Republic of the Philippines
CENTRAL BOARD OF ASSESSNMENT APPEALS
M a n l l a

TUGUEGARAO MEMORIAL, INC., represented by ENGR. ROBERT P. GUZMAN,
Petitioner-Appellant,

-versus-

THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE CITY OF TUGUEGARAO,
Appellee,

-and-

THE CITY OF TUGUEGARAO, represented by its City Assessor, JOSEPHINE A. AVENA,
Respondent-Appellee.
X- /

CBAA CASE NO. L - 104
(LBAA Case No. 1-2008)
City of Tuguegarao

D E C I S I O N

This is an appeal filed by Petitioner-Appellant Tuguegarao Memorial, Inc. from the Decision dated December 16, 2009 rendered by the Local Board of Assesssment Appeals of Tuguegarao City (the "LBAA") in LBAA Case No. 1-2008, the dispositive portion of which Decision reads as follows:

> *"WHEREFORE, premises considered, a decision is hereby rendered adjudging the 48% assessment by the appellee on the lands of the appellant, legal.*
>
> *"SO ORDERED."*[1]

Petitioner-Appellant states the following facts:

> "5. The appellee, City Assessor of Tuguegarao, sent unto appellant a tax assessment on the said realties, applying the assessment level of forty eight percent (48%) by classifying the said realties as commercial.

[1] Annex H, Appeal.

"6. Upon receipt of the said assessment, the appellant paid under protest.

"7. Within the sixty (60) day period allowed by law, the appellant filed an appeal/petition for the correction of the computation of the real property tax on the above assessment before the TUGUEGARAO CITY BOARD OF ASSESSMENT APPEALS, alleging that the assessment level should be fifteen percent (15%) and not forty eight percent (48%) since the real properties are not commercial properties but special use properties/special purpose properties and/or properties used for cultural purpose.

"8. Summoned, the appellee filed an Answer to the appeal, alleging that the properties subject of the assessment are commercial properties and therefore, should be assessed the *(sic)* rate of forty eight percent (48%) and not fifteen percent (15%). Appellee likewise averred that the appeal was filed out of time and should be dismissed

"9. Preliminary conference was conducted wherein the parties agreed to litigate/argue on two (2) legal issues, namely: (a) Whether or not the appeal was filed out of time; and (b) Whether or not the appellee erred in applying the assessment level of forty eight percent (48%) on the computation of the above real property taxes. By agreement, the parties submitted their respective Memorandum/Position Paper on the issues defined."[2]

Petitioner-Appellant raised only one (1) issue, *viz:*

"WHETHER OR NOT THE TUGUEGARAO CITY BOARD OF ASSESSMENT APPEALS LEGALLY ERRED IN HOLDING THE CLASSIFICATION OF THE REAL PROPERTIES OF APPELLANT AS COMMERCIAL AND HENCE, SUBJECT TO FORTY EIGHT PERCENT (48%) ASSESSMENT LEVEL."

In its Answer with Motion to Dismiss dated August 13, 2010 and received by this Board on August 23, 2010, Respondent-Appellee City of Tuguegarao raised the following issues:

"I

WHETHER OR NOT THE APPEAL TO THE LBAA WAS MADE WITHIN THE PERIOD REQUIRED BY LAW.

"II

WHETHER OR NOT THE APPELEE CITY GOVERNMENT CITY ASSESSOR'S ASSESSMENT OF THE LANDS SUBJECT OF THIS APPEAL, WAS PROPER AND LAWFUL.

[2] Records, pp. 4-5.

"III

WHETHER OR NOT THIS APPEAL MAY BE DISMISSED FOR NON-PAYMENT OF THE REQUISITE DOCKET AND APPEAL FEES."

Perceivably, the issues worth considering are those on *Prescription* raised by Respondent-Appellee and on *classification* raised by both Petitioner-Appellant and Respondent-Appellee. The non-payment of docket fees is a non-issue as it is not a ground for dismissal.

Parenthetically, prescription is a jurisdictional issue, hence the corresponding dismissal of the appeal as a consequence thereof.

Anent the issue of prescription, Respondent-Appellee's Answer to Petitioner-Appellant's appeal states thus:

> "The notice made by the City Assessor-appellee Avena indicating the new assessments made on the lands subject of this appeal were sent to the petitioner-appellant in June 18, 2007 as shown in appellee's Exhibit 1. From appellant's receipt of the new assessment, the appellant had sixty (60) days within which to appeal the assessment. This 60-day period lapsed because the appeal was filed on June 10, 2008 or thereabouts, long after the 60-day period within which to undertake the appeal, already lapsed."[3]

The Appellee Local Board's Decision reads:

> "xxx though we agree that the technical rules laid down in the LGC must be followed, it should not be strictly enforced especially so if substantial rights will be compromised. The rules must sometimes be relaxed and must yield to the demands of due process and the policy on social justice. It is not crafted to suit the whims and caprices of those witty, who, at the very least opportunity would invoke the same to their advantage in view of the non-observance thereof by the other party. Justice must be tempered with compassion in order to promote its noble end. This is anchored in Sec. 6, Rule 1 of the Rules of Court which we find applicable by giving due course to the timeliness of the appeal filed by herein-appellant on the assessment for taxation purposes on his property, the Tuguegarao Memorial, Inc."[4]

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[3] Records, pp. 91-92.
[4] Records, p. 63.

Petitioner-Appellant's Reply dated August 26, 2010 and received by this Board on September 7, 2010, is as follows:

> "THE APPELLEE CANNOT RAISE AN ISSUE WHICH WAS ALREADY FINAL AND EXECUTORY FOR ITS FAILURE TO FILE ITS OWN APPEAL.
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> "2. The LBAA of Tuguegarao City, in its appealed Decision dated December 16, 2009, ruled that the appellant seasonably filed his appeal. The Respondents-appellees failed to file their own appeal when the LBAA of Tuguegarao City ruled that the appeal earlier filed before it was seasonably filed.
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> "3. On that aspect of the decision, the issue on the timeliness of the filing of the appeal was already settled and the appellee, in a mere Answer to the appeal, instead of filing its own appeal, could not again raise an issue which is already final and executory."[5]

Contrary to Petitioner-Appellant's belief, decisions of the Local Boards of Assessment Appeals are appealable to the Central Board of Assessment Appeals. Thus, Section 229(c) of the Local Government Code of 1991 (the "Code") provides:

> ". . . The owner of the property or the persons having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, provided herein. . . "

On November 11, 2011, counsel for Petitioner-Appellant, Atty. Haxley M. Galano, filed a Manifestation dated November 11, 2011 stating that Petitioner-Appellant "is willing to submit the Petition/Appeal for Resolution based on the record already available without further hearing."

The last and final hearing of this case was conducted on November 28, 2011. Only counsel for Respondent-Appellee, Atty. Edwin V. Pascua, appeared. Then and there, Atty. Pascua submitted what appears to be a machine copy of the Notice of Assessment and what appears to be an original

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[5] Records, p. 100.

copy of a "Certification" issued on July 7, 2011by a Mr. Arsenio B. Mateo, Postmaster VI of Tuguegarao City to the effect "that as per records available in this Office, Registered Letter bearing Registry Receipt No. 8462 posted on June 18, 2007 addressed to Engr. Robert P. Guzman of No. 15 Mabini St., Tuguegarao City Cagayan was delivered by Postman II Romeo Lagramonte on June 22, 2007 and received by Milaflor S. Paguirigan (employee of addressee.)"

Atty. Pascua then reiterated Respondent-Appellee's prayer that the instant appeal be dismissed on the ground of prescription.

In his Comment dated January 19, 2012 and received by this Board on February 24, 2012, Petitioner-Appellant said:

> "2. First, litigated motions should be made in writing and the subject of notice and hearing. Oral litigated motions are not allowed most especially in this case where the Respondent submitted documents before the Honorable Office to support its motion to dismiss without giving the Petitioner the opportunity to examine the said documents.
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> "3. For this reason alone, the motion should be denied.
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> "4. Second, there is no showing that Registered Letter bearing Registry Receipt No. 8462 contains Notice of Assessment dated June 18, 2007 which was received by the Office of the Petitioner on June 22, 2007.
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> "5. There were several correspondences made between the Petitioner and Respondent during that period but the Notice of Assessment dated June 18, 2007 was not one of them.
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> "6. Third, the Tuguegarao City Board of Assessment Appeals, in the appealed Decision, already ruled in favor of the timeliness of the appeal. That is the reason why said Board decided the case on the merits.
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> "7. It should be stressed that the Respondent did not file its own appeal against the Decision of the Board that said appeal was seasonably filed.
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> "8. Since no separate appeal was filed by the Respondent against the Board's Decision declaring the appeal to be seasonably filed, said issue is considered *res judicata* and could not again be raised in these present proceedings, most especially since it was not part of the errors raised by Petitioner in its appeal.

> "9. Therefore, the oral motion to dismiss should not have been entertained by this Honorable Office since to entertain the same would be violative of the principle of *res judicata.*
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> "10. Thus, the oral motion to dismiss should be denied due course and the appeal be resolved on its merits.
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> "11. Lastly, and assuming purely for the sake of argument that the appeal was indeed filed out of time, this Honorable Board, in deference to substantial justice, may disregard such technicality and proceed to decide the appeal on the merits not only because justice is better served if litigations are disposed of based on their intrinsic merits but also to avoid or prevent multiplicity of suits between the parties which would definitely arise in the future."[6]

On the matter of the supposed "Oral Litigated Motion to Dismiss" which the Petitioner-Appellant dwelt on lengthily, this Board finds nothing of the sort. Respondent-Appellee merely reiterated orally what it prayed this Board for in its (Respondent-Appelee's) "Answer With Motion to Dismiss" dated August 13, 2010, thus:

> "The respondent-appellee City Government stands pat on its allegation that the appeal to the LBAA was made out of time and submits this issue for the sound discretion of the Honorable Central Board of Assessment Appeals (CBAA) for resolution."[7]

Petitioner-Appellant complained of not being given the opportunity to examine the documents submitted by Respondent-Appellee during the hearing of this case on November 28, 2011. Petitioner-Appellant has himself and/or his counsel to blame. Despite notice, neither Petitioner-Appellant nor his counsel appeared at such scheduled hearing on November 28, 2011. Perhaps, it was because of the Manifestation filed by Counsel for Petitioner-Appellant on November 11, 2011 stating that Appellant "is willing to submit the Petition/Appeal for Resolution based on the record already available without further hearing."

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[6] Records, pp. 183-185.
[7] Records, p. 92.

Petitioner-Appellant said that "4. Second, there is no showing that Registered Letter bearing Registry Receipt No. 8462 contains Notice of Assessment dated June 18, 2007 **which was received by the Office of the Petitioner on June 22, 2007."**While virtually admitting that it received that letter bearing Registry Receipt No. 8462, Petitioner-Appellant blamed Respondent-Appellee for not showing any proof that the questioned Notice of Assessment was attached to or enclosed with said letter.

Under the circumstances, this Board believes, and so holds, that the questioned Notice of Assessment was attached to or enclosed with that letter bearing Registry Receipt No. 8462, which was delivered to and received by Petitioner-Appellant on June 22, 2007, as certified by the Postmaster VI of Tuguegarao City. Otherwise, Petitioner-Appellant would have complained, to put it mildly, to the Respondent-Appellee on the absence of such Notice since the opening paragraph of said letter from Respondent-Appellee City Assessor dated June 18, 2007[8] stated thus:

> "We are furnishing herewith the Notice of Assessment of Real Property of lots where the Tuguegarao Memorial, Incorporated is located together with the buildings that are erected thereon with the corresponding owners copy of the tax declarations . . ."

Petitioner-Appellant stated that since no separate appeal was filed by the Respondent against the Board's Decision declaring the appeal to be seasonably filed, said issue could not be raised again in these present proceedings.[9]

[8] Records, p. 179.
[9] No. 8, Petitioner-Appellant's Comment.

Respondent-Appellee does not, and did not, have the obligation to file an appeal of its own to question the LBAA's decision. All it had to do, as it did, was question, in its Answer (to) with Motion to Dismiss Petitioner-Appellant's appeal, the LBAA's pronouncement on the matter of the supposed timeliness of the filing of Petitioner-Appellant's appeal.

Petitioner-Appellant also said that "assuming purely for the sake of argument that the appeal was indeed filed out of time, this Honorable Board, in deference to substantial justice, may disregard such **technicality** and proceed to decide the appeal on the merits . . ."

The requirements under Section 226 are not merely procedural in nature. They are both mandatory and jurisdictional. The right to appeal is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law on the matter.[10]

The records show that Petitioner-Appellant filed its appeal before the Local Board of Tuguegarao City on March 13, 2008, definitely more than sixty (60) days after Petitioner-Appellant's receipt of the Notice of Assessment on June 22, 2007. Clearly, therefore, Petitioner-Appellant's Appeal before the Local Board was filed out of time. That being the case, the Decision rendered on December 16, 2009 by the Local Board of Assessment Appeals for the City of Tuguegarao in LBAA Case No. 1-2008 is null and void for lack of jurisdiction. The questioned assessments, erroneous though they may have

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[10] See *City Assessor of Baguio vs. BAA of Baguio City and Benguet Consolidated, Inc.,* CBAA Case No. 45, October 17, 1975.

been, had become final and unappealable by virtue of the taxpayer's failure to timely question on appeal the assessments before the Local Board.[11]

With the above findings, the issue of "classification" of subject properties is rendered moot and academic.

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

SO ORDERED.

Manila, Philippines, April 24, 2012.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member

[11] See *Central Azucarera de Bais vs. City Assessor of Bais,* CBAA Case No. V-11, March 25, 1998.