

Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
M a n i l a

NATIONAL POWER  
CORPORATION,  
*Petitioner-Appellant,*

CBAA CASES NOS. L-26

- versus -

LOCAL BOARD OF ASSESSMENT  
APPEALS OF BATAAN,  
*Appellee,*

- and -

PASTOR P. VICHUACO, Provincial  
Treasurer Province of Bataan,  
HERMENEGILDO C. PILAPIL,  
Provincial Assessor, Province of  
Bataan and RODOLFO C. GOMEZ,  
Municipal Assessor, Limay, Bataan,  
*Respondents-Appellees.*

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## R E S O L U T I O N

Before this Board is the Appeal of the National Power Corporation (NPC),  
Petitioner-Appellant, against the dismissal of its Petition with the Local Board of  
Assessment Appeals (LBAA) of the province of Bataan, as follows:

“WHEREFORE, the instant petition is hereby ordered DISMISSED for  
having been filed out of time and for lack of merit.”

Petitioner-Appellant assigned the following errors:

- “1. The Local Board erred in holding that the petition was  
filed out of time.”
- “2. The Local Board erred in holding that Respondent-  
Appellees’ assessment is in accordance with facts and  
law.”

A jurisdictional issue, Prescription stands to be disposed of before going  
further with the case. The bone of contention herein is whether or not Sections  
226 and 252 of the Local Government Code of 1991 (R.A. 7160), which were  
reproduced as Articles 317 and 343 respectively, in the Rules of Regulations  
Implementing the Local Government Code of 1991, are separate and distinct  
modes of Appeal before the Local Board of Assessment Appeals. The

distinction will, in effect, settle the question of whether or not Petitioner-Appellant, National Power Corporation's Appeal before the Local Board of Assessment of Bataan was filed out of time.

Sections 226 and 252 of the Local Government Code of 1991 (R.A. 7160) 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."

"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.

"(b) X x x.

"(c) X x x.

"(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."

Appellee Local Board's findings read:

"On the question of prescription, the Board is of the opinion that the two (2) remedies made available to the taxpayer under: (a) Section 226, Chapter 3, and (2) Section 252, Chapter 6, both of Title Two, Book II of the Local Government Code, are not at all independent of each other which the taxpayer can avail of at will.

"Notice of a new or revised assessment is required to be delivered to the taxpayer in the manner indicated in Section 223 of the law. It is from the date of receipt of such written notice that the taxpayer is given sixty (60) days within which to appeal to the LBAA. Needless to say, the assessment would become final if the taxpayer fails to make the appeal.

"Where for some reason the taxpayer has not been served with a notice of a new or revised assessment, logically the sixty (60) day period does not begin to run. **Because he had no such notice, the taxpayer would most likely be surprised if he is told by the collecting agent of the new amount that he has to pay. It is here where the remedy indicated in Section 252 applies.**

"In the case of petitioners, it was never in dispute that petitioner received notice of the assessment on October 21, 1996. Section 226, therefore, governs and pursuant to which, petitioner who professed dissatisfaction with the assessment had sixty (60) days from the said date within which to make the appeal to this Board.

"The Board simply cannot subscribe to the petitioner's theory that a taxpayer is given the option of making his appeal either under Section 226 or Section 252. If that were so, then the finality of assessment would be placed in the hands of the taxpayer. **Even if he received notice of the assessment**

**that he is not satisfied with, he can take his own sweet time by simply deferring payment because after all he can always avail of the protest and appeal under Section 252 when he finally decides to make the payment.”**

From the record the following appears:

1. The Notice of revision of real property assessment made on the properties of the National Power Corporation located at the Bataan Combine Cycle Power Plant in the Municipality of Limay, Bataan, dated October 18, 1996 and issued by Limay Municipal Assessor Rodolfo C. Gomez was received by NPC on October 21, 1996.

2. On October 23, 1996 Appellant, through Mr. Antonio O. Nerona, Officer-In-Charge of its Metro Manila Regional Center Office, addressed a letter to Respondent-Appellee, Gomez, informing the latter that per Petitioner-Appellant's sworn declaration submitted to the office of Respondent-Appellee, Pastor P. Vichuaco, the value of subject properties is lower than those reflected in said tax declarations. In the same letter, Appellant requested Respondent-Appellee Gomez to consider its sworn declaration accordingly.

3. In its reply, dated November 4, 1996, Respondent-Appellee, Gomez granted the request and asked for a meeting with the counsel of Petitioner-Appellant.

4. On November 8, 1996, Petitioner-Appellant paid "under protest" a portion of subject real property tax in the amount of P8,160,000.00 to Respondent-Appellee Vichuaco, eighteen (18) days from notice of assessment. Petitioner-Appellant paid the balance in the amount of P12,213,114.90, also "under protest", on November 11, 1996, twenty one (21) days from Notice of Assessment.

5. On November 15, 1996, Petitioner-Appellant formally filed the protest and requested that Respondent-Appellee's assessment be corrected and that its excess payment be refunded or credited in its favor.

6. A series of meetings and discussions were held between the Petitioner-Appellant and Respondent-Appellee, viz, Gomez, Pilapil and Vichuaco. On January 13, 1997, Petitioner-Appellant furnished Respondent-Appellee Gomez with additional supporting documents for its protest. On November 7, 1997, Petitioner-Appellant "paid under protest" the amount of P6,000,000.00 for the 1997 real property tax on subject property.

7. Petitioner-Appellant filed its Petition (Appeal) before the Local Board of Assessment Appeals on April 14, 1998.

8. Reproduced, hereunder is Petitioner-Appellant's Schedule of Payment "Under Protest":

OR NO.	DATE	AMOUNT	PERIOD OF TAX PAID
1540761 & 1538911-S	11/06/97	P6,000,000.00	For the year 1997
1546013-S	03/31/98	P 33,459.74	For the year 1998
1546011-S	03/31/98	P1,350,000.00	1 <sup>st</sup> Quarter of 1998
6063021-S	11/20/98	P1,350,000.00	2 <sup>nd</sup> Quarter of 1998
6063022-S	11/27/98	P1,500,000.00	3 <sup>rd</sup> Quarter of 1998
6063023-S	12/09/98	P1,350,000.00	4 <sup>th</sup> Quarter of 1998
0345994-T	03/31/99	P4,553,106.38	For the year 1999

In the hearing before this Board, Petitioner-Appellant argued that it was not able to submit a Petition within the sixty(60) day period because it was

made to believe that the Provincial Assessor would revise and correct his assessment per his letter of Nov. 04, 1996.

In its Memorandum, Petitioner-Appellant adduced that the taxpayer can still avail of the remedies provided in Section 226 as provided for under Sec. 252, viz, Chapter 3, Title Two, Book II, in the event that the Provincial Treasurer failed to act on the protest within sixty (60) days; that said provision did not provide for a period when the taxpayer can avail of the provisions of Section 226 in the event the Provincial Treasurer fails to act on the protest; that Section 252 is an independent remedy and can be availed of separately from Section 226.

In the same Hearing, Respondents-Appellees specified that Section 226 of R.A. 7160 is the one applicable in determining the period within which to file the protest or appeal and that is sixty (60) days from receipt of the written Notice of Assessment—it pertains specifically to the remedy of the taxpayer in cases of assessments which the taxpayer finds to be unsatisfactory; that Sec. 252 should be read in conjunction with Sec. 226; that Sec. 252 refers to excessive or arbitrary assessment—it presupposes that the taxes to be collected appears to be excessive; that the Municipal or Provincial treasurer have no power to assess or reassess the property as the power is expressly vested in the Municipal or the Provincial Assessors, so that the computation of the tax by the Provincial, City or Municipal Treasurer is in question; that there can be no finality of assessment under Sec. 226 if there is always the reserve remedy under Sec. 252, rendering the mandatory character of Sec. 226 nugatory as it will be very convenient for any taxpayer not to question the assessment within sixty (60) days from the written Notice of Assessment and after several years he will just pay under protest and avail of the provision of Sec. 252.

In the case of Central Azucarera de Bais, Inc. (CAB) vs. Local Board of Assessment Appeals (LBAA) and City Assessor of Bais City (CA-G.R. SP No. 54276, Promulgated, September 28, 2001), the Court of Appeals ruled:

“The word ‘action’ (i.e. in Sec. 226, R.A. 7160) should mean the final action of the provincial, city or municipal assessor concerned. Since the City Assessor of Bais failed to resolve the ‘Petition for Recomputation, etc.’, and there was no outright denial of the same, it would not be far-fetched for the CAB to conclude that there was no ‘final assessment yet to appeal to the Local Board of Assessment Appeals. Consequently, it is entirely in good faith for the petitioner to assume that the period within which to appeal did not begin to run.”

The case is as follows:

“On February 16, 1996, CAB filed a ‘Petition for Recomputation, Revision, Correction and/or Cancellation of Assessments’, with the City Assessor of Bais City.

“The City assessor of Bais indorsed the said petition to the Sangguniang Panglungsod of Bais City. The latter in turn indorsed the same to the Local Board of Assessment Appeals (LBAA) of Bais City for study and recommendation.

“On August 15, 1996, petitioner received through registered mail a copy of the 1<sup>st</sup> Indorsement of respondent City Assessor dated August 13, 1996 x x x

x x x

“On October 09, 1996, petitioner appealed to the Local Board of Assessment Appeals.

“On November 05, 1996, the Local Board of Assessment Appeals dismissed the appeal for being filed out of time. CAB received a copy of the order dismissing the appeal on November 07, 1996.

“On December 07, 1996, CAB appealed the decision of the Local Board of Assessment Appeals to the Central Board of Assessment Appeals.

“On March 25, 1998, the Central Board of Assessment Appeals affirmed in toto the Order of the Local Board of Assessment Appeals.

“CAB moved for the reconsideration of the decision of the Central Board of Assessment Appeals, but the same was denied x x x.”

Anent the instant case: the delay in the filing of the Appeal pursuant to Sec. 226 was caused by time-consuming communications, meetings and negotiations between the parties.

The Supreme Court, in the case of Lopez vs. City of Manila (303 SCRA 495), and reiterated in the case of Figuerres vs. Court of Appeals (305 SCRA 213), held:

“Under Section 226 of R.A. 7160 an owner of real property who is not satisfied with the assessment of his property may, within sixty (60) days from notice of assessment, appeal to the Board of Assessment Appeals.

“Should the taxpayer question the excessiveness of the amount of tax, he must first pay the amount due, in accordance with Section 252 of R.A. 7160. Then, he must request the annotation of the phrase ‘paid under protest’ and accordingly appeal to the Board of Assessment Appeals x x x,”

Herein Petitioner-Appellant questioned the excessiveness of the assessment and the amount of tax imposed on its properties. Hence Petitioner-Appellant is entitled to Appeal before the Local Board of Assessment Appeals under Sec. 252 of R.A. 7160, after having “paid under protest” the corresponding taxes thereto.

Petitioner-Appellant’s contention however is that Sec. 252 did not provide for a period when the taxpayer can avail of the provisions of Sec. 226 (referred to as Chapter 3, Title Two, Book II of the Local Government Code of 1991), in the event the provincial treasurer fails to act on the protest. The period could easily be deduced from the context of Sec. 252, i.e., sixty (60) days from receipt by Petitioner of the denial by the treasurer of the protest or upon the lapse of the sixty (60) day period prescribed therein.

The Court of Appeals in that case of *Central Azucarera De Bais vs. Local Board of Assessment Appeals and City Assessor of Bais City* (supra) justifiably determined the start of the sixty (60) days period within which to Appeal to the LBAA, and that is, from final action of the provincial, city, or municipal assessor concerned.

The Supreme Court delineated the instances when the taxpayer could avail of the provisions of Sections 226 and 252 of R.A. 7160, in filing an Appeal before the LBAA, in the case of *Lopez vs. City of Manila* (supra). In that context therefore, this Board finds that Sec. 252 can stand, not in combination or tandem with Sec. 226, as Respondents-Appellees would have it, but by itself. The law provided nothing that would translate, in unequivocal terms their inseparability as to constitute them into a single mode of Appeal. The reference

to Chapter 3, Title Two, Book II of R.A. 7160 (supra), which is Sec. 226 thereof is merely adoptive of form but not of essence. Indeed Sections 226 and 252 are separate and distinct modes of Appeal.

This can be gleaned from the fact that Sec. 226 speaks of assessment and action taken by the assessor to arrive at such assessment. The appeal therefore is against the assessment and directed to the assessor, who is of course the respondent. The grounds are all actions by the assessor in connection with or in relation to every phase and aspect of the assessment process. These may cover actuations or omissions by the assessors in the discovery and listing of the property subjected to tax, its proper identification, classification, valuation and appraisal, final assessment and recording. Perceived errors and inequities, justifiable or not, however, can be raised only before sixty days (60) from receipt of the written notice of assessment by the property owner or anyone having legal interest in the assessment of the property. After the 60 day reglementary period to appeal, the assessment becomes final and no longer open to question.

On the other hand, Section 252 of RA 7160, falls under chapter 6 (Collection of Real Property Tax). This remedy is accorded to taxpayers who may be satisfied or in agreement with the assessment of his property but find the tax imposed excessive or unjust. This presupposes that the tax has been paid but under protest. Unlike in Sec. 226 where the assessment is sought to be adjusted to the satisfaction of the property owner, the taxpayer here seeks to be refunded of the tax paid under protest or that the same be applied/credited to existing or future tax liability. The appeal therefore under this section is addressed to the treasurer who is in charge of tax collection. The respondent in this petition/appeal is the treasurer who fails to act on the protest or denies the claim for refund or tax credit within the reglementary period.

Under Sec. 252, it is the payment of the tax that is under protest, not the assessment of the property. This contemplates a situation wherein the taxpayer

out of necessity or desire to avail of a discount pays the tax first with the treasurer's office with an annotation on the official receipt that the tax is being "paid under protest." This is followed by a formal protest in writing made within 30 days from the actual payment of the tax wherein the protestant cites the ground/s for his action. The grounds may vary. It may be the result of an erroneous imposition of the realty tax on an exempt property or a mistake in the computation of the tax and/or penalties. The need to first pay the tax arises wherein a tax clearance is needed for the real property to be titled, transferred, encumbered, used as collateral in bank loans, for bail purposes in criminal cases, and in all instances that requires that realty taxes are paid and updated.

This must be differentiated with the letter protest usually addressed to assessors after receipt of the notice of assessment requesting for a reduction, revaluation, recomputation, modification and/or adjustment of the assessment made by the assessor. This kind neither falls under Section 226 or Section 252. This however must be addressed and given due course by the assessor, for the 60 day period to run under Section 226. Failure to resolve on the part of the assessor of this request will toll the running of the reglementary period to appeal as ruled in the Bais City case.

This Board is in full concurrence with respondents-appellees that the municipal or provincial treasurer has no power to reassess or to make an assessment of real properties. That power and function is vested solely to the assessment services under RA 7160. There lies the need to harmonize the seemingly conflicting aspects of the two remedies under sections 226 and 252. The assessor has the discretion to adjust, modify, or reduce the assessment per letter-request of the assessee and the treasurer cannot question the action of the assessor the same way that under section 252, the treasurer has the discretion to refund or tax credit a tax erroneously imposed or unjustly collected. In both cases, no appeal is forthcoming before the Local Board of Assessment Appeals.



The apprehension therefore of the appellee local board that the treasurer can countermand the action of the assessor under Section 252 is unfounded. To change the assessment on the part of treasurer with no appeal available to the assessor, would place the treasure more powerful than the Local Board, the Central Board, the Court of Appeals and the Supreme Court. This funny situation is not only patently illegal. It is absurd. And this can never be the intention of the framers of RA 7160.

“On Appellee Local Board’s assertion, that if the taxpayer is given the option of making his appeal, either under Section 226 or Section 252, then the finality of the assessment would be placed in the hands of the taxpayer who, if he received notice of assessment that he is not satisfied with can take his own sweet time by simply deferring payment because after all he can always avail of the provisions on “payment under protest’ and appeal under Sec. 252, when he finally decides to make the payment:

The taxpayer cannot take his own sweet time before making “payment under protest”, preliminary to filing an Appeal:

(a) There is “notice of the dates when tax may be paid without interest”. (See Sec. 249, LGC.)

(b) Interest of two percent (2%) per month on the unpaid amount or fraction thereof until the delinquent tax shall have been fully paid, from the expiration of the periods or when due. (See Sec. 255, LGC.)

(c) Distraint on personal property to effect payment on tax delinquencies. (See Sec. 254, LGC.)

(d) Levy on real property subject to tax after the expiration of the time required to pay the basic real property tax. (See Sec. 258, LGC.)

**WHEREFORE**, the Resolution of the Local Board of Assessment Appeals of the Province of Bataan pertaining to its Order of Dismissal of the Appeal therein by the National Power Corporation, Petitioner-Appellant, for having been filed, not in accordance with the provisions of the Local Government Code of 1991 (R.A. 7160) and therefore (filed) out of time is hereby set aside. The Appeal filed pursuant to Sec. 252 of R.A. 7160 is hereby upheld. Hearing of the case on the merits will be on October 7, 2003, the parties are hereby ordered to act accordingly.

**SO ORDERED.**

Manila, Philippines, September 17, 2003.

*(Signed)*  
CESAR S. GUTIERREZ  
Chairman

*(Signed)*  
ANGEL P. PALOMARES  
Member

VACANT  
Member