REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LOURDES R. DE ORTEGA,
Petitioner,

- versus -

CTA CASE NO. 2199

CITY BOARD OF ASSESSMENT APPEALS OF MANILA and THE CITY ASSESSOR OF MANILA,
Respondents.

Jan. 31/72

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D E C I S I O N

This is an appeal from the decision of respondent City Board of Assessment Appeals of Manila (B.A.A. Case No. 70-4) dated December 23, 1970, affirming that of the City Assessor assessing at ₱557,000.00 for real estate tax purposes a seven-storey apartment building, known as the "Ortega Apartment," and owned by petitioner, effective 1963.

Petitioner, on July 20, 1963, received a letter dated July 18, 1963, from the City Assessor informing her that her apartment building located at No. 1170-1178 Alhambra St., District of Ermita, known as the "Ortega Apartment" had been assessed for realty tax purposes at ₱270,000.00 effective 1962, and at ₱557,000.00 effective 1963, which amounts correspond to the partially completed building in 1961 and as finally completed in 1962, respectively.

On August 20, 1963, petitioner filed a protest against the assessment for 1962 on the ground that no portion of the building was completed for occupancy by tenants in 1961. With respect to the assessment of the building for ₱557,000.00 effective 1963, she claimed that the same is excessive considering that the assessments of similarly situated buildings in the immediate vicinity were lower and requested that the assessment be reduced.

In a letter dated May 28, 1965, the City Assessor informed petitioner that he was maintaining his assessment. On June 22, 1965, petitioner appealed the assessment to respondent City Board of Assessment Appeals (respondent Board for short) which, on December 23, 1970, rendered a decision modifying that of the City Assessor by eliminating the assessment on the building in the amount of ₱270,000.00 effective 1962 on the ground that it was not yet occupied by tenants in 1961, but maintaining the assessment of ₱557,000.00 for 1963. In connection with petitioner's prayer in her appeal to respondent Board that she be granted a reasonable time to pay the realty tax due on the property without penalty, said Board in its decision held that it is beyond its province and should be directed to the proper official. Hence, petitioner filed her appeal with this Court on January 14, 1971.

The issues involved in this case are as follows:

1. Whether or not the assessment of the Ortega Apartment in the amount of ₱557,000.00, effective 1963, for realty tax purposes is excessive; and

2. Whether or not petitioner should be held liable for penalty for her delay in the payment of realty tax on her property.

Respondent contends that the assessment of petitioner's building is fair and reasonable because it represents its fair market value or true market value at the time of its completion. The said amount was arrived at as follows:

1st Floor	308.00	sq. m.	₱230	₱ 70,840.00
2nd to 7th Floor	1,991.04	" "	200	398,208.00
Machine Room	25.00	" "		3,750.00
Deck Roof	291.54	" "		14,577.00
Elevator				70,000.00
Total				₱557,375.00

Petitioner, on the other hand, alleges that the above assessment is excessive and that the fair or just value thereof should only be ₱337,120, computed as follows:

1st Floor (ground floor)	308	sq. m.	₱ 80	₱ 24,640.00
2nd to 7th floor	2,016	" "	155	312,480.00
Total				₱337,120.00

After a careful study of the computations made by the parties as to the value of the building, it can readily be seen that petitioner arrived at a much lower valuation than that of respondent City Assessor of Manila because she (a) valued the 1st floor and the 2nd to the 7th floor at only ₱80 and ₱155, respectively; and (b) eliminated the values placed by respondent on the machine room, deck roof and elevator of the building.

Petitioner is seeking a reduction of respondent's assessment based mainly on the fact that similarly situated buildings were assessed at a much lower rate than her building. In other words, petitioner is making use of the comparison appraisal method in estimating the value of her building. For purposes of comparison, petitioner cited the Angel Jose Bldg. and Young Enterprise Bldg. (Jose Bldg., and Young Bldg. for short), which, like the Ortega Bldg., are equally first class apartment buildings, multi-storey, and made of reinforced concrete and located in the same vicinity, i.e. in Ermita, Manila, which were assessed by respondent as follows:

ANGEL JOSE BLDG.

1st to 6th Floor	2,974 sq. m.	₱140.00
Terrace (covered)	137 " "	80.00
Roof		free
Elevator		"

YOUNG ENTERPRISE BLDG.

Basement or 1st floor	376 sq. m.	₱ 80.00
2nd to 8th Floor	2,487 " "	170.00
Roof		free
Elevator		"

Petitioner claims that based on the assessment of the other two buildings, the assessment of the 1st or ground floor of the Ortega Bldg. at ₱230 per square meter is excessive and should be reduced to only ₱80.00 because that was the same amount of assessment placed on the ground floor of the Young Bldg. She also asserts that the assessment of the rest of the floors of the Ortega Bldg. at ₱200 per square meter should also be reduced to only ₱155, which is the average assessment per square meter of the Jose Bldg., assessed at

P140 per square meter and the Young Bldg. assessed at P170.00. We cannot agree to the manner by which petitioner arrived at the value of her building for assessment purposes.

It is a general rule that real estate is to be valued for purposes of taxation at its fair market value or, as it is called in the Charter of the City of Manila (Rep. Act No. 409), its "cash value." Cash value is the same as "fair market value." By "cash value" or "fair market value" is meant the amount of money which a purchaser who is willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied. (See Army & Navy Club vs. Trinidad, 44 Phil. 383, 385.) This method of estimating value is what is called the comparative sales approach method. Both parties, however, decided to sustain the validity of their positions by using the comparison appraisal method of estimating value. This was done probably because sales of multi-storey apartment buildings, unlike land and other improvements, are not common. But one thing is certain. There exists no rigid rule for the valuation of property, which are affected by a multitude of circumstances which no rule could foresee or provide for. (New Orleans Cotton Exchange vs. Board of Assessors [1885], 37 La. An., 423, cited in Army & Navy Club vs. Trinidad, supra.) The assessor, however, is bound to assess the property according to his best judgment and with honest purpose and in so doing there exists a rebuttable presumption that he has performed his duty; that the assessment is correct; and that this places the burden of proving the contrary on whoever attacks the assessment. (Cooley on Taxation, Secs. 1146 & 1073, Vol. 3, 4th Ed.)

Among the recognized factors which affect the value of a building are construction, time and location factors. (Philippine Assessors Appraisal Manual by G. Enriquez, p. 107, 1963 Ed.) The cost of construction is the factor which had been mainly relied upon by respondent in the appraisal and assessment of the Ortega Bldg. The Ortega Bldg. and the Young and Jose Bldgs. used as basis for comparison were constructed and completed on different dates. The Ortega Bldg. was finally completed in 1962; while the Young and Jose Bldgs. were constructed in 1957 and 1958, respectively. It cannot be disputed that the value of a building constructed in 1962 is different from a similar building constructed several years before so that it would be improper to equate the value of the former with that of the latter as petitioner would want to do. It is undeniable, too, that the prices of almost all commodities, especially construction materials are on the upward trend. Even the cost of labor became higher in 1961 and 1962 compared to labor in 1957 and 1958. Added to this is the fact that our peso was devalued in 1962, when its purchasing power dropped to only P0.80 compared to P0.97 in 1956. Also, inflation became more pronounced in 1960. (The Peso Is Sick by J. de Jesus, p. 17, Manila Times, Feb. 4, 1972.)

To show that the prices of construction materials were much higher in 1962 than in 1957 and 1958, respondent presented Statistical Bulletin, Vol. XX, No. 2, published by the Department of Economic Research of the Central Bank of the Philippines dated June, 1968, showing that the prices of <u>specific construction materials</u> were higher in 1957 and 1958 than in 1961 and 1962. (Exhs. D & D-1, pp. 9-11, Pet. Folder of Exhs.) But these data refer to prices of selected construction materials only and this alone can not be a safe guide for us to conclude that the entire cost of construction of an entire building in 1962 is the same, higher or lower than in 1957 or 1958. As correctly pointed out by respondent -

> x x x Other factors must be considered, such as the plans of the buildings under consideration and their functional features. It is possible that two buildings may be constructed at the same time, with the same area and the same structural features, but the plan of one of them would call for more quantity of, say, cement, steel bars, columns and beams than that of the other. In this regard, petitioner failed to prove, either during the hearing before the Board of Assessment Appeals or before this Court, that, area for area, the same quantity of materials was used in the subject building as in the

> Young Enterprise and the Angel Jose buildings, or, better still, lesser to offset the difference in the cost of labor and construction materials at the time of their respective construction. Therefore, the similarity in the external features and appearance of different buildings located adjacent to each other, like the buildings under consideration, cannot be the gauge, as petitioner urges, for making a finding that such buildings should be assessed at the same value per unit area. (Respondent's Memorandum, p. 73, CTA rec.)

Petitioner insists that the prices of construction materials, shown in Exh. D-1, and alleged to have been abundantly used in the construction of her building completed in 1962 had remained at about the same levels as in 1957 and 1958. While it is true that cement, hollow blocks, and cast iron pipes, which are abundantly used in the construction of reinforced concrete buildings, had decreased in prices in 1961 and 1962 compared to 1957 and 1958, other materials which were equally abundantly used in building construction, such as gravel, sand, steel bars, nails, plywood, lumber, had increased in prices in 1961 and 1962. We can, therefore, rightly say that the decrease in prices of the materials referred to by petitioner was offset by the relative increase in prices of the other materials used in the construction of her building. It is incorrect for petitioner to categorically say that "prices of other materials abundantly used in such construction, had remained at about the same levels for the periods under consideration." (P. 58, Petitioner's Memorandum.) In the final analysis, since all other materials used in the construction, such as the plumbing, electrical and painting materials have increased, there is an overall increase in the prices of construction materials of buildings in 1961 and 1962. Consequently, we can conclude that the cost of construction of an entire building in 1961 and 1962 is higher than the cost of construction of an entire building in 1957 and 1958.

Note that the percentage rate of increase of prices of construction materials in 1961 is about 12% and 13% higher than in 1957 and 1958, and in 1962, the rate of increase in prices is about 21.5% and 22% than in 1957 and 1958 as shown in Exhibit 12 (p. 48, CTA rec.) of respondent. And comparing the assessed value of the Young Bldg. per square meter, which is equally made of reinforced concrete as the Ortega Bldg., the percentage difference in the increase of the assessment of the latter at ₱200 per square meter, compared with the assessment of the former at ₱170 per square meter, is 15%. This increase of 15% in the assessment per square meter of the major floors (2nd to the 7th floor) of the Ortega Bldg. is relatively in proportion to the increase of prices of building materials in 1961 and 1962, i.e., 12% and 13% and 21.5% and 22%, respectively, compared to the 1957 and 1958 price levels. The assessment made by respondent City Assessor per square meter of the aforesaid floors of the Ortega Bldg. is, in our opinion, fair and reasonable.

Moreover, a period of five (5) years had elapsed from 1957 (when the 2nd to the 8th floor of the Young Bldg. was assessed at ₱170) to 1962 (when the 2nd to the 7th floor of the Ortega Bldg. was assessed at ₱200). An increase of ₱30 in the assessment per square meter of the Ortega Bldg. can not be considered unfair and unreasonable. The reasonableness of the assessment of the aforesaid floors of the Ortega Bldg. at ₱200 can be gleaned from the fact that in 1965, or two years after the assessment of Ortega Bldg., which was effective in 1963, the Sabas-Almeda Bldg., located in the same vicinity and also constructed of reinforced concrete frame, was assessed at ₱250 per square meter as regards the 2nd to the 4th floor (Exh. 9, p. 53 BAA rec.), or ₱50 more than the assessment of the Ortega Bldg.

The assessment of the ground floor of the Ortega Bldg. at ₱230 per square meter is being questioned because the ground floor of the Young Bldg. was assessed at ₱80 per square meter. To justify the disparity in the assessment of the ground floors of the two buildings, respondent presented Felix Silagon, Chief, Building Appraiser, City Assessor's Office, Manila, who testified that during the original appraisal of the Young Bldg., the ground floor was just being used as a garage with a height of only 2.5 meters and was open except the front. The only evidence presented by petitioner to contradict this finding is Exhibit "E-2," a picture showing, among others, part of the ground floor of the Young Bldg. This pictures can not, however, be taken as a basis for fixing the value of the ground floor of the Ortega Bldg. because, by the very admission of petitioner's counsel, the said picture was taken only recently and after several offices had already been constructed on said building (p. 92, t.s.n.), and not at the time when the ground floor was appraised at P80 per square meter. (Pp. 45, 47-48, t.s.n.) This also holds true as regards the ground floor of the Jose Bldg. On the other hand, there was already a restaurant at the ground floor of the Ortega Bldg. in March, 1962 (Exh. 2, pp. 6-7 BAA rec.), indicating the existence of a commercial establishment at the time of assessment. We, therefore, find no valid reason to modify the assessment of the ground floor of the Ortega Bldg. .

Petitioner contends that the imposition of additional assessment on the deck roof the Ortega Bldg. is violative of the uniformity rule of taxation inasmuch as the roofs of the Young and Jose Bldgs. were not similarly assessed.

The deck roof of the Ortega Bldg. was separately assessed by respondent allegedly because, unlike the roofs of the Young and Jose Bldgs., it can be used as space for parties, meetings, dancing and related purposes. It cannot be denied that all the roofs of the said three buildings can be used for sunning laundry. (Exh. E-3, p. 15, Pet. Folder of Exhs.). The fact, however, is that the deck roof of the Ortega Bldg., unlike the roofs of the Young and Jose Bldgs. which are made of galvanized iron, is made of reinforced concrete slab which, to all appearances, could carry a load like any other floor of the same building. The only difference perhaps is that a deck roof is open, uncovered and not tiled or smooth-finished. (See Exh. E-3, supra.) We agree that the deck roof of the Ortega Bldg. can be used as a place for parties, dancing and meetings which can not be possible on the roofs of the Young and Jose Bldgs. This conclusion is bolstered by the testimony of Mr. Felix Silagon, civil engineer, who, upon occular inspection of the Ortega Bldg., found that its elevator reaches up to the deck roof which can only mean that the owner of the building intends to make use of it for purposes other than just to serve as a roof for protection against the sun or rain. (P. 81-83, t.s.n.) Mr. Silagon also testified that there is a big difference between the cost of a building with deck roof and those with ordinary roofing. To quote from his testimony:

> There is a big difference when you put deck roofs -- the beams and other structural provisions there will have to be increased to carry the stipulated load; not only the wind load but also the live load like people that

> may come up. And usually, when it is a deck roof with intention for other use - like perhaps dancing place, or party place or party room, the deck is of nicer finish - I mean the finish is nicer than one with ordinary roofing. Naturally, the cost of building will increase very much -- much higher than a building with only g.i. roofing. (P. 83-84, t.s.n.; underlining supplied.)

Under these circumstances, we believe that the assessment of the deck roof of the Ortega Bldg. is justified.

Respondent Board in its decision with respect to the elevator, applying Section 53 of the Charter of Manila (Republic Act No. 409, as amended by Republic Acts Nos. 1928 and 3899), which provides as follows:

> SEC. 53. Powers and duties of the City Assessor.- x x x. The City Assessor xxx shall appraise and value all the real estate not expressly exempt, except machines, mechanical contrivances, instruments, tools, implements, appliances, apparatus, and paraphernalia used for industrial, agricultural or manufacturing purposes which shall be excluded from such valuation and assessment whether or not attached to lands or buildings. x x x.

ruled that said section specifically exempts machineries, mechanical contrivances, instruments, tools, implements, appliances, apparatus and paraphernalia used for industrial, agricultural or manufacturing purposes; that the Ortega Bldg. is used for commercial and not for industrial, agricultural or manufacturing purposes; and that, therefore, the elevator does not enjoy exemption from assessment.

The business of petitioner of renting her building is not merely a commercial but also an industrial undertaking or activity; in short, the construction of her building was for an industrial purpose. This Court has interpreted a substantially similar provision (Section 3 [f]) of the Assessment Law to the effect that the term "industry" means any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labor and capital and is a distinct branch of trade, or a productive enterprise which employs relatively large amounts of capital and or labor. (Philippine Bulk Corporation vs. Prov. Board of Assessment Appeals of Negros Occidental, CTA 1730, Dec. 26, 1967, citing Philippine Acetylene Company vs. Comm. of Customs, CTA No. 1147, Dec. 26, 1963.) This Court expressed the view in the latter case that a productive enterprise, among others, is one devoted to the production or net return of wealth; and that a "person engaged in commerce or trade employing much labor and capital is engaged in industry because the enterprise is productive of results, profits or benefits." On the basis of this interpretation as to the meaning of "industry," petitioner, by constructing her apartment building and by renting it, is engaged in an industry. This is so because the enterprise of renting property entails much capital and labor which produces results, profits and benefits. The elevator of said building, therefore, which is a machinery or mechanical contrivance used to carry the tenants and the general public to the various floors of the building, is a device used for the efficient operation of the building; hence, it is machinery or instrument used in an industry. The elevator, with a value of ₱70,-000.00, is therefore exempt from realty tax effective 1963 pursuant to Section 53 of Republic Act No. 409 (Charter of the City of Manila), as amended by Republic Acts Nos. 1928 and 3899.

In connection with the assessment of the machine roof at ₱3,750.00, we notice that neither the petition for review nor petitioner's memorandum advanced any reason to justify the cancellation or modification thereof. For failure to rebut the finding of respondent, the assessment of the machine room must be sustained.

Finally, petitioner alleges that she should not be held liable for the payment of the penalty for the delay in the payment of her realty tax on said building which was not due to her fault. She contends that such delay was due to the failure of the City Board of Assessment Appeals to resolve immediately her protest against the assessment.

We believe that this Court lacks competence to pass upon the issue as to whether or not petitioner is liable for the penalty for the delay in the payment of her realty tax. It should be noted that the assessment of the City Assessor and his denial of petitioner's protest, which was appealed to the respondent Board, did not impose any penalty. (Exhs. A & B, <u>supra</u>.) In other words, no decision has been rendered by the City Assessor on the question of the alleged penalty, assuming that he has jurisdiction to impose it, which could be properly elevated to the respondent Board for review. Respondent Board, therefore, correctly declined to pass upon this issue for lack of jurisdiction. Since respondent Board is bereft of jurisdiction to pass on the said issue, it necessarily follows that this Court, whose jurisdiction is limited to a review of the decisions of City and Provincial Boards of Assessment Appeals, is likewise without jurisdiction over the same. (Secs. 7(3) & 11, Rep. Act No. 1125.)

WHEREFORE, the decision appealed from is hereby modified. The assessment of petitioner's apartment building for real estate tax purposes is hereby reduced to ₱487,000.00 effective 1963 (₱557,000.00 less ₱70,000.00, the value of the elevator). With costs against petitioner.

SO ORDERED.

Quezon City, January 31, 1972.

(SGD.) ROMAN M. UMALI
Presiding Judge

WE CONCUR:

(SGD.) ESTANISLAO R. ALVAREZ
Associate Judge

(SGD.) RAMON L. AVANCEÑA
Associate Judge