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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BATAAN REFINING CORPORATION,
Petitioner,

versus CTA CASE NO. 1587

July 8, 1967

BOARD OF ASSESSMENT
APPEALS OF BATAAN,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Board of Assessment Appeals of Bataan dated February 16, 1965, affirming that of the Acting Provincial Assessor of Bataan raising the assessed value of a portion of petitioner's refinery site in the amount of ₱4,781,180.00 at the rate of ₱4.00 per square meter and fixing the assessed value of all the machineries in the refinery at ₱65,759,050.00, effective January 1, 1962 and January 1, 1966, respectively.

Briefly, the facts of the case, which respondent considered to have been substantially stated by petitioner (p. 207, CTA rec.), are as follows:

On December 7, 1957, petitioner, then Standard Vacuum Refining Corporation (Phil.), was granted a refining concession under the provisions of Republic Act No. 387, known as the Petroleum Act of 1959. In preparation for the establishment of its petroleum refinery in Limay, Bataan, one of its stockholders, Esso Standard Eastern, Inc. (then Standard Vacuum Oil Company), purchased, in 1955, 2,131,065 square meters of land in the municipality of Limay, Province of Bataan, for ₱216,690.00, or approximately at ₱.10 per square meter.

The Acting Provincial Assessor of Bataan in December, 1958, notified petitioner that its land had been assessed for 1959 at the rate of ₱1.60 per square meter or at ₱3,487,940 which was subsequently reduced to ₱216,690.00, to conform with the actual purchase price effective January 1, 1959. On April 20, 1959, the Acting Provincial Assessor of Bataan issued Assessment Order No. 13 (Exhs. E & 3, pp. 39-41, BAA rec.) prescribing the schedule of values for industrial lands in all the municipalities of the province of Bataan, which was later on approved by the Secretary of Finance. Pursuant to said schedule, the Acting Provincial Assessor on October 28, 1959 again notified petitioner increasing the assessed value of the same land from ₱216,690.00 to ₱4,438, 980.00, or at the rate of ₱3.50 per square meter, effective 1960. From this increased assessment, petitioner appealed to respondent which on April 29, 1960 rendered a decision reducing the assessed value of the land from ₱3.50 to ₱3.00 per square meter (Exh. G).

On December 28, 1961, the Acting Provincial Assessor of Bataan mailed to petitioner a copy of Tax Declaration No. 2969, which was received by petitioner on January 3, 1962, raising again the assessed value of the refinery site from ₱3.00, as fixed by respondent on April 29, 1960, to ₱4.00 per square meter, or a total of ₱4,781,180.00 effective 1962 (See Exhs. F, 4 & 8, pp. 1-3, 63, BAA rec.). In the same tax declaration, petitioner's refinery machineries were assessed at ₱80,832,790.00 (Exhs. F & 8, supra) which was subsequently reduced to ₱65,759,050.00 under Tax Declaration No. 3004 (Exhs. H & 9, p. 64, BAA rec.) to take effect in 1966. From this action of the Acting Provincial Assessor of Bataan, petitioner appealed to respondent (pp. 4-10, 17-34, BAA rec.) which in a decision rendered on February 16, 1965, declared Tax Declarations Nos. 2969 and 3004 valid and confirmed the same. Petitioner on March 25, 1965, filed an appeal in this Court seeking the review of this decision of respondent.

The first question posed before this Court is one of tax exemption. Petitioner urges that it is exempt from the payment of real property tax under Article 102 of the Petroleum Act of 1949, which provide as follows:

> ART. 102. <u>Work obligations, taxes, royalties not to be changed</u>. — Work obligations, special taxes and royalties which are fixed by the provisions of this Act or by the concession for any of the kinds of concessions to which this Act relates, are considered as inherent on such concessions after they are granted, and shall not be increased or decreased during the life of the concession to which they apply; nor shall any other special taxes or levies be applied to such concessions, <u>nor shall concessionaires under this Act be subject to any provincial, municipal, or other local taxes or levies</u>; nor shall any sales tax be charged on any petroleum produced from the concession or portion thereof, manufactured by the concessionaire and used in the working of his concession. <u>All such concessionaires, however, shall be subject to such taxes as are of general application</u>, in addition to taxes and other levies specifically provided in this Act. (Republic Act No. 387, "Petroleum Act of 1949," approved on June 18, 1949; underlining supplied.)

The foregoing provision clearly contains a tax exemption from "any provincial, municipal, or other local taxes or levies" in favor of a holder of a petroleum refinery concession. <u>Real property tax, to our mind, is a local tax</u> or levy because under Section 5 of the Assessment Law, the tax is levied and the rate is, within specified limits, fixed by the provincial board by resolution with respect to the share of the province, and by municipal ordinance with respect to the share of the municipality, and the proceeds of the tax is exclusively for the benefit of the province and municipality. In his report to the Special Tax Revision Commission entitled "Property Tax Administration in the Philippines", J. G. Castillo said the following:

> "During the Spanish Regime, local governments were mainly supported by revenue accruing to the Intendencia General, the main source of which was taxes levied on persons rather than on property. No real property tax system in the accepted sense of the term existed until the American sovereignty was established in the Philippines.
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> "Introduced in the Philippines with the advent of the American Regime, the real property tax has become firmly established and will doubtless continue to be a mainstay in the field of local taxation. On January 31, 1901, Act No. 82 of the Philippine Commission organizing the municipal governments in the Philippines was enacted. This was the first law governing property tax assessment. Among other provisions, the law authorized the levy of not less than one-half of one per centum, the proceeds of which accrued entirely to the municipalities . . ."

Although we are of the persuasion that real property tax is a local tax or levy, we are, however, of the opinion that it is not included in the exemption in question. Article 102 of the Petroleum Act of 1949, after dealing with privileges and exemptions from particular taxes, among which are the local taxes and levies, goes on to qualify that "All such concessionaires, however, shall be subject to such taxes as are of general application, in addition to taxes and other levies specifically provided in the Act." Real property tax readily falls under the clause "taxes of general application". It is a tax that is not exactly in the same category as local taxes and levies imposed under powers vested by the charter of the provinces and municipalities where the option to levy or not is given to the municipalities and provinces. The latter kind of taxes are applicable only to localities where the governing bodies thereof opted to impose them by resolution or ordinance; thus they are purely of local application. Real property tax on the other hand applies to all the length and breath of the country. Section 2 of the Assessment Law provides that "there shall be levied, assessed, and collected, an annual ad valorem tax in real property . . ." Similar provisions appear in all city charters. No local government can escape imposing the tax and it is thus of general application in contrast to taxes levied under the charter of the provinces and municipalities which are applicable only to particular localities where the governing bodies have chosen to exercise their authority to tax.]?

The foregoing interpretation of the exemption in question is in keeping with the well-established rule of statutory construction that provisions of a statute should be harmonized to give effect to all provisions thereof unless they are patently irreconcilable. It is also in keeping with the rule of taxation that exemptions should be strictly interpreted. And it may not be amiss to say at this juncture that it is difficult to think that Congress intended to extend the exemption to real property tax which is the mainstay of local taxation.

We find no merit in respondent's contention that petitioner can no longer raise before us the question of exemption from real property tax under the Petroleum Act of 1949 because the said question has already been resolved by respondent adversely to petitioner in its decision rendered on April 29, 1960. In the said decision, respondent declared that petitioner is not exempt from real property tax under the Petroleum Act of 1949. However, it reduced the re-assessment made by the Acting Provincial Assessor of Bataan on the refinery site from ₱3.50 to ₱3.00 per square meter effective 1960. Petitioner did not appeal this decision of respondent to the Court of Tax Appeals. The effect of petitioner's failure to appeal within the reglementary period the decision of respondent, fixing the assessed value of the refinery site at ₱3.00 per square meter effective 1960, is to render the said decision final and executory, as far as petitioner is concerned (See Victorias Milling Co., Inc. v. The Prov. Assessor, et al., Negros Occ., Civil Case No. 2670, Sept. 3, 1964). In contemplation of law, petitioner is deemed to have abided by the decision of respondent and has no other recourse but to follow the same. However, this decision does not in any way bind this Court on the legal question of the exemption and will not preclude it from passing again upon the same question when properly brought to it on appeal in a subsequent case, as what happened herein. Otherwise, this Court would be deprived of its exclusive jurisdiction to review on appeal decisions of the Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law (See Sec. 7 /37, Rep. Act No. 1125).

The next question presented to us is whether the assessment of ₱4.00 a square meter conforms with the Assessment Law.

The pertinent provision of the law reads as follows:

> SEC. 4. Principle governing valuation and assessments. — All real property subject to taxation under the provisions of this Act shall be valued and assessed for taxation at its true and full value in accordance with the schedule of values in force in the municipality or municipal district wherein it is situated. As

> far as properly applicable such schedule shall be controlling; but where the property to be assessed is of a kind not classified in the schedule or of a kind for which a value is not therein fixed, it shall be assessed at its full and true value, independently of such schedule." (Underscoring supplied)

Prior to the purchase of the refinery site, the land in question was agricultural, fruit and forest lands, and classified as such for taxation purposes. In 1959, because there was still no schedule of values for industrial lands in Limay, Bataan, said land was assessed at its actual purchase values or at ₱0.10 per square meter. After the issuance and approval of the schedule of values for industrial lands in the province of Bataan in April, 1959, the refinery area was reassessed at ₱3.50 per square meter as second-class industrial land, effective 1960. This increased assessment was appealed to respondent, which in a decision rendered on April 29, 1960 reduced the valuation to ₱3.00 per square meter on the ground that similar properties in Bauan, Batangas where the Caltex refinery is located, are assessed at lower rates than the assessment in question when said municipality is higher in class and more progressive than the municipality of Limay. It also found that the buildings constructed on the refinery area were not yet completed in 1960, and hence, not yet subject to taxation. This decision of respondent became final and executory for failure of petitioner to appeal. On December 28, 1961, the Acting Provincial Assessor of Bataan re-assessed the refinery site from ₱3.00, as fixed by the respondent for 1960, to ₱4.00 per square meter, effective 1962. The increased assessment was based on the alleged "installation of the machineries and the construction of buildings, tanks and other permanent improvements" and the fact that the "rates are very low compared to those in Batangas province where the oil refineries of Caltex and Shell are located" (Exh. D).

We do not think that the Acting Provincial Assessor of Bataan was justified in re-assessing the refinery area at ₱4.00 per square meter on the ground that improvements had been made thereon. It should be observed that respondent already considered the various improvements made by petitioner on the refinery area when it fixed the rate at ₱3.00 per square meter effective 1960, which was a considerable increase from the previous assessment in 1959 (at ₱0.10 per sq. m., more or less). The land was already a refinery site even if the structures thereon were incomplete. It is true that petitioner had added improvements since 1960, but these were mere additional machinery needed to complete the refinery and we can not see how these additions have increased the value of the refinery area as such. The additional machinery could not have enhanced its intrinsic value as a site for a factory. If it increased in value it is because of the improvement thereon but additional improvements like buildings, machinery, tanks, etc., are subject to a separate and distinct assessment from that of the land and are taxed independently thereof as was done by the assessor. As far as the intrinsic value of the refinery site is concerned, it would seem to be still ₱3.00 per square meter and should be assessed as such. Of course it would have been a different case if the adjoining lands, as a result of the construction of petitioner's refinery, blossomed into a commercial center or business section or residential area, thus enhancing the value of the land in the locality. But nothing to this effect appears.

The true test of the fair market value of a land is the price it will bring in the open market.

> "By 'fair market value' or 'cash value' is meant the amount of money which a purchaser 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. The criterion established by the statute and by the decisions contemplates a hypothetical case. Hence, the buyers need not be actual and existing purchasers. What a thing has cost is no infallible criterion of its market value" (Army & Navy Club v. Trinidad, 44 Phil. 383).

> "The 'market value' of property is the price the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it." (Macondray & Co. v. Sellners, 33 Phil. 370.)

The facts, however, show that lands surrounding the refinery area were being freely bought and sold in 1963, which is later than the year in question, at prices far below the valuation in question. Adjoining lands bought by Esso Standard Eastern, Inc. for its fertilizer plant were bought at prices ranging from ₱1.00 to ₱3.00 per square meter, while on the other hand there is nothing to show that sales at higher prices have been made or that a better price could have been obtained after a fair and reasonable effort have been made to find a purchaser who would give the highest price for it. Considering that the need of the petitioner for land for said fertilizer plant must have been known by landowners, in all probability petitioner must have paid the best price for its purchases. The assessment at ₱4.00 per square meter, from all appearances, does not meet the test of true market value.

Respondent's pretension that the rates in question are allegedly low compared to similar properties of Caltex and Shell refineries in the province of Batangas is without merit. The properties located in the province of Batangas can not be the criterion for the fair market value of land in the province of Bataan. It is needless to discuss the fact that the conditions prevailing in the two provinces are different and valuations based on this consideration alone would be unreasonable. Considering the circumstances of this case, we reiterate that the fair market value of petitioner's refinery site is ₱3.00 per square meter, the rate fixed by respondent in its decision on April 29, 1960, which has been accepted by petitioner when it failed to appeal said decision of respondent.

Petitioner claims that the area assessed as first-class industrial land is much in excess of the area fixed in the schedule of values. It urges that the total area of the refinery site which could be classified as first-class industrial land is only 421,552 square meters (398,034 plus 23,518) and not 1,195,552 square meters as fixed by the Acting Provincial Assessor of Bataan. We cannot subscribe to this contention. When petitioner appealed to respondent in connection with the assessment for 1960, it never questioned the area of the refinery site as fixed by the Acting Provincial Assessor. When respondent rendered its decision, petitioner did not appeal and said decision has become final and executory. Petitioner is now estopped from questioning the correctness of the area comprising the refinery site. To allow petitioner to do so would be to disturb the decision of respondent which has already become final and binding upon the petitioner. At any rate, the Municipal Treasurer of Limay, Bataan, inspected and personally measured, with the aid of a clerk, the area actually occupied by the refinery site in computing the number of square meters falling under the category of first-class industrial land in accordance with the schedule of values (See pp. 402-403, t.s.n.).

We now come to the assessment of petitioner's machinery. Petitioner contends that its machinery should be taxed beginning 1967 because the assessment was allegedly for the entire machinery and since the last unit started operating only on January 23, 1961, the entire machinery should be deemed in operation only in 1961. Petitioner further contends that if portions of the machinery actually operated in 1960, they were merely for testing purposes. Respondent, on the other hand, counters that petitioner started operating the machinery in 1960 as shown by the fact that it had withdrawn manufactured products as early as December 1960 and paid specific taxes due thereon. The law in point provides:

> "SEC. 3. Property exempt from tax. -
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> x x x x x
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> "(f) Machinery, which term shall embrace machines, mechanical contrivances, instruments, appliances, and apparatus attached to the real estate, used for industrial, agricultural or manufacturing purposes, during the first five years of the operation of the machinery." (Com. Act No. 470; underscoring supplied.)

There is no dispute as to the valuation of the machinery at ₱65,759,050.00 under Tax Declaration No. 3004 (Exh. 9), the same having been furnished to the Acting Provincial Assessor of Bataan by Mr. R. R. Pulver, manager of petitioner's refinery (See Exh. 9-A). And these improvements should be assessed and taxed beginning with the year following its completion (See Exhs. H & 17; Sec. 10, Com. Act No. 470; Viuda e Hijos de Pedro P. Roxas v. Rafferty, 37 Phil. 957; Churchill v. Concepcion, 34 Phil. 969).

In the present case, it appears that even before the completion of the remaining units on January 23, 1961, many units of machinery installed in 1960 were already completely operating and in fact producing marketable products, i.e., fuel oil and refined products (Exhs. L to L-9). These units produced finished products different from that produced by the units completed in 1961. In other words, units completed in 1960 were complete and independent from those completed in 1961. This is clearly attested to by the fact that petitioner in December 1960 had paid specific taxes for fuel oil manufactured and withdrawn from the refinery (See Exhs. L to L-9). Although some fuel oils were removed in the early part of January 1961, there can be no question, however, that they were produced or manufactured in 1960, since all applications for the payment of specific taxes on these products were made in December 1960. Neither do we agree with the contention that the operation of the independent units in 1960 was merely for testing purposes. The big volume of oil produced by petitioner in 1960 belies its claim that they were the results of mere testing. Also significant is the fact that petitioner had paid the amount of P173,681.18 as specific taxes on its products for December 1960 (Exhs. L to L-9 & 17).

The Acting Provincial Assessor of Bataan should have assessed these units actually operating in 1960 separately from those completed and operated only in 1961. Based on the evidence on record, we find the following:

Units of Machinery Operating
in 1960:

1. Crude Storage
2. Atmospheric Pipe Still
3. Vacuum Pipe Still
4. Light Diesel Oil
5. Heavy Diesel Oil
6. TCC Charge
7. Distillate Catalytic Desulfurizer
8. Catalytic Reformer
9. Naphtha Catalytic Desulfurizer
10. Naphtha Charge
(See Exh. I-1; pp. 18-19, t.s.n.)

Units of Machinery Operating
in 1961:

1. Stright Run Gasoline
2. Blending Plant
3. Cat Reformed Gasoline
4. "Cat-Cracked" Gasoline
5. "Cat-Poly" Gasoline
6. Catalytic Polymerization Unit
7. Thermofor Catalytic Cracker
8. Vacuum Residium
9. Asphalt Blending & Drumming Facilities.
(See Exh. I-2; pp. 19-20, t.s.n.)

In fact, petitioner's counsel is agreeable to this method of assessing the units of machinery in question (See pp. 389-390, t.s.n.). The units that were completed in 1960 (Items 1-10, *supra*) should be exempt from real property tax for 5 years, beginning 1961 to 1965, while the units completed only in 1961 (Items 1-9, *supra*) should be exempt from the same tax for 5 years beginning 1962 up to 1966.

In its petition for review, petitioner asks this Court to make provision for depreciation of the machineries. It, however, failed to discuss this point in its memorandum and we consider same abandoned. At any rate, since the machineries in question were newly installed at the time of assessment, no depreciation can be allowed.

In the memorandum submitted in support of its stand, petitioner prays this Court to order the refund of the amount it paid as realty tax. The Court of Tax Appeals has no jurisdiction to order the refund of said tax (City of Cabanatuan, et al. v. Gatmaitan, et al., G. R. No. 19129, February 28, 1963).

WHEREFORE, the assessment in Tax Declaration 2969 of the refinery site of 1,195,296 square meters is hereby reduced from ₱4.00 to ₱3.00 per square meter. As regards Tax Declaration No. 3004, same is hereby modified to the effect that only the units of machinery operating in 1960 are taxable in 1966 and those operating in 1961 are taxable in 1967. Modified as herein indicated, the appealed decision is affirmed in every other respects. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 8, 1967.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

Presiding Judge Umali did not take part.