Winston, 5 Stw. & P., Ala., 17; Bart *vs.* Houston, 23 Ga. 506." (*Italics* supplied.)

In People *vs.* Barrett (46 N.W. 2d 951), the Supreme Court of Illinois held:

"x x x Though the state has created a body corporate to control the University of Illinois, yet the state retains the power of selecting trustees, and may through other agents than the trustees, sell and dispose of the property of the institution or change its charter as the legislature may direct. The *property of the University of Illinois though held by the Board of trustees, belongs to the state.* People *vs.* Board of Trustees, 283 Ill. 494, 119 N.R. 595; Spalding *vs.* People 172 Ill. 45, 49 G. B. 903; Board of Trustees vs. Chaspalga County, 76 Ill. 184; Thomas *vs.* (Board of Trustees of Illinois) Industrial University, 71 Ill. 310." (*Italics* supplied.)

We hold, therefore that the U.P. Basilan Land Grant is a government property and as such it is exempt from the payment of real property tax, as provided in Section 3, of C.A. 470, which reads as follows:

"SEC. 3. - *Property exempt from tax.*- The exemption shall be as follows :

"(a) Property owned by the Republic of the Philippines, any province, city, municipality or municipal district."

x x x

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3. The petitioners further contend that the Court of Tax Appeals erred in ordering the refund to the U.P. of the real estate taxes it had already paid, because its jurisdiction is limited to the review upon appeal of decisions of provincial or city board of assessment appeals involving assessment and taxation of real property.

This contention is also untenable. We believe that the power of the Court of Tax Appeals to order the refund of realty taxes collected on the basis of the assessment that said court declared invalid is incidental to its exclusive appellate jurisdiction to review by appeal "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*..."[2] This incidental jurisdiction is embraced within the phrase "other matters arising under the Assessment Law." When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its finding that the appealed assessment is illegal or unreasonable. The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under the invalid assessment but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits. Certainly Congress, in enacting R.A. 1125, did not intend to promote multiplicity of suits. Inasmuch as the principal jurisdiction of the Court of Tax Appeals is to review the decision of the provincial or city board of assessment appeals, it is incident to the exercise of that principal jurisdiction to grant a relief based on the decision made in the exercise of that jurisdiction. The provincial or city board of assessment appeals has no power to order the refund of realty taxes

[2] Par. (3), Section 7 of Republic Act 1125.

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paid. It has only the power, upon appeal from the action of the provincial or city assessor, to determine whether or not the assessment made by the assessor is valid or reasonable. But the appeal to the Court of Tax Appeals, from the decision of the provincial or city board of assessment appeals, involving the validity or reasonableness of an assessment may carry with it a prayer for refund of the taxes illegally collected on the basis of the questioned assessment. In that case the Court of Tax Appeals, in the exercise of its appellate jurisdiction, may also order the refund of the taxes collected on the basis of the assessment that it declared invalid or unreasonable.

In the case of Philippine Air Lines Employees Association *vs.* Philippine Air Lines, Inc., G.R. No. L-18559, June 30, 1964, 11 SCRA 387, decided by then Associate Justice (now Chief Justice) Concepcion, We have this authority on the question of the incidental jurisdiction of a court:

"A grant of jurisdiction implies the necessary and usual incidental powers essential to effectuate it, and every regularly constituted court has power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgments and mandates, even though the court may thus be called upon to decide matters which would not be within its cognizance as original causes of action.

"While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it (In re Stinger's Estate, 201 P. 693), and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgments and mandates. So demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance (Bartolome *vs.* Shipe, 251 S.W. 1031)." (21 C.J.S., pp. 136-138.)"

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This question, of whether or not the Court of Tax Appeals has the power to order the refund of taxes collected in connection with a tax assessment case brought before it by way of an appeal from the decision of the provincial or city board of assessment appeals, has been squarely settled in the decision of this Court in the recent case of Ramon A. Gonzales, et al. *vs.* Province of Iloilo, G.R. No. L-24663, March 31, 1971.[3] This Court, speaking thru Mr. Justice Teehankee, among others, held:

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

x x x

" The Court has therefore adopted the more simple test 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, 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.

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[3] The decision in this case supersedes the ruling in the case of City of Cabanatuan *vs.* The Hon. Magno Gatmaitan, et al., G.R. No. L-19129, Feb. 28, 1963, 7 SCRA 46, to the effect that the Court of Tax Appeals has no jurisdiction to order the refund of realty taxes already paid.

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"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."

Inasmuch as the claim for refund of realty taxes paid by the U.P. in the case now before Us is based and dependent on the outcome of its appeal from the decision of the City Board of Assessment Appeal of Basilan City, and the Court of Tax Appeals had ruled that the assessment on the U.P. Basilan Land Grant is illegal, the Court of Tax Appeals had not committed an error when in its decision it also ordered the refund to the U.P. of the realty taxes collected on the basis of the assessment which it declared invalid.

IN VIEW OF THE FOREGOING, the decision of the Court of Tax Appeals in its CTA Case No. 936, appealed from, is affirmed, without pronouncement as to costs.

IT IS SO ORDERED.

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

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**[G.R. No. L-20871. April 30, 1971]**

**KER & CO., LTD., *petitioner, vs.* JOSE B. LINGAD, as Acting Commissioner of Internal Revenue, *respondent.***

**SYLLABUS**

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; COMMERCIAL BROKER, DEFINED; TEST FOLLOWED IN DETERMINING WHO FALLS WITHIN THE DEFINITION.—** According to the National Internal Revenue Code, a commercial broker "includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for