

SECOND DIVISION

[G.R. No. 215955, January 13, 2021]

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,
PETITIONER, VS. CENTRAL BOARD OF ASSESSMENT APPEALS,
THE PASAY CITY LOCAL BOARD OF ASSESSMENT APPEALS,
PASAY CITY, THE PASAY CITY TREASURER AND CITY ASSESSOR,
RESPONDENTS.**

DECISION

LOPEZ, J.:

Central in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court, assailing the Resolutions dated June 3, 2014^[2] and December 11, 2014^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 129182, is the exemption from real property tax of petitioner Metropolitan Waterworks and Sewerage System (MWSS).

Facts

On June 19, 1971, Republic Act (RA) No. 6234^[4] created MWSS "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."^[5] It was vested with the power to exercise supervision and control over all waterworks and sewerage systems within Metro Manila, Rizal, and a portion of Cavite.^[6]

In 1997, pursuant to RA No. 8041^[7] or the "National Water Crisis Act of 1995," MWSS entered into a concessionaire agreement with Maynilad Water Services, Inc. (Maynilad) to service the West Zone of the Metropolitan Area that includes Pasay City.

On February 21, 2008, MWSS received Real Property Tax Computations^[8] from the Pasay City Treasurer for taxable year 2008, demanding payment of real property taxes in the total amount of P166,629.36. Allegedly on the same day, MWSS filed a Protest Letter^[9] dated February 3, 2008, addressed to then Pasay City Mayor Wenceslao Peewee Trinidad. MWSS argued that it is a public utility and a government instrumentality, and its properties and facilities are exempt from real property tax, consistent with its position in the Petition for *Certiorari* and Prohibition with the CA that it filed against the local government of Quezon City, docketed as CA-G.R. SP No. 100733.^[10] This claim was anchored upon the case of *Manila International Airport Authority v. CA*,^[11] (MIAA) that declared MIAA a government instrumentality exercising corporate powers,^[12] and thus, exempt from real property taxes under Section 133(o)^[13] and Section 234(a)^[14] of RA No. 7160^[15] or the "Local Government Code of 1991" (LGC).^[16]

Due to inaction on the part of the Pasay City Treasurer, MWSS filed an appeal to the Local Board of Assessment Appeals (LBAA).^[17]

LBAA Ruling

The LBAA observed MWSS's non-compliance with Section 252^[18] of the LGC for failure to file protest with the city treasurer that made the assessment final and not appealable. Nonetheless, the LBAA resolved the substantive issue on whether MWSS is liable to pay real property taxes. It ruled that the MWSS is a government-owned or controlled corporation (GOCC), not a government instrumentality. Hence, the doctrine of tax exemption enunciated in *MIAA* is not applicable. It also pointed out that when the MWSS entered into a concessionaire agreement with Maynilad, the actual use of its real properties was turned over to a taxable person. Therefore, the assessment of real property taxes against the MWSS was "reasonable and collectible."^[19]

Aggrieved, the MWSS filed an appeal to the Central Board of Assessment Appeals (CBAA).

CBAA Ruling

In its Decision^[20] dated August 30, 2012, the CBAA affirmed the assessment's finality, not for failure to comply with Section 252 of the LGC, but for failure to question the legality of the assessment before the city assessor in accordance with Section 226^[21] of the LGC.^[22] For this reason, the CBAA did not discuss the merits of the case for being moot and academic.

MWSS filed a motion for reconsideration (MR), but it was denied in an Order^[23] dated February 27, 2013. In denying the MR, the CBAA acknowledged that MWSS is a government instrumentality, recognized under RA No. 10149,^[24] or the "GOCC Governance Act of 2011." As such, it cannot be subjected to local taxes, fees and charges as provided under Section 133(o)^[25] of the LGC. However, this is not relevant since the collections involved are real property taxes. Instead, Section 40(a)^[26] of Presidential Decree (PD) No. 464,^[27] as embodied under Section 234(a)^[28] of the LGC should apply. In other words, the CBAA ruled that the common limitation on the taxing power of the local government under Section 133(o) should not affect the imposition of real property taxes. Besides, MWSS 's tax exemption under Section 18^[29] of its Charter (RA No. 6234)^[30] had already been withdrawn by Section 234 of the LGC, which states:

SEC. 234. x x x

x x x x

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or - controlled corporations are hereby withdrawn upon the effectivity of this Code.

MWSS appealed the CBAA's ruling to the CA.

CA Ruling

In a Resolution^[31] dated June 3, 2014, the CA dismissed MWSS's appeal for failure to exhaust administrative remedies as provided under Sections 206^[32] and 252^[33] of the LGC, requiring proof of exemption and payment under protest, thus:

WHEREFORE, the petition is **DISMISSED**. The assailed dispositions dated August 30, 2012 and February 27, 2013 **STAND**.

SO ORDERED.^[34]

MWSS's MR was denied in a Resolution^[35] dated December 11, 2014, hence, this petition.

Issues

- (1) Did the CA err in dismissing MWSS's appeal for failure to exhaust administrative remedies?
- (2) Is Pasay City authorized to assess and collect real property taxes from MWSS?

Ruling

Administrative remedies are inapplicable when the issue presented is a pure question of law.

The CA palpably erred in dismissing MWSS's appeal solely on the ground of the alleged non-exhaustion of administrative remedies under the LGC. A careful reading of MWSS's arguments and allegations reveals that it is neither challenging the reasonableness or correctness of the City Assessor's assessment nor asserting error on the part of the City Treasurer's computation of the assessed tax. Plainly, MWSS is assailing the authority of the city assessor and treasurer to assess and collect real property taxes against it. The issue of whether a local government is authorized to assess and collect real property taxes from a government entity is a pure question of law,^[36] which is beyond the LBAA and CBAA's jurisdiction.

In the oft-cited case of *Ty v. Hon. Trampe*,^[37] the Court held that the rule on exhaustion of administrative remedies does not apply when the controversy does not involve questions of fact but only of law.^[38] The protest contemplated under Section 252 of the LGC is required when there is question as to the reasonableness or correctness of the amount assessed, while an appeal to the LBAA under Section 226 is fruitful only where questions of fact are involved.^[39] Accordingly, when the very authority and power of the assessor to impose the assessment, and of the treasurer to collect real property taxes are in question, the proper recourse is a

judicial action.^[40]

Thus, despite the alleged non-exhaustion of administrative remedies, we give due course to the instant Petition on the ground that the controversy only involves a question of law.^[41]

MWSS is a government instrumentality with corporate powers, not liable to the local government of Pasay City for real property taxes. The tax exemption that its properties carries, however, ceases when their beneficial use has been extended to a taxable person. The liability to pay real property taxes on government-owned properties, the beneficial or actual use of which was granted to a taxable entity, devolves on the taxable beneficial user.

The case of *Metropolitan Waterworks Sewerage System v. The Local Government of Quezon City*^[42] (2018 MWSS Case), which reviewed the CA Decision in CA-GR. SP No. 100733, has already settled with finality that MWSS is a government instrumentality vested with corporate powers, and as such, exempt from payment of real property taxes. The Court explained that with the issuance of Executive Order No. 596,^[43] as well as the passage of RA No. 10149,^[44] the Executive and the Legislative Branches have explicitly classified MWSS as a government instrumentality with corporate powers, thus:

Be that as it may, this Court's categorization cannot supplant that which was previously made by the Executive and Legislative Branches. After the

promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596, which recognized this Court's categorization of "government instrumentalities vested with corporate powers." Section 1 of Executive Order No. 596 states:

Section 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of "government instrumentality vested with corporate powers" or "government corporate entity[,"] as defined by the Supreme Court in the case of *"MIAA vs. Court of Appeals, City of Parañaque, et al. [,"] [supra]*, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), *Metropolitan Water and Sewerage Services* (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

Under this provision, petitioner is categorized with other government agencies that were found to be exempt from the payment of real property taxes.

In 2011, Congress passed Republic Act No. 10149 or the GOCC Governance Act of 2011, which adopted the same categorization and explicitly lists petitioner together with the other government agencies that were previously held by this Court to be exempt from the payment of real property taxes:

(n) - *Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the *Metropolitan Waterworks and Sewerage System (MWSS)*, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities