

## SECOND DIVISION

G.R. No. 169234 – CAMP JOHN HAY DEVELOPMENT CORPORATION, *Petitioner*, versus CENTRAL BOARD OF ASSESSMENT APPEALS, REPRESENTED BY ITS CHAIRMAN HON. CESAR S. GUTIERREZ, ADELINA TABANGIN, IN HER CAPACITY AS CHAIRMAN OF THE BOARD OF TAX (ASSESSMENT) APPEALS OF BAGUIO CITY, AND HON. ESTRELLA B. TANO, IN HER CAPACITY AS THE CITY ASSESSOR OF THE CITY OF BAGUIO, *Respondents*.

Promulgated:

**OCT 02 2013**



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## CONCURRING OPINION

**CARPIO, J.:**

I join Justice Jose P. Perez in his denial of Camp John Hay Development Corporation's (CJHDC) petition. There is no merit in CJHDC's present petition because John Hay Special Economic Zone (JHSEZ) is not tax-exempt. Any tax protest filed by CJHDC, therefore, can only refer to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest as a condition for contesting the assessment.

A restatement of the facts is necessary to establish context.

Republic Act No. 7227, the Bases Conversion and Development Act of 1992, was enacted on 13 March 1992. R.A. No. 7227 authorized the President to create through executive proclamation Special Economic Zones in various areas in the country, including Camp John Hay in Baguio City. President Fidel V. Ramos issued Proclamation No. 420, establishing the JHSEZ, on 5 July 1994. Section 3 of Proclamation No. 420 created a regime of tax exemption within the JHSEZ.

Sec. 3. *Investment Climate in John Hay Special Economic Zone.* -- Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules and regulations governing the zone, including investment incentives, in consultation with pertinent government



departments. Among others, the zone shall have all the applicable incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.

CJHDC entered into a Lease Agreement with Bases Conversion Development Authority (BCDA) on 19 October 1996 for the development of JHSEZ. On 21 March 2002, the City Assessor of Baguio City issued notices of assessment to CJHDC on the properties that it leased from BCDA. In Case No. 2002-003, CJHDC questioned the assessments before the Board of Tax Assessment Appeals of Baguio City (BTAA-Baguio), and stated that it was exempted from paying taxes pursuant to Section 12(c) of R.A. No. 7227<sup>1</sup> and Section 3 of Proclamation No. 420.

BTAA-Baguio, in its Resolution dated 12 July 2002, directed CJHDC to comply with Section 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals (LBAA), which entails payment of the assessed tax under protest or the issuance of a surety bond.<sup>2</sup> BTAA-Baguio dismissed for lack of merit CJHDC's motion for reconsideration in its Resolution dated 20 September 2002.

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<sup>1</sup> Sec. 12. *Subic Special Economic Zone.* – x x x

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter.

<sup>2</sup> Sec. 7. *Effect of Appeal on Collection of Taxes.* – An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the provincial, city or municipal assessor, without prejudice to subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions: (1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount; (2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety company is duly authorized to issue such bond; (b) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and (3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

CJHDC's appeal to the Central Board of Assessment Appeals (CBAA) on 30 October 2002, docketed as Case No. L-37, resulted in a 23 May 2003 Resolution which set aside the resolution of BTAA-Baguio and remanded the case to the LBAA for further proceedings subject to a full and up-to-date payment of realty taxes on the leased properties as assessed by the City Assessor of Baguio City. The CBAA denied CJHDC's motion for reconsideration on 8 September 2004.

In the meantime, on 24 October 2003, this Court promulgated its decision in *John Hay Peoples Alternative Coalition v. Lim*<sup>3</sup> (*John Hay*). We ruled against JHSEZ's tax exemptions, and declared that "under Section 12 of R.A. No. 7227 *it is only the Subic SEZ which was granted by Congress with tax exemption, investment incentives and the like*. There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time via presidential proclamation."<sup>4</sup> The grant by Proclamation No. 420 of tax exemption and other privileges to JHSEZ is void for being violative of the Constitution:<sup>5</sup> a law granting any tax exemption must have the concurrence of a majority of all the members of Congress, and cannot be granted by the Chief Executive alone.

On 5 March 2004, CJHDC filed a Motion for Leave to Intervene in *John Hay*, "alleging that it, together with its consortium partners Fil-Estate Management, Inc. and Penta Capital Investment Corporation, entered into a Lease Agreement dated October 19, 1996 with respondent BCDA for the development of the John Hay SEZ; and that it 'stands to be most affected' by this Court's Decision 'invalidating the grant of tax exemption and other financial incentives' in the John Hay SEZ since '[i]ts financial obligations and development and investment commitments under the Lease Agreement were entered into upon the premise that these incentives are valid and subsisting.'"<sup>6</sup> In an Order dated 25 May 2004, this Court granted CJHDC's Motion for Leave to Intervene and noted its Motion for Reconsideration in Intervention.

In an unsigned Resolution dated 29 March 2005, this Court denied with finality the motions for reconsideration filed in *John Hay*, including that of CJHDC. Our decision in *John Hay* became final and executory and recorded in the Book of Entries of Judgments on 17 November 2005.

While CJHDC's Motion for Leave to Intervene in *John Hay* was pending, it filed on 24 November 2004 a Petition for Review, docketed as

<sup>3</sup> G.R. No. 119775, 460 Phil. 530, decision promulgated on 24 October 2003; unsigned resolution promulgated on 29 March 2005; Entry of Judgment made on 17 November 2005.

<sup>4</sup> Id. at 549. Italicization in the original.

<sup>5</sup> Section 28(4), Art. VI of the Constitution provides that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress."

<sup>6</sup> G.R. No. 119775, Unsigned Resolution, 29 March 2005, p. 7.

C.T.A. E.B. No. 48, before the Court of Tax Appeals (CTA). CJHDC sought to nullify the assessments for real property taxation and to set aside the resolutions of the CBAA.

The CTA dismissed CJHDC's petition for lack of merit. In its Decision promulgated on 27 July 2005, the CTA stated that "[t]he remand of the case to the Local Board of Assessment Appeals for further proceedings subject to a full and up-to-date payment, either in cash or surety, of realty taxes on the subject properties as assessed by the City Assessor of Baguio City is proper pursuant to Section 252 of the Local Government Code of 1991 x x x in relation to Section 7, Rule V of the Rules of Procedure Before the Local Boards of Assessment Appeals x x x."<sup>7</sup> The CTA also noted that CJHDC wanted the CTA to resolve the issue of its liability for real property tax or the issue of its tax-exempt status without complying with the law and rules. The CTA agreed with the CBAA's ruling that, pursuant to Sections 231<sup>8</sup> and 252<sup>9</sup> of the Local Government Code of 1991, "[b]efore a protest may be entertained, the tax should have been first paid without prejudice to subsequent adjustment thereof depending upon the final outcome of the appeal and that the tax or portion thereof paid under protest, shall be held in trust by the treasurer concerned."<sup>10</sup>

CJHDC filed the present Petition for Review on Certiorari on 29 September 2005, after the promulgation of our Resolution in *John Hay* on 29 March 2005 and before the finality of *John Hay* on 17 November 2005.

There is no showing that CJHDC ever complied with the requirements of Section 206<sup>11</sup> of the Local Government Code in claiming tax exemption;

<sup>7</sup> *Rollo*, pp. 15-16.

<sup>8</sup> Sec. 231. *Effect of Appeal on the Payment of Real Property Tax.* - Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

<sup>9</sup> 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) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(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 II, Book II of this Code.

<sup>10</sup> *Rollo*, p. 17.

<sup>11</sup> Sec. 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

hence, the City Assessor of Baguio acted well within her power to assess the subject properties. There was no need for CJHDC to wait for an assessment before submission of its proofs of tax exemption.<sup>12</sup> Had CJHDC submitted proofs of its tax exemption to the City Assessor, there would have been no need for CJHDC to pay under protest. CJHDC could question in court any adverse decision of the City Assessor, the Local Board of Assessment Appeals, and the Central Board of Assessment Appeals denying its tax exemption, without paying any tax assessment under protest, due to its claim of tax exemption under Proclamation No. 420.

However, once the tax exemption in Proclamation No. 420 was declared with finality as unconstitutional by this Court on 17 November 2005, CJHDC no longer had any legal basis for claiming tax exemption. CJHDC could then only question the correctness of the amount of the tax assessment, not the lack of legal authority by the City Assessor to impose or assess any realty tax on CJHDC. Payment under protest under Sections 231 and 252 of the Local Government Code thus applied to CJHDC as of 17 November 2005. Thereafter, any question by CJHDC on realty assessment can only refer to the correctness of the amount of the assessment, and not to the City Assessor's legal authority to impose or issue the assessment.

Once the non-tax-exempt status of the taxpayer is settled with finality, or if the same is not in issue, any dispute on the realty assessment only raises questions on the correctness of the amount of the assessment, thus necessitating prior payment of the assessment under protest. To repeat, any protest that CJHDC files or pursues after 17 November 2005 necessarily refers only to the correctness of the amount of the assessment, in which case CJHDC must pay the assessed tax under protest. The present petition should be denied because JHSEZ can no longer claim tax exemption, with the finality of this Court's ruling in *John Hay*. CJHDC's doctrine of operative fact argument is a defense it may raise before the Local Board of Assessment Appeals, to where this case is being remanded.

The facts in the present case are different from *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*<sup>13</sup> (*Napocor*). The province of Quezon assessed Mirant Pagbilao Corporation (Mirant) realty taxes for its machineries in Pagbilao, Quezon. A copy of the tax assessment was also sent to Napocor, with whom Mirant had a Build-Operate-Transfer Agreement. Napocor, and not Mirant, protested the assessment and claimed tax exemption under Section 234(c) and (e) of the

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If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

<sup>12</sup> See *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, 29 June 2004, 433 SCRA 119.

<sup>13</sup> G.R. No. 171586, 25 January 2010, 611 SCRA 71.

Local Government Code.<sup>14</sup> *Napocor* is different from the present case because *Napocor* is not a case of tax exemption by law but a case of assumption of tax by another entity – where *Napocor*, a tax-exempt entity, assumed by contract to pay all taxes that may be incurred (including realty taxes) by *Mirant*, a taxable entity. In *Napocor*, the Court held that payment of the tax under protest was required to contest the assessment.

I vote to **DENY** petitioner Camp John Hay Development Corporation's Petition for Review on Certiorari and **AFFIRM** the Court of Tax Appeals' Decision of 27 July 2005 remanding the case to the Local Board of Assessment Appeals subject to payment under protest of the assailed assessment.



**ANTONIO T. CARPIO**  
Associate Justice

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<sup>14</sup> Sec. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of real property tax:

x x x x

(c) All machineries and equipment that are actually, directly, and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x

(e) Machinery and equipment used for pollution control and environmental protection;

x x x x