



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

**METROPOLITAN WATERWORKS
AND SEWERAGE SYSTEM,**
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-103
(LBAA Case No. 08-03)
Pasay City

**THE LOCAL BOARD OF
ASSESSMENT APPEALS OF
PASAY CITY,**

Appellee,

-and-

**THE CITY OF PASAY,
CONCEPCION C. DAPLAS, CITY
TREASURER, AND ENGR.
FERNANDO FANDIÑO, (OIC) CITY
ASSESSOR,**

Respondents-Appellees.

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D E C I S I O N

This Appeal, received by this Board on February 26, 2010, is from the undated Decision of the Pasay City Board of Tax Assessment Appeals (hereinafter, the "Local Board") in PCBTAA Case No. 08-03, the dispositive portion of which decision reads:

"WHEREFORE, in view of the foregoing, after careful deliberation, the Board finds the payment of the Real Property Tax in the total amount of P166,629.36, and P169,229.72, covering the periods January 28 (*sic*) until December 2008; and January 2009 until December 2009, respectively; as determined/ assessed by the Respondent Assessor, pursuant to the implementing City Ordinance is reasonable and collectible. Accordingly, the petition filed by the MWSS is hereby **DISMISSED** and the assessment made by the City Assessor is hereby **AFFIRMED**. **SO ORDERED.**"

In its Appeal, Petitioner-Appellant avers:

“THE PARTIES

“1. Appellant MWSS is an instrumentality of the government of the Republic of the Philippines created by virtue of Republic Act No. 6234, as amended, (“R.A. 6234”). Appellant MWSS has jurisdiction, supervision and control over all waterworks and sewerage systems within Metropolitan Manila, the entire province of Rizal and portions of the province of Cavite and holds office at the MWSS Compound, Katipunan Road, Balara, Quezon City. Appellant MWSS may be served with notices and other processes of this Honorable Board through the undersigned counsel.

“2. Respondent-Appellee City of Pasay (Appellee Pasay for brevity) is a local government unit in whose territorial jurisdiction part of Appellant MWSS’ waterworks properties and facilities are located. Appellee Pasay is being impleaded herein as the local government unit that assessed the real property taxes against Appellant MWSS, through the other Respondents-Appellees, namely Concepcion C. Daplas, the City Treasurer of Pasay (the “**City Treasurer**”) and Engr. Fernando Fandino, the City Assessor of Pasay (the “**City Assessor**”) who are impleaded in their official capacity. Respondent-Appellees City Treasurer and City Assessor of Pasay hold their respective offices at the City Hall of Pasay, where they may be served with notices and other processes of this Honorable Board.

On the other hand, Respondents-Appellees’ version of the parties hereto, as contained in their Comment/Opposition (To Petitioner-Appellant’s Appeal Memorandum) dated April 10, 2010 (received by this Board on May 6, 2010), follows:

“THE PARTIES

“Petitioner-Appellant Metropolitan Waterworks and Sewerage System (“MWSS” for brevity) is a government corporation created by virtue of Republic Act 6234, as amended. It is the successor of the defunct National Waterworks and Sewerage Authority (“NWSA” for brevity) in whose name certain properties subject of the instant case are registered. It has its principal office at the MWSS Compound, Katipunan Road, Balara, Quezon City.

“Respondent-Appellee City of Pasay is a local government unit duly organized and existing pursuant to Republic Act 183, as amended, and represented herein by its City Mayor, Atty. Wenceslao B. Trinidad, with office address at Room 206, Pasay City Hall, F.B. Harrison St., Pasay City. Respondents Concepcion C. Daplas and Engr. Fernando Fandiño, are the City Treasurer and OIC – City Assessor, respectively. Respondents-Appellees may be served with summons and other legal processes of this Honorable Board through the undersigned counsel.

“On June 7, 1995, Republic Act No. 8041 or the National Water Crisis Act of 1995 was enacted. Pursuant thereto, the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities

Administration (LWUA) was (sic) reorganized which include the privatization of any or all segments of the said agencies (Section 7, RA 8041). Acting upon this mandate, the MWSS entered into a Concession Agreement with two separate contractors, namely the Maynilad Water Services, Inc. ("MAYNILAD" for brevity) and the Manila Water Company, Inc. on February 21, 1997. Both concessionaires are private corporations maintaining their respective principal offices at the MWSS Compound, Katipunan Road, Balara, Quezon City, which, incidentally, is the same office address of Petitioner-Appellant.

"Under the Concession Agreement, these private sector-corporations shall act as contractors to perform certain functions, and as agents for the exercise of certain rights and powers, of MWSS under its Charter, to operate the system of waterworks and sewerage services referred to in the Charter. In the concession agreements granted by MWSS, it delineated areas of operation within the Metro Manila Water Supply System to each of the Concessionaires whereby the West Service Area, which includes Respondent City of Pasay, will be serviced by Maynilad and the East Service Area by the other concessionaire. In the grant of concession, the concessionaires were given the sole right to manage, operate, repair, decommission and refurbish the Facilities in the Service Area, including the right to bill and collect for water and sewerage services supplied in the Service Area (the "Concession"). To enable the concessionaire Maynilad to fully undertake operation, maintenance and improvement of the waterworks and sewerage system in its area of operation, Petitioner-Appellant turned over certain assets and properties within Pasay City, which are taxable real properties, to the said concessionaire.

"It was further agreed under the last sentence of Article 6.2 of the Concessionaire Agreement that "xxx, the Concessionaire shall pay, for and on behalf of MWSS, or shall reimburse MWSS, within 10 days of demand therefore, (sic) any real property taxes and other taxes or assessments payable by MWSS on MWSS property or assets in the Service Area used for the supply of water and sewerage services (*underscoring supplied*).

"Almost two months after the execution of the concessionaire agreement, or on April 16, 1997, Petitioner-Appellant has since been paying real property tax to respondent City of Pasay as evidenced by the Payments Record marked as **Annexes "1," "2," "3," "4," "5," "6," "7," "8," "9," and "10"** attached to Respondents-Appellees' Comment before the PCBTAA and are being adopted and incorporated in this Comment/Opposition.

"After more than a decade of religious payment of real property taxes, Petitioner-Appellant surprisingly filed a petition for protest on assessment of real property taxes before the PCBTAA upon the following premises, that: 1) The MWSS properties situated in the City of Pasay are intended for public use and devoted to public use, and as consequence, should be exempt from real property tax, because they form part of the public dominion, and 2) MWSS is an instrumentality of the Republic of the Philippines, and therefore not subject to taxation by local government units.

"As aforesaid, a decision was rendered by the City Board of Tax Assessment Appeals against the Petitioner-Appellant, and affirmed the assessment made by the City Assessor.

STATEMENT OF FACTS AND OF THE CASE

Alleging that it received the assailed undated PCBATA Decision on January 27, 2010, Petitioner-Appellant MWSS stated:

“6. By way of background, Appellant MWSS was created under R.A. 6234, with the following declaration of policy by the State:

‘The proper operation and maintenance of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems are essential public services because they are vital to public health and safety. It is therefore declared a policy of the state that the establishment, operation and maintenance of such systems must be supervised and controlled by the state.’

“7. Under R.A. 6234, therefore, Appellant MWSS’ mandate is to generate and provide water supply for Metro Manila including the province of Rizal and portions of the province of Cavite. Pursuant to and in compliance with this mandate, Appellant MWSS administers, for and in behalf of the Republic of the Philippines, certain properties comprising of land, machineries, and other facilities constructed by the State (the “MWSS Properties”).

“8. These MWSS Properties are intended for public purpose and devoted to public use, being properties exclusively used for the supply and generation of water, and are declared in the name of Appellant MWSS, but owned by the Republic of the Philippines. The MWSS Properties include the following:

TAX DEC. NUMBER	ASSESSED VALUE	LOCATION
B1-078-00001	P1,088,100.00	Capt. Ambo cor. FB Harrison
B1-078-00003	722,700.00	Capt. Ambo cor. FB Harrison
B1-078-00004	168,760.00	Capt. Ambo
B1-078-00016	168,760.00	Agtarap St.
B1-078-00017	168,760.00	Agtarap St.
B1-078-00018	949,230.00	Capt. Ambo cor. FB Harrison
B1-078-00002	965,380.00	Capt. Ambo cor. FB Harrison
B4-038-00588	1,924,770.00	Taft Ave.
B4-038-00589	96,310.00	Taft Ave.
B4-038-00590	15,000.00	Taft Ave.

Copies of Tax Declaration Nos. B1-078-00001, B1-078-00003, B1-078-00004, B1-078-00016, B1-078-00017, B1-078-00018, B1-078-00002, B4-038-00588, B4-038-00589 and B4-038-00590 are hereto attached as **Annexes “B” to “B-9”**, respectively, and made integral parts hereof.

“9. On 21 February 2008, Appellant MWSS received Notices of Assessment from the Appellee City Treasurer, demanding payment in the total amount of Philippine Pesos: ONE HUNDRED SIXTY SIX THOUSAND SIX HUNDRED TWENTY NINE & 36/100 PESOS (Php166,629.36) covering the

period 1 January 2008 to 31 December 2008, representing RPT allegedly payable on the subject MWSS Properties. Thus:

NOTICE OF ASSESSMENT DATED 21 FEBRUARY 2008

Tax Dec. Number	Assessed Value	Period Covered	Tax Due
B1-078-00001	P1,088,100.00	Jan 2008 to Dec 2008	P 29,378.68
B1-078-00003	722,700.00	Jan 2008 to Dec 2008	19,512.88
B1-078-00004	168,760.00	Jan 2008 to Dec 2008	4,556.88
B1-078-00016	168,760.00	Jan 2008 to Dec 2008	4,556.88
B1-078-00017	168,760.00	Jan 2008 to Dec 2008	4,556.88
B1-078-00018	949,230.00	Jan 2008 to Dec 2008	25,629.20
B1-078-00002	965,380.00	Jan 2008 to Dec 2008	26,065.24
B4-038-00588	1,924,770.00	Jan 2008 to Dec 2008	51,968.80
B4-038-00589	96,310.00	Jan 2008 to Dec 2008	2,600.36
B4-038-00590	15,000.00	Jan 2008 to Dec 2008	405.00
Total	P6,267,770.00		P166,629.36

Copies of the Notices of Assessment are hereto attached as **Annexes "C" to "C-9"** and made integral parts hereof.

(*Nota bene:* The correct taxes due and paid for TD Nos. B1-078-0004, B1-078-0016 and B1-078-00017 are only P4,556.52 each, not P4,556.88; the tax due for B4-038-00589 in the amount of P2,600.36 was not paid and not part of P166,629.36.)

"10. On 28 February 2008 Appellant MWSS paid under protest the total amount stated in the Notices of Assessment (Annexes "C to C-10"), while the protest letter was timely filed on 21 February 2008. A copy of the Protest Letter is hereto attached as **Annex "D"** and made an integral part hereof.

"11. After the lapse of sixty (60) days from the time the Protest Letter was duly received by the Appellee City Treasurer, no action was taken thereon by the City Treasurer. Appellant MWSS had sixty (60) days from 21 April 2008 or until 20 June 2008 within which to file its Petition to the PCBTAA. Within the reglementary period, Appellant MWSS filed its Petition to the PCBTAA, a copy of which is attached and made an integral part hereof as **Annex "E"**.

"12. A Comment was filed by Appellee City Assessor sometime in October 2008, admitting most of the allegations of the Petition, except the fact that Appellant MWSS is exempt from the payment of real property tax and that there was no ordinance that exempted herein appellant from payment of real property tax. A copy of the Comment is hereto attached as **Annex "F"** and made an integral part hereof.

"13. Hearings were held thereon and thereafter, the matter was submitted for resolution.

"14. On 27 January 2010, herein Appellant MWSS received a copy of the assailed Decision of the PCBTAA dismissing Appellant's Petition and finding the assessment against Appellant MWSS reasonable and collectible.

"15. Appellant assails the foregoing Decision and in support hereof, hereby submits the following:

ASSIGNMENT OF ERRORS

- “I. The PCBTAA erred in finding that the assessment is final and not appealable for failure to comply with the provision of Section 252 of the Local Government Code.
- “II. The PCBTAA erred in holding that the tax exemption of Appellant MWSS under its Charter has been withdrawn upon the effectivity of R.A. 7160, as amended.
- “III. The PCBTAA erred in not holding that Appellant MWSS is a government instrumentality and is exempt from payment of real property tax under Section 133(o) of R.A. 7160.
- “IV. The PCBTAA erred in not finding that the properties titled in the name of appellant MWSS, are properties of public dominion and, thus, are beyond the commerce of man.
- “V. The PCBTAA erred in finding that MWSS’ real properties are taxable on the basis of actual use.
- “VI. The PCBTAA erred when it failed to take into consideration the damaging impact the assessment will have to the numerous beneficiaries of water supply within Appellant’s service area.”

ISSUE NO. I

WHETHER OR NOT THE PCBTAA ERRED IN FINDING THAT THE ASSESSMENT IS FINAL AND NOT APPEALABLE FOR FAILURE TO COMPLY WITH THE PROVISION OF SECTION 252 OF THE LOCAL GOVERNMENT CODE.

Appellant MWSS argues:

“16. In the questioned Decision, the Honorable PCBTAA held that the Appellants failed to comply with the procedural requirements of Section 252 of the Local Government Code. It stated that: ‘Absent that compliance, we hold its failure to appeal within the statutory period renders the assessment final and not appealable. Despite an advice uttered by the Board Secretary to the personnel of the MWSS that such protest letter must be in sufficient form; and be first raised to the City Treasurer, still it ignored and thus, failed to conform to the said rules of

procedure. Accordingly, the Board negates the averment that it has taken cognizance of the protest letter dated 3 February 2008 precisely because it is not within the ambit of jurisdiction of the Board to initially decide on "payment under protest" cases. It was merely received for records purposes.'

"17. Contrary to the said finding of the Honorable PCBTAA, the procedural requirements of Section 252 of the Local Government Code on payment under protest were complied with by the herein Appellant MWSS. The 3 February 2008 letter protest was filed with the Office of the City Treasurer of Pasay on 21 February 2008 as can be clearly seen from the stamp receipt on the said letter protest. The Honorable PCBTAA, through its Secretary, was furnished with a copy of the letter protest for records purposes only and not for it to act upon the same. Thus, for the Honorable PCBTAA to hold that the appealed tax assessments are final and not appealable is based on its misapprehension of fact, that the letter protest was submitted for its disposal.

CBAAL'S FINDINGS On Issue No. I:

The Local Board of Assessment Appeals of Pasay City (the "Local Board") held that the Appellants failed to comply with the procedural requirements of Section 252 of the Local Government Code (LGC). In part, the Local Board said, thus:

"Absent that compliance, we hold its failure to appeal within the statutory period renders the assessment final and not appealable. Despite an advice uttered by the Board Secretary to the personnel of the MWSS that such protest must be in sufficient form, and be first raised to the City Treasurer, still it ignored and thus, failed to conform to the said rules of procedure. Accordingly, the Board negates the averment that it has taken cognizance of the protest letter dated February 3, 2008 precisely because it is not within the ambit of jurisdiction of the Board to initially decide on "payment under protest" cases. It was merely received for records purposes."

Section 252 of the LGC provides:

"SEC. 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

xxx

(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code."

Section 252 of the LGC, above-quoted, clearly states that “The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city or municipal treasurer, in the case of a municipality within Metropolitan Manila Area.” As admitted by Appellant and borne by the Official Receipts¹ paid the amount of P166,629.36 on 28 February 2008. Before that, or on 21 February 2008, Appellant received copies of the “Real Property Tax Computation”² from the Office of the City Treasurer.

Petitioner-Appellant says that its “protest letter” was filed with the Office of the Respondent City Treasurer on February 21, 2008 “as can be clearly seen from the stamp receipt on said letter protest. The Honorable PCBTAA, through its Secretary, was furnished a copy of the letter protest for records purposes only and not for it to act upon the same.”

A close scrutiny of the said “letter-protest”³ would show that the same “letter-protest” is dated 03 February 2008, addressed to the City Mayor, Attention: 1. City Treasurer 2. Local Board of Assessment Appeals, a copy of which “letter-protest” was received by the PCBTAA, through its Secretary, Ma. Luisa B. Pasco, on February 21, 2008. Respondents say that neither the said mayor nor the Pasay City Treasurer received a copy of such letter.

The first paragraph of said “letter-protest” is worded as follows:

“Please consider the herein attached tax assessment of the Pasay City Assessor’s Office as basis in the payment under protest for the MWSS’ real property taxes covering the period of year 2008 for its real properties located in Pasay City.”

¹ Annex “D” to Appellant’s Petition before the LBAA, pp. 153-161, LBAA Records.

² Annexes “C” to “C-9” to instant appeal, termed by Appellant as “Notices of Assessment”.

³ Annex “D” to instant appeal, p. 75, Records.

It would seem that the said “letter-protest” was not really the protest required under Sec. 252 of the LGC, but a warning that the next payment would be made under protest, owing to the fact that the “letter-protest” was prepared and dated February 3, 2008, long before Appellant received copies of the “Real Property Tax Computation” on February 21, 2008 from the Office of the City Treasurer and even longer before Appellant paid the taxes for the year 2008 on February 28, 2008. The “letter-protest” must have been based on copies of the Tax Declarations⁴ which were made effective beginning the third (3rd) quarter of 2002, purportedly pursuant to “Ordinance No. 2415, S-2002, amending Ordinance No. 2221, S-2001, ‘General Revision’ of Real Property” as printed/stamped on the front pages of the tax declarations. The assessments had not changed since then and through 2008. Appellant had been assessed and had paid the same amount of taxes on the subject real properties since 2003 through 2008⁵. Copies of the said tax declarations must have been received by Appellant in the third quarter of 2002.

Therefore, since there was no protest filed by Appellant MWSS with the Office of the City Treasurer pursuant to the provisions of Section 252 of the LGC, there was also no denial through inaction by the City Treasurer that could have been appealable to the LBAA.

The provisions of Section 252 of the Code would apply only when the taxpayer believes that the **assessment made by the assessor is satisfactory or correct**, but that the **treasurer’s computation of the tax thereon is erroneous**. If the taxpayer believes that the assessment made by the assessor

⁴ Annexes “B” to “B-9” to the instant appeal.

⁵ Payments Records, Annexes “1” to “10” to Respondent’s Comment to the instant Appeal, Records, pp. 118-137.

is **illegal or otherwise incorrect**, his recourse would be to file an appeal with the Local Board, with the assessor – not the treasurer – as respondent, under the provisions of Section 226 of the Code, which provides:

“SEC. 226. Local Board of Assessment Appeals. – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.”

Under the LGC, the treasurer merely bills and collects the taxes due on the assessments. The treasurer neither makes assessments nor sends Notices of Assessment to the concerned taxpayers. These duties pertain to the assessor.

The real purpose of Petitioner’s “letter protest” was to assail or question the assessment made by the Respondent City Assessor on Petitioner’s real properties. In which case, Petitioner’s action should have filed an appeal with the Local Board within sixty (60) days from its receipt of the written notice of assessment. But which written notice of assessment? The so-called “Notices of Assessment” which Petitioner received on February 21, 2008 from Respondent City Treasurer were actually copies of the “Real Property Tax Computation” of the realty taxes due for the calendar year 2008. For all we know the true Written Notices of Assessment were sent to the Appellant together with the Tax Declarations sometime in the third quarter of 2002.

In any case, the records do not show that Petitioner made an appeal in accordance with the provisions of Section 226 of the LGC. Therefore, the Local Board was correct in holding that the assailed assessment had become final and not appealable.

At this juncture, it would be pointless to discuss the other issues raised by Appellant MWSS as they have become moot and academic. As often said, it would be an exercise in futility.

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, August 30, 2012.

SIGNED
OFELIA A. MARQUEZ
Chairman

ABSTAINED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member