Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

June 28, 1967

SAMAR MINING CO., INC.,
Petitioner,

versus   CTA CASE NO. 1703

THE BOARD OF ASSESSMENT
APPEALS OF ZAMBOANGA DEL
SUR and PLACIDO L. LUMBAY,
in his capacity as PROVINCIAL
ASSESSOR OF ZAMBOANGA DEL SUR,
Respondents.

x - - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of the Board of Assessment Appeals of Zamboanga del Sur, contained in its Resolution No. 15, which sustained the validity of the real property tax assessed by the Provincial Assessor on the road constructed by petitioner in a land owned by the Republic of the Philippines.

Petitioner is a domestic corporation engaged in the mining industry. It filed applications with the Bureau of Lands for the lease of public land in Zamboanga del Sur for the purpose of constructing a road from its mine site at Buug to its pier area at Pamintayan of the said province. The Bureau of Lands approved the applications and the lease of a portion of the public land was awarded to petitioner on October 7, 1963. However, the preparation and execution of the corresponding lease contracts were held in abeyance (p. 81, BAA record).

Petitioner constructed on a public land, at its own expense, the Samico Road from the mine site to the pier area for the use of the company in hauling and transporting its iron ores (p. 42, BAA record). On June 5, 1964, petitioner received from the Provincial Assessor of Zamboanga del Sur an assessment for real property tax on the improvement made on a portion of the public land consisting of 13.8 kilometers of road constructed by petitioner (Par. 7, Petition for Review; Par. 1, Answer) with an assessed value of ₱1,117,800.00. The real property tax assessment was predicated on the Assessment Law (Commonwealth Act No. 470) which provides as follows:

> SEC. 2. Incidence of real property tax.— Except in chartered cities, there shall be levied, assessed, and collected, an annual *ad valorem* tax on real property including land, buildings, machinery, and other improvements not hereinafter specifically exempted. (Underscoring supplied)

In a letter dated July 14, 1964, petitioner appealed the said real property tax assessment of the Provincial Assessor to the Board of Assessment Appeals by contesting the legality thereof (p. 24, BAA record). The said respondent Board affirmed the validity of the real property tax assessment of the Provincial Assessor but held in abeyance the enforceability of the said assessment pending the execution of the lease contracts between petitioner and the Bureau of Lands (Par. 9, Petition for Review; par. 1, Answer).

On February 16, 1965, petitioner filed a motion for reconsideration of the decision of the Board of Assessment Appeals of Zamboanga del Sur. The motion for reconsideration was, however, denied by the respondent Board and it declared valid and enforceable the real property tax assessment commencing with the year 1959 (Par. 10, Petition for Review; par. 1, Answer). On August 20, 1965, petitioner filed another motion for reconsideration with the respondent Board which was denied by it (Par. 11, Petition for Review; par. 1, Answer). Hence, this appeal.

In their answer, respondents alleged that the petition for review should not be entertained and given due course by this Court because of the failure of petitioner to pay the real property tax assessed against it as required by the Assessment Law which provides, among others, as follows:

> SEC. 94. Restriction upon power of court to impeach tax.—No court shall entertain any suit assailing the validity of a tax assessed un-

der this Act until the taxpayer shall have paid, under protest, the taxes assessed against him x x x"

On the other hand, petitioner alleged that it is not subject to the real property tax assessed against it by the Provincial Assessor, in line with the doctrine enunciated by our Supreme Court in the case of Bislig Bay Lumber Company, Inc. v. The Provincial Government of Surigao, G. R. No. L-9023, November 13, 1956; 100 Phil. 306). It is claimed, therefore, that payment of the real property tax is not a prerequisite to the validity of the appeal to this Court.

The appealed case was submitted to the Court for decision on the basis of the pleadings of the opposing parties and the records of the Board of Assessment Appeals submitted to us (p. 50, CTA rec.).

The controversial issues submitted for our resolution are the following:

1. Whether or not the petitioner (Samar Mining Co., Inc.) is required to pay first the real property tax assessed by the Provincial Assessor before it can appeal to this Court from the decision of the Board of Assessment Appeals, under Section 54 of the Assessment Law; and

2. Whether or not the road constructed by petitioner on land owned by the Republic

of the Philippines is subject to real property tax under Sec. 2, in relation to Sec. 3 (a), of the Assessment Law.

First Issue

It is contended by respondents that, under Section 54 of the Assessment Law, supra, petitioner cannot institute an action in court assailing the validity of the tax without paying first the real property tax assessed against it as a condition precedent to the acquisition of jurisdiction by this Court. However, the extent and scope of the jurisdiction of the Court of Tax Appeals relative to the case at bar are embodied in Sections 7(3) and 11 of Republic Act No. 1125, the pertinent portions of which provide as follows:

> "SEC. 7. Jurisdiction. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> x x x x x
>
> (3) Decisions of provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto."
>
> "SEC. 11. Who may appeal; effect of appeal.— Any person, association or corporation adversely affected by a decision or ruling of x x x any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

The legal provisions conferring exclusive appellate jurisdiction on the Court of Tax Appeals to review decisions of the provincial or city Board of Assessment Appeals would be empty, meaningless and unenforceable because, under Section 54 of the Assessment Law, "no Court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him." The conflict between Sections 7(3) and 11 of Republic Act No. 1125 and Section 54 of the Assessment Law, *supra*, should be harmonized and reconciled in order to give effect to the provisions of Republic Act No. 1125 creating the Court of Tax Appeals.

Prior to the enactment of Republic Act No. 1125, all civil actions involving the legality of any tax, impost or assessment were under the jurisdiction of the Court of First Instance (Sec. 44, Republic Act No. 296). It is clear, therefore, that before the creation of the Court of Tax Appeals all cases involving the legality of assessments for real property taxes, as well as the refund thereof, were properly brought and taken cognizance by the said court. However, with the passage by Congress and the approval by the President of Republic Act No. 1125, the jurisdiction over cases involving the validity of realty tax assessment were transferred from the Court of First Instance to the Court of Tax Appeals (See Sec. 22, Rep. Act No. 1125). The only exception to the grant of exclusive appellate jurisdiction to the Tax Court relates to cases involving the refund of real property taxes which remained with the Court of First Instance (See City of Cabanatuan, et al. v. Gatmaitan, et al., G.R. No. L-19129, February 28, 1963).

A critical and analytical study of Section 7 of Republic Act No. 1125, in relation to subsections (1), (2) and (3) thereof, will readily show that it was the intention of Congress to lodge in the Court of Tax Appeals the exclusive appellate jurisdiction over cases involving the legality of real property tax assessment, as distinguished from cases involving the refund of real property taxes. To require the taxpayer, as contended by respondents, to pay first the disputed real property tax before he can file an appeal assailing the legality and validity of the realty tax assessment will render nugatory the appellate jurisdictional power of the Court of Tax Appeals as envisioned in Section 7(3), in relation to Section 11, of Republic Act No. 1125. If we follow the contention of respondents to its logical conclusion, we cannot conceive of a case involving the legality and validity of real property tax assessment, decided by the Board of Assessment Appeals, which can be appealed to the Court of Tax Appeals. The position taken by respondents is, therefore, in conflict with the Explanatory Note contained in House Bill No. 175, submitted during the First Session, Third Congress of the Republic of the Philippines, and the last paragraph of Section 21 of Republic Act No. 1125 which provides as follows:

> SEC. 21. General provisions. -
>
> x x x x x x
>
> Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed.

Accordingly, we hold that this Court can entertain and give due course to petitioner's appeal assailing the legality and validity of the real property tax assessment here in question without paying first the disputed real property tax as required by Section 54 of the Assessment Law.

Second Issue

Petitioner contends that it is not subject to real property tax despite the provisions of Section 2 of the Assessment Law, *supra*, authorizing the assessment and collection of the *ad valorem* tax on real property and other improvements thereon, in line with the decision of our Supreme Court in the case of Bislig Bay Lumber Company, Inc. v. The Provincial Government of Surigao, supra, which held as follows:

> "It is the theory of appellant that, inasmuch as the road was constructed by appellee for its own use and benefit it is subject to real tax even if it was constructed on a public land. On the other hand, it is the theory of appellee that said road is exempt from real tax because (1) the road belongs to the national government by right of accession, (2) the road cannot be removed or separated from the land on which it is constructed and so it is part and parcel of the public land, and (3), according to the evidence, the road was built not only for the use and benefit of appellee but also of the public in general.
>
> "We are inclined to uphold the theory of appellee. In the first place, it cannot be disputed that the ownership of the road that was constructed by appellee belongs to the government by right of accession not only because it is inherently incorporated or attached to the timber land leased to appellee but also because upon the expiration of the concession, said road would ultimately pass to the national government (Articles 440 & 445, new Civil Code; Tabotabo v. Molero, 22 Phil., 413). In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive x x x Since as above shown, the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of section 2 of Commonwealth Act No. 470.

"x x x It is well settled that a real tax, being a burden upon the capital, should be paid by the owner of the land and not by a usufructuary (Mercado v. Rizal, 67 Phil., 608; Article 598, new Civil Code). Appellee is but a partial usufructuary of the road in question." (underscoring supplied)

It is, however, the contention of respondents that, although the road in question was constructed by petitioner on public land, the said road is still subject to ordinary taxes under Section 115 of Commonwealth Act No. 141, as amended by Republic Act No. 436, which reads as follows:

SEC. 115. All lands granted by virtue of this Act, including homesteads upon which final proof has not been made or approved, shall, even though and while the title remains in the State, be subject to the ordinary taxes, which shall be paid by the grantee or the applicant, beginning with the year next following the one in which the homestead application has been filed, or the concession has been approved, or the contract has been signed, as the case may be, on the basis of the value fixed in such filing, approval or signing of the application concession or contract. (Underscoring supplied)

In the case at bar, petitioner filed its miscellaneous lease applications under Commonwealth Act No. 141, as amended (pp. 84 & 86, BAA rec.). It will be noted from Section 115 of Commonwealth Act No. 141 that "all lands granted" by virtue of said Act, whether by sale, lease, or use thereof, and while the title remains in the State shall be subject to ordinary taxes. It is clear, therefore, from the said provisions of the law that only the "lands" and not the "improvements" thereof are subject to ordinary taxes. On the other hand, under Section 2 of the Assessment Law, "improvements" on land are subject to real property tax. The question may be asked: Are the improvements made on land owned by the Republic of the Philippines or any political subdivisions thereof subject to the realty tax imposed by the Assessment Law? We will answer the question in the negative because the road constructed by petitioner on a public land constitutes an integral part thereof and not an independent improvement.

As lessee of the public land on which the road was constructed, petitioner is merely a usufructuary thereof and, upon the expiration of the lease contract, the said road will ultimately pass to the national government (Articles 440 & 445, new Civil Code; Tabotabo v. Molero, 22 Phil. 413.) This view is strengthened and confirmed by Section 38 of Commonwealth Act No. 141 which provides as follows:

> SEC. 38. Leases shall run for a period of not more than twenty-five years, but may be renewed once

> for another period not to exceed twenty-five years, in case the lessee shall have made important improvements which, in the discretion of the Secretary of Agriculture and Commerce, justify a renewal. Upon the final expiration of the lease, all buildings and other permanent improvements made by the lessee, his heirs, executors, administrators, successors, or assigns shall become the property of the Government, and the land together with the said improvements shall be disposed of in accordance with the provisions of chapter five of this Act. (Underscoring supplied.)

The tax-exemption theory of petitioner is bolstered by Section 3(a) of the Assessment Law (Commonwealth Act No. 470) which provides as follows:

> SEC. 3. Property exempt from tax.—The exemptions shall be as follows:
>
> (a) Property owned by the Republic of the Philippines, any province, city, municipality or municipal district.

Inasmuch as the road constructed by petitioner on public land can really be considered as integral part thereof and not as an independent improvement, the said improvement cannot be taxed under Section 2 of the Assessment Law, notwithstanding the provisions of Section 115 of Commonwealth Act No. 141, as amended, supra. Thus, in a case where the taxpayer was awarded the lease of swamps belonging to the government, the improvements made by the lessee, consisting of dikes and flood-gates of fishponds, were declared exempt from the real property tax imposed by the Assessment Law.] In the said case, our Supreme Court held:

> "We however believe that the assessment on the improvements introduced by defendants on the fishponds has included more than what is authorized by law. The improvements as assessed consist of dikes, gates, bodegas, and guard-houses. The assessed value of the guard-houses and bodegas totals ₱6,850 which appellants are not now questioning, but they dispute the assessment on the dikes and gates in this wise: 'After the swamps were leased to appellants, the latter cleared the swamps and built dikes, by pushing the soil to form these dikes in the same way that paddies are built on lands intended for the cultivation of palay, the only difference that dikes used in fishponds are relatively much larger than the dikes used in ricelands.' <u>We believe this contention to be correct, because these dikes can really be considered as integral parts of the fishponds and not as independent improvements. They cannot be taxed under the assessment law</u>. The assessment, therefore, with regard to improvements should be modified by excluding the dikes and gates." (Municipality of Cotabato, et al. v. Roman R. Santos, et al., G.R. No. L-12757, May 29, 1959; underscoring supplied.)

WHEREFORE, in view of the foregoing consideration, the decision rendered by the Board of Assessment Appeals of Zamboanga del Sur is hereby reversed. Petitioner should, therefore, be declared exempt from the real property tax assessed by the Provincial Assessor of Zamboanga del Sur. Without pronouncement as to cost.

SO ORDERED.

Quezon City, June 28, 1967.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

Presiding Judge Umali did not take part.