

## EN BANC

**[ G.R. NO. 154126, September 15, 2006 ]**

**ALLIED BANKING CORPORATION AS TRUSTEE FOR THE TRUST FUND OF COLLEGE ASSURANCE PLAN PHILIPPINES, INC. (CAP), PETITIONER, VS. THE QUEZON CITY GOVERNMENT, THE QUEZON CITY TREASURER, THE QUEZON CITY ASSESSOR AND THE CITY MAYOR OF QUEZON CITY, RESPONDENTS.**

### RESOLUTION

**CARPIO MORALES, J.:**

Allied Banking Corporation (petitioner) filed the instant motion for clarification of the Decision of this Court promulgated on October 11, 2005 which declared as invalid the third sentence of Section 3, Quezon City Ordinance No. 357 Series of 1995 (the proviso)<sup>[1]</sup> for adopting a method of assessment or appraisal of real property contrary to the Local Government Code and its Implementing Rules and Regulations and the Local Assessment Regulations No. 1-92 issued by the Department of Finance.

Petitioner contends in its motion for clarification that the return of the real property tax erroneously collected and paid is a necessary consequence of this Court's finding that the proviso is invalid, hence, there is no need to claim for a refund with the Local Board of Assessment Appeals<sup>[2]</sup> as provided by the second paragraph of the dispositive portion of the decision to wit:

WHEREFORE, the petition is hereby GRANTED. The assailed portion of the provisions of Section 3 of Quezon City Ordinance No. 357 is hereby declared invalid.

Petitioner's claim for refund, however, must be lodged with the Local Board of Assessment Appeals, if it is not barred by the statute of limitations. (Underscoring supplied)

Treating the motion for clarification as a motion for reconsideration, this Court required respondents to comment thereon.

In their Comment, respondents aver that with the Court's finding that petitioner failed to exhaust administrative remedies,<sup>[3]</sup> "it cannot be allowed to create legal shortcut" by demanding that the real property tax it paid be refunded to it without going through the usual procedure provided for by the Local Government Code,<sup>[4]</sup> specifically Sections 252,<sup>[5]</sup> 226,<sup>[6]</sup> 229,<sup>[7]</sup> 230<sup>[8]</sup> and 231<sup>[9]</sup> thereof. As respondents conclude that the Court's decision is clear and exhaustive to guide the parties, they pray that the motion for clarification be denied.

This Court notes that prior to the filing before the trial court of the petition for

declaration of nullity of the proviso, petitioner commenced a claim for refund with the City Treasurer who referred it to the City Assessor.

The City Assessor denied petitioner's claim for refund by letter dated May 7, 2000:

Please be informed that the subject new assessment was made by the Office of the City Assessor in faithful compliance with the provision of 3rd [s]entence of Section 3, Ordinance No. SP-357, S-95. The duty of the City Assessor is to apply the said statutory provision and not interpret the same. Under the settled jurisprudence in our jurisdiction, the City Assessor, being in the Executive Department, is duty bound to implement the said provision. The same is presumed valid and legal unless declared otherwise by a court of competent jurisdiction.<sup>[10]</sup> (Underscoring supplied)

In its Decision subject of the present motion, this Court ruled that the assailed proviso is null and void *ab initio* for being *ultra vires* and for contravening the provisions of the Local Government Code and its Implementing Rules and Regulations and Local Assessment Regulations No. 1-92 and, as such, it acquired no legal effect and conferred no rights from its inception.<sup>[11]</sup>

Clearly, petitioner and all those similarly situated are entitled to a tax refund/credit corresponding to the difference between the assessed value based on the proviso and the assessed value based on the then prevailing schedule of fair market values prepared by the City Assessor.

It bears stressing, however, that entitlement to a tax refund does not necessarily call for the automatic payment of the sum claimed.<sup>[12]</sup> The amount of the claim being a factual matter, it must still be proven in the normal course and in accordance with the administrative procedure for obtaining a refund of real property taxes, as provided under the Local Government Code.

Under Section 253 of the Local Government Code, the claim for refund or credit for taxes must be filed before the city treasurer<sup>[13]</sup> who shall decide the claim based on the tax declarations, affidavits, documents and other documentary evidence to be presented by petitioner.

SEC. 253. Repayment of Excessive Collections. - When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies provided in Chapter 3, Title Two, Book II of this Code.

WHEREFORE, in light of the foregoing discussion, the second paragraph of the earlier quoted dispositive portion of the Decision of this Court dated October 11, 2005 is amended to read: