REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

VISAYAN ELECTRIC COMPANY, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 1439

THE BOARD OF ASSESSMENT APPEALS
OF THE CITY OF DUMAGUETE,
Respondent.

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

D E C I S I O N

This is an appeal from a decision of the Board of Assessment Appeals of the City of Dumaguete dated July 11, 1963, (Appendix "A"-Petition) affirming the real estate tax assessment of the City Assessor on certain electric and power installations of the petitioner in the sum of ₱120,460.00.

The petitioner is the successor-in-interest of the Visayan Electric Co., S. A. which in turn was a successor to "La Electrica", the original grantee of a legislative franchise (Act No. 2781) for the operation and maintenance of an electric light, heat and power system in the City of Dumaguete (par. I, petition; par. I, Answer; Exhibit "1", pp. 59-63 CTA, Records).

On March 29, 1961, the City Assessor of Dumaguete issued Tax Declaration No. 16567 (New) in the name of the petitioner, assessing for taxation purposes under the provisions of Art. 14, of Act 2791, electric and power installations of the petitioner (Exhibit A).

105

This Tax Declaration No. 16567 was subsequently superseded and cancelled by Tax Declaration No. O-1495. The electric and power installations, as valued by the City Assessor, are as follows:

			VALUE
87	posts, concrete	8"x8"x25'	₱7,003.50
288	" "	8"x8"x30'	26,208.00
68	iron pipes	4"xØ x20'	5,712.00
50	iron pipes	4"xØ x25'	4,550.00
47	posts, wooden	8"xØ x25'	2,466.00
148	" "	8"xØ x30'	9,324.00
94	posts, wooden	8"xØ x25'	7,567.00
55	transformers		38,500.00
29,762	meters-wire primary		3,720.00
119,048	" " secondary		11,904.80
Accessories-insulators, knobs, brackets, etc.,		--------------	3,500.00
		TOTAL	₱120,460.00

On April 17, 1961, petitioner wrote the City Assessor of Dumaguete informing the latter that, as per opinion of its lawyers, the properties in question are personal properties, and therefore not subject to real estate taxes. At the same time it returned Tax Declaration No. 16567, with a request that it be cancelled (par. V, Petition).

On May 8, 1961, the City Attorney of Dumaguete, upon request of the City Assessor, rendered an opinion that pursuant to the provisions of Art. 14, of Act 2791, the assessment on the properties in question is in order (par. VII, Petition). Accordingly, the City Assessor of Dumaguete, in a written indorsement, informed the petitioner that in view of said legal opinion, Tax Declaration No. 16567 stands. (par. VIII, Petition; par. VIII, Answer.)

109

The petitioner, therefore, appealed to the Board of Assessment Appeals of the City of Dumaguete, which in a resolution dated July 11, 1963, affirmed the assessment of the City Assessor. (Appendix "A", Petition).

Pursuant to the above-mentioned resolution of the respondent, the City Treasurer of Dumaguete demanded from the petitioner the payment of the sum of ₱5,709.79 as real property tax, inclusive of penalties; par. XII, Answer).

Dissatisfied with said decision of respondent, petitioner, on August 2, 1963, filed the present petition for review.

The only issue raised is whether or not the properties of the petitioner above described are subject to real estate tax.

Petitioner contends that the electric posts, transformers, wires, insulators, knobs, brackets, and other accessories used in the operation and maintenance of its electric light, heat, and power system are personal properties and, therefore, not subject to real estate tax. Cited in support of this contention are our decisions in the Philippine Long Distance Telephone v. Board of Tax Appeals of Bacolod City, C.T.A. Case No. 300, June 29, 1957, and Manila Electric Company v. Board of Assessment Appeals of Quezon City et al., CTA Case No. 358, December 29, 1958.

110

Contrarywise, respondent claims that although the properties in question are by their nature personal properties, nevertheless, by destination they are real properties falling under par. 5, Art. 415 of the New Civil Code. Respondent further argues that, even granting that petitioner is not engaged in an industry, nevertheless, it must necessarily be engaged in some kind of works, as to fall under par. 5, of Art. 415 of the same Code.

Petitioner's contention is well taken. In the case of the Philippine Long Distance Telephone Company v. the Board of Tax Appeals of Bacolod City, *supra*, this Court held:

> "The central office equipments and outside installations of petitioner such as its poles, conduit, terminals, cables, radio equipments and manholes cannot be considered as constructions so as to make them fall within the purview of paragraph 1, Article 415 of the New Civil Code. Constructions generally refer to big improvements which have to undergo the process of building, construction and erection or extensive repairs and alterations (Webster's New International Dictionary, 2nd Edition; pp. 498-500, Vol. 8A Words and Phrases). The setting up of petitioner's central office equipments inside a rented building, the digging of manholes and putting up of telephone poles are not acts of construction, building or erection as the terms are commonly and generally used.
>
> "Neither could we classify petitioner's properties as immovables under paragraph 3 of the same article of the New Civil Code. The attachment of movable to immovable property in order that the former could be classified under the category of the latter by attachment or incorporation must be 'in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object.' (par. 3, Article 415, New Civil

Code). x x x

x x x x x

"It is of common knowledge that the poles, conduit, wires, equipments and other appliances of the petitioner company as is the case with the Meralco are moved or replaced now and then for the convenience of their customers and the public. Old wooden, creosoted and truscon poles, wires and other installations are often replaced with new ones with the use of special equipments and devices without the least impairment of the real property to which they are fixed.

"Paragraph 5, Article 415 of the New Civil Code is just as inapplicable to petitioner's properties for the purpose of classifying them as immovables for realty tax purposes as the other two paragraphs quoted above. In order that machinery, receptacles, instruments or implements attached to a piece of land or building may be considered as immovables under said paragraph 5, they must be attached thereto by the owner of the tenement (Davao Saw Mill Co. vs. Castillo 61 Phil., 708) and must be intended for his industry or trade (Berkenkotter vs. Cu Unjieng 61 Phil., 663). As admitted by both parties, the equipments, poles and other apparatus of petitioner now in question are installed on public and private property as the petitioner herein has no land or building of its own in Bacolod City. One who is engaged in the operation and maintenance of a telephone system by virtue of a franchise cannot be said to be engaged in an industry or trade. A telephone company is a common carrier in the same sense as a telegraph company, and it has certain well-defined obligations of public character. It is a public quasi corporation. (Swayze v. City of Monroe 40 So. 926, 928, 116 La 643; Hockett vs. State 5 N. E. 178, 185, 105 Ind. 250, 55 Am. Rep. 201.)

"Considering the nature of petitioner's properties; the use for which they are intended and their temporary attachment to public and private tenement not belonging to petitioner;

117

the intention of the Legislature when it granted the franchise under Act 3436 in considering them as movables subject to relocation or removal; the intention of petitioner and the lessors of the land and building on which they are installed in considering them as such; and, the possibility of their separation from the building or lands on which they are installed without breaking them or without impairing the real property to which they are fixed, the more appropriate provision of law applicable in their classification is paragraph 4, Article 416 of the New Civil Code which reads as follows:

> 'The following things are deemed to be personal property:
>
> x x x x
>
> (4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.'

"Being personal or movable properties, the Treasurer of Bacolod City and the respondent Board of Tax Appeals of said City erred, therefore, in classifying petitioner's properties as immovables and in assessing and collecting real estate taxes thereon for the years 1953, 1954 and 1955."

The Supreme Court, in the case of Board of Assessment Appeals, et al. v. Manila Electric Co., G. R. No. L-15334, January 31, 1964 (affirming CTA Case No. 358, December 29, 1958), held:

> "The steel towers or supports in question, do not come within the objects mentioned in paragraph 1, because they do not constitute buildings or constructions adhered to the soil. They are not constructions analogous to buildings nor adhering to the soil. As per description, given by the lower court, they are removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from

> place to place. They cannot be included under paragraph 3, as they are not attached to an immovable in a fixed manner, and they can be separated without breaking the material or causing deterioration upon the object to which they are attached. Each of these steel towers or supports consists of steel bars or metal strips, joined together by means of bolts, which can be disassembled by unscrewing the bolts and reassembled by screwing the same. These steel towers or supports do not fall under paragraph 5, for they are not machineries or receptacles, instruments or implements and even if they were, they are not intended for industry or works on the land. Petitioner is not engaged in an industry or works on the land in which the steel supports or towers are constructed" (underlining supplied).

We find no urgent reason to depart from the above-quoted decisions.

WHEREFORE, the decision of the respondent contained in its resolution dated July 11, 1963 (Appendix "A") is hereby reversed and set aside, without pronouncement as to costs.

SO ORDERED.

Manila, March 13, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

114