REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COTABATO ELECTRIC COOPERATIVE Rep. by ALEJANDRO COLLADOS, General Manager
Petitioner-Appellant,

-versus-

CENTRAL BOARD OF ASSESSMENT APPEAL
Public Respondent-Appellee

-and-

MUNICIPAL ASSESSOR AND TREASURER OF MAKILALA, MAGPET, PRESIDENT ROXAS ALL OF THE PROVINCE OF COTABATO,
Respondent-Appellee

LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF COTABATO,
Respondent-Appellee.

CTA EB CASE NO. 377
(CBAA CASE NO. M-24)

Present:

ACOSTA, ***P.J.***
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, ***JJ.***

Promulgated:

OCT 0 2 2009
4:10 p.m.

x - x

DECISION

Casanova, J:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review[1] filed by the Petitioner-Cotabato Electric Cooperative

[1] CTA En Banc Rollo, pp. 8-14.

(COTELCO) on March 24, 2008, under Section 7 (a)(5) of Republic Act No. 9282, otherwise known as "An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA)" assailing the October 2, 2007 Decision[2] *(Assailed Decision)* promulgated by the Central Board of Assessment Appeals (CBAA) which denied the appeal of herein-petitioner-COTELCO, and accordingly held that the subject real properties of COTELCO are liable to the payment of real property tax, and the December 3, 2007 Resolution[3] *(Assailed Resolution)* which denied petitioner's Motion for Reconsideration for lack of merit.

The facts of the case, as culled from the records[4], are as follows:

> "It is undisputed that Petitioner-Appellant was created under P.D. No. 269 with its business address at Manubu-an, Matalam, Cotabato. It is providing electric services throughout the Province of Cotabato. In the course of its operation it has installed steel towers, electric posts, transformers, and transmission lines to enable it to provide electric services to all its customers. While, Respondents-Appellees are local government officials, namely: Municipal Assessors and Treasurers of Magpet, Makilala and President Roxas, all of the Province of Cotabato. They are tasked to make realty tax assessments and to collect them.
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> In charging Petitioner-Appellant with real property tax, Respondents-Appellees argue, THUS:
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> 'Poles can be regarded as realty because they are attached to the land while Transformers and Transmission lines are connected to machinery and other devices for conveying electric current, therefore, appurtenance or accessories of the machinery. Although removable, these auxiliary facilities or accessories are essentially being used to meet the needs of their business and its is really very necessary to the operation for without them their business would be useless.' (First Paragraph, Annex 'B-1' of Appeallant's Brief)
>
> Accordingly, effective on May 25, 2006, the assessor of the Municipality of Makilala assessed COTELCO of P3,040,520.70 real property tax in accordance with Section 204 of RA 7160. Similarly, each of the Municipalities of Magpet and President Roxas assessed Petitioner-Appellant of P1,532,626.30.

[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 16-36.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, pp. 37-41.
[4] Supra note 2, pp. 17-19.

> Petitioner-Appellant disagrees with these assessments. They maintain that electric posts, steel towers, transmission lines and transformers are personal properties and are not subject to real property taxation. They are relying on Article 415 of the New Civil Code as realty is nowhere defined in the assessment and real property tax laws. They argue applicable to their situation is the case of *the Board of Assessment Appeal, City Assessor and City Treasurer of Quezon City vs. Meralco, G.R. No. L-15334, January 31, 1964.*
>
> Petitioner-Appellant assigns two errors of the Local Board:
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> 1. 'That the Local Board Assessment Appeals erred in saying that steel towers/electric posts/transmission lines/transformers are taxable under CA No. 420 (sic) and P.D. 464 and the Local Government Code despite the clear and categorical declaration by the Supreme Court in the case of Board of Assessment Appeal, City Assessor and City Treasurer of Quezon City vs. Meralco, G.R. No. L-15334, July 31, 1964. That the same are not real properties; hence, not taxable.
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> 2. 'The Local Board Assessment Appeals erred in saying that the appeal is dismissible by failure of the Petitioner-Appellant to comply Section 252 and 226 of RA 7160.'
>
> In fine, the issues involved in the instant appeal are:
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> > Whether the appeal to the LBAA conforms to the requirements of Section 226 of R.A. 7160 and Article 317 of the Implementing Rules and Regulations of the same Act.
> >
> > Whether Petitioner-Appellant should first pay the real property tax, under protest, to perfect an appeal before the LBAA.
> >
> > Whether steel towers, electric poles, transmission lines and transformers are real properties or personal properties classified as realty for taxation purposes."

On October 2, 2007, Public-Respondent CBAA promulgated the *Assailed Decision* denying COTELCO's appeal for lack of merit. Aggrieved with the said Decision, COTELCO filed a Motion for Reconsideration on November 5, 2007, which was also denied by the CBAA in the *Assailed Resolution* dated December 3, 2007.

On January 2, 2008, COTELCO filed, through registered mail, the instant Petition for Review which was received by this Court on March 24, 2008. COTELCO raised the following assignment of error[5] in support of the instant petition, to wit:

> THE LOCAL BOARD OF ASSESSMENT APPEALS AND THE CENTRAL BOARD OF ASSESSMENT APPEALS ERRED IN DECLARING THAT ELECTRIC POST, TRANSMISSION LINES, STEEL TOWERS, TRANSFORMERS ARE MACHINERIES AND THEREFORE SUBJECT TO REAL PROPERTY TAX UNDER THE LOCAL GOVERNMENT CODE.

On May 9, 2008, the Court *En Banc* promulgated a Resolution[6] denying the instant Petition for Review for not being sufficient in form and accordingly, dismissing the same. COTELCO filed a Motion for Reconsideration[7] on May 30, 2008. On June 19, 2008, petitioner filed a "Submission of Compliance"[8] attaching therewith a copy of the Board Resolution passed by the Board of Directors of COTELCO alleging among others, that its General Manager, Mr. Alejandro Collados is authorized to file for and in behalf of the cooperative the motion for reconsideration on its real property tax.

On January 14, 2009, the Court *En Banc* promulgated a Resolution[9] granting petitioner-COTELCO's Motion for Reconsideration in the interest of substantial justice. Accordingly, the Resolution dated May 9, 2008 was lifted and set aside and the Petition for Review was reinstated. Respondent was also ordered to file a Comment on the said Petition for Review.

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[5] Petition for Review, CTA En Bank Rollo, p. 11.
[6] CTA En Banc Rollo, pp. 44-48.
[7] CTA En Banc Rollo, pp. 50-53.
[8] CTA En Banc Rollo, pp. 57-58.
[9] CTA En Bank Rollo, pp. 72-81.

Sans respondent's comment/opposition on the instant petition for review, the Court *En Banc* promulgated a Resolution[10] on March 18, 2009 giving due course to the petition for review and ordering the parties to file their respective Memorandum. In compliance with the said Resolution, petitioner-COTELCO filed a Memorandum[11] on May 12, 2009.

The Court *En Banc* promulgated a Resolution[12] on May 14, 2009 submitting the case for decision *sans* respondents' Memoranda. On May 26, 2009, Respondents-Appellees, through the Provincial Legal Office of Kidapawan City, filed a Memorandum[13] which was noted by the Court in a Resolution dated May 27, 2009.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds the arguments of petitioner-COTELCO not meritorious.

As aptly ruled by the CBAA on the afore-cited issue in the assailed Decision and We quote with approval, to wit:

> "On the third and final issue, Petitioner-Appellant relying mainly on the Board of Assessment Appeals, City Assessor and City Treasurer of Quezon City vs. Manila Electric Company, G.R. No. L-15334 (January 31, 1964) and Article 415 of the Civil Code, argues that 'steel towers, electric posts, transmission lines, and transformers' are PERSONAL PROPERTIES that are not subject to realty tax.
>
> We do not agree.
>
> The instant appeal is similar to the factual scenario of Palawan Electric Cooperative (PALECO) vs. LBAA of the Province of Palawan and the Provincial Assessor of Palawan and the Municipal Assessor of Brooke's Point, Palawan, <u>CBAA Case No. L-75, June 28, 2007</u>, where we, in part, ruled, quoting the said Supreme Court pronouncement, THUS:

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[10] CTA En Banc Rollo, pp. 88-89.
[11] CTA En Banc Rollo, pp. 92-97.
[12] CTA En Banc Rollo, p. 104.
[13] CTA En Banc Rollo, p. 105-124.

> 'Granting for the purpose of argument that the steel supports or towers in question are not embraced within the term poles, the logical question posited is whether they constitute real properties, so that they can be subject to a real property tax. The tax law does not provide for a definition of real property; but Article 415 of the Civil Code does, by stating the following are immovable property:
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> (1) Lands, buildings, roads and construction of all kinds adhered to the soil;
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> xxx xxx xxx
>
> (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
>
> xxx xxx xxx
>
> (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
>
> xxx xxx xxx'

The steel towers or supports in question do not come within the object mentioned in paragraph 1, because they do not constitute buildings or construction 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 those 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 also 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.

'When the Supreme Court promulgated its decision in the above-entitled case (L-15334), there was as yet no Rep. Act No. 7160, otherwise known as the Local Government Code of 1991, which took effect on January 1, 1992.

Also, 'this Board had the opportunity to rule on similar issues involving the same company in the case of Manila Electric Company (MERALCO) vs. Board of Assessment Appeals of Lucena City, City Assessor and City Treasurer of Lucena City (CBAA Case No. L-20-98, May 3, 2001). In this case, MERALCO said that the Local Board of Lucena City erred 'IN NOT HOLDING THAT POLES, WIRES, INSULATORS, TRANSFORMERS AND ELECTRIC METERS ARE PERSONAL PROPERTIES, HENCE, NOT SUBJECT TO REAL PROPERTY TAX, AS EARLIER DECIDED BY THE LOCAL BOARD OF ASSESSMENT APPEALS OF LUCENA CITY IN LBAA CASE NO. 89-2 AND AFFIRMED BY THE CENTRAL BOARD OF ASSESSMENT APPEALS IN CBAA CASE NO. 248.'

Indeed, this Board ruled in MERALCO's favor in connection with this very same issue on April 10, 1991 where we ruled that 'wires, insulators, transformers and electric meters which are mounted on poles and can be separated from the poles and moved from place to place without breaking the material or causing deterioration of the object, are deemed movable or personal property. The same position of MERALCO would have been tenable and that decision may have stood firm prior to the enactment of R.A. 7160 but not anymore in this jurisdiction. The Code provides and now sets a more stringent yet broadened concept of machinery, thus:

> 'Section 199(o) 'Machinery' embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus *which may or may not be attached, permanently or temporarily*, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and *those not permanently attached to the real property which are actually directly, end exclusively used to meet the needs of the particular industry, business or activity* and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural, purposes.' (Emphasis supplied)

'The pivotal point where the difference lies between the former and the current case is that by the very wordings of aforesaid provision, the ground being anchored upon by MERALCO concerning the properties in question being personal in nature does not hold anymore for the sole reason that these come now within the purview and new concept of Machineries. The new law has treated these in an unequivocal manner as machineries in the sense that they are instruments, mechanical contrivances or apparatus though not attached permanently to the real properties of petitioner-appellant are actually, directly and exclusively used to meet their business of distributing electricity.'

Article 415 of the Civil Code the term 'immovable' property is followed by a listing of what are included in the term: and the term 'machinery', as used in Article 415, is defined in Paragraph (5). In the same way that Section 199(o) of the Local Government Code defines machineries that are subject to real property taxation, thus we do not see the need of resorting to the Civil Code provisions in determining whether steel towers, electric posts, transmission lines, and transformers are real property for assessment purposes. As the Civil Code is a general law and Section 199 of RA 7160 is a special law that delves on realty taxation. By the settled rules of statutory construction it is the latter that prevails.

Incidentally, the above-cited decision of the CBAA was affirmed by the Court of Appeals, in Manila Electric Company vs. The City Assessor and City Treasurer of Lucena City (CA-G.R. SP No. 67027, May 13, 2004).

At the outset, it is clear from the descriptions of 'steel towers, electric posts, transmission lines, and transformers' that we have no doubt that they are necessary and integral part of distributing electricity, without which the other appurtenances and generators would be useless for the purpose they are intended by COTELCO. Otherwise it would be absurd to have spent so much investment for their construction. Thus, these items constitute one, whole composite property. These are, in the alternative, an 'improvement' in contemplation of Section 199(m) of RA 7160 subject to realty taxation, THUS:

> 'Section 199(m)- 'Improvement' is a valuable addition made to a property or an amelioration in its condition, amounting to more than a mere repair or replacement of parts involving capital expenditures and labor, which is intended to enhance its value, beauty or utility or to adapt it for new or further purposes.'

'In the instant case, applying the above-stated principle of law, x x x the wires, insulators, transformers and electric meters mounted on the poles of the petitioner may nevertheless be considered as

improvements on the land, enhancing its utility and rendering it useful in distributing electricity. The said properties are actually, directly and exclusively used to meet the needs of the petitioner in the distribution of electricity' (Manila Electric Company vs. The City Assessor and City Treasurer of Lucena City (CA-G.R. SP No. 67027, May 13, 2004, quoted in Palawan Electric Cooperative (PALECO) vs. LBAA of the Province of Palawan and the Provincial Assessor of Palawan and the Municipal Assessor of Brooke's Point, Palawan, *supra*).

In addition, 'improvements on land are commonly taxed as realty even though for some purposes they might be considered personal. It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property.' (Caltex (Phil.) Inc. vs. Central Board of Assessment Appeals, 114 SCRA 296, 301-302)."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice