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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

VICTORIAS MILLING CO., INC.,
Plaintiff,

- versus -

Negros Occidental
Civil Case No. 2670

Sept. 3, 1964

THE PROVINCIAL ASSESSOR and
THE PROVINCIAL TREASURER OF
NEGROS OCCIDENTAL,
Defendants.

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

D E C I S I O N

The above-entitled case was remanded to this Court by the Supreme Court in its decision promulgated on July 30, 1962 (G.R. No. L-13654), pursuant to the provisions of Section 22 of Republic Act No. 1125. The undisputed facts, as found by the Supreme Court and stated in its decision, are as follows:

> "Victorias Milling Co., Inc. thru its Vice-President J.J. Osorio, On December 17, 1948, declared under oath for purposes of taxation that the true value of some of its old and new machineries after deducting 50% for depreciation was ₱2,979,080.00, to which the provincial assessor added ₱1,033,100.00 as value of other not declared properties, thus raising the total assessment of the machineries in 1948 to ₱4,012,180.00. On the basis of the aforesaid declaration, the provincial assessor assessed a tax of ₱41,121.80, which the company paid under protest in 1948. This assessment became final and conclusive, as no appeal therefrom was taken by the company to the local Board of Tax Appeals, as provided by Section 17 of the Assessment Law and by Section 1 of Commonwealth Act 530. (Underscoring supplied.)
>
> "In 1949, the provincial assessor assessed the same machineries at only ₱3,904,310.00 (arrived at by deducting from ₱4,012,180.00 approximately 3% as estimated annual depreciation due to ordinary wear and tear) and the corre-

sponding tax of ₱39,043.10 was paid under protest in the same year. In 1950, together with other machineries, the company was assessed at ₱4,101,490.00 and paid under protest the tax thereon of ₱41,014.90; in 1951, the same machineries were assessed at ₱4,060,000.60, in 1952 ₱3,273,930.00, and in 1953 ₱3,023,910.00, and the company paid under protest the taxes of ₱40,600.60, ₱32,-729.30, and ₱30,239.10, in 1951, 1952 and 1953, respectively.

"After more than five years since it paid under protest the taxes mentioned in the preceding paragraphs and though the assessment made of said taxes had long become final and conclusive for lack of appeal to the then Board of Tax Appeals as above-mentioned, the company filed on April 24, (27) 1953 a complaint before the Court of First Instance of Negros Occidental against the collection officials of said province demanding from them an additional 24% depreciation of its pre-war machineries computed at the rate of 3% a year for eight years retroactive from 1940 to 1947, thereby claiming that it be entitled to a total of 74% depreciation of its machineries as of 1948 based on the so-called "straight line method" of computing depreciation, and praying that the 1948 assessment be correspondingly reduced and the proportionate partial refund of the tax be made based on the reduced assessment. The company made a similar request with regard to the assessment made of the machineries for the years 1950, 1951, 1952 and 1953 so that the corresponding partial refunds may be made based on the reduced assessments in line with the so-called "straight line method." (Underscoring supplied.)

The parties agreed to submit three (3) legal questions for determination. Let us consider the first issue, which as stated in their "Stipulation," is as follows:

"(1) On the legal question of whether or not it was necessary for plaintiff to interpose an appeal to the Board of Assessment Appeals and/or the Board of Tax Appeals, or whether or not such an appeal was proper, before resorting to this Court by means of its complaint dated April 24, 1953, concerning the matters involved in said complaint." (Exh. A, also marked as

Exh. 1, pp. 95-256, CTA rec.)

The laws in point and to be applied to resolve the first issue are Section 17 of the Assessment Law (Com. Act No. 470) and Section 1 of Commonwealth Act No. 530, the same laws cited by the Supreme Court in its decision remanding the case at bar to this Court.

Section 17 of the Assessment Law provides in part as follows:

> "Sec. 17. Appeal by owner to the Board of Tax Appeals (Board of Assessment Appeals). - Any owner who is not satisfied with the action of a provincial assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in section sixteen hereof, appeal to the Board of Tax Appeals (Board of Assessment Appeals), which is created in each province, by filing with it or with the municipal treasurer of the municipality where the property assessed is situated, who is duly bound to transmit it to the Board of Tax Appeals (Board of Assessment Appeals), a petition to that effect stating the grounds of his appeal." (See Sec. 21, Rep. Act No. 1125. Underscoring supplied.)

And Section 1 of Commonwealth Act No. 530 reads in part as follows:

> "Sec. 1. x x x Should the tax declaration called for herein be not filed or, if filed, the same is disapproved, the provincial or city assessor may make the tax declaration for the property, and the assessor's valuation shall be conclusive, for purposes of real estate taxation, unless appeal is taken under existing law." (Underscoring supplied.)

The Supreme Court, in interpreting and applying a similar provision of the Charter of the City of Manila held:

> "The local law, as elsewhere, provides

an administrative procedure for the assessment of realty. An assessor to fix the value of the property in the first instance, and a board of tax appeals to review the action of the assessor in the second instance are constituted. Proceedings before this board are quasi-judicial in nature. To it the citizen must apply for relief against excessive and irregular taxation. Here must the aggrieved party go for the correction of errors in assessments. Administrative remedies must be exhausted before resort can be had to the courts. <u>It is a condition precedent to the exercise of the taxpayer's right of action in a court of justice that previous and timely effort shall have been made on his part to have the board of tax appeals correct an alleged error while the matter was yet in their hands and under their control.</u> Even when the courts assume jurisdiction, they will not presume to interfere with the intelligent exercise of the judgment of men specially trained in appraising property. (See Stanley vs. Supervisors of Albany [1887] 121 U.S., 535)" (Viuda e Hijos de Pedro P. Roxas vs. Rafferty, 37 Phil. 957) (Underscoring supplied.)

Considering the findings of fact made by the Supreme Court in this case, and Section 17 of the Assessment Law (Com. Act No. 470) and Section 1 of Commonwealth Act No. 530, which are all quoted above, and in line with the <u>obiter dicta</u> of the Supreme Court in its decision remanding this case to this Court for final determination pursuant to Section 22 of Republic Act No. 1125 (G.R. No. L-13654, July 30, 1962), and following the ruling of the Supreme Court in Viuda e Hijos de Pedro P. Roxas vs. Rafferty, <u>supra</u>, we are of the opinion and so hold that the disputed assessments made by defendant Provincial Assessor of Negros Occidental became final and conclusive more than five (5) years before this case was originally filed on April 27, 1953 in the Court of First Instance of Negros

Occidental. For failure of the taxpayer herein to file a timely appeal with the then Board of Tax Appeals (now Board of Assessment Appeals), this case should be dismissed.

It is true as contended by taxpayer Victorias Milling Co., Inc., that the pronouncements made by the Supreme Court in its decision with regard to the finality and conclusiveness of the assessments involved in this case are mere _obiter dicta_ and therefore not conclusive upon this Court. However, after independently interpreting and applying the pertinent laws to the established facts in this case, we have arrived at the same conclusion: the assessments made by the Provincial Assessor of Negros Occidental in the instant case are already final and conclusive, and therefore not subject to review by this Court. The fact that the _obiter dicta_ of the Supreme Court and the decision of this Court are the same should not surprise the taxpayer herein. From the same facts and the same laws, there can be only one correct determination of the same questions.

Plaintiff Victorias Milling Co., Inc., citing the case of Viuda e Hijos de Pedro P. Roxas vs. Rafferty, _supra_, insists that an appeal to the Board of Tax Appeals (now Board of Assessment Appeals) would have been improper, and that it clearly had a right to resort directly to the Court of First Instance of Negros Occidental. In answer to this contention, it shall suffice to state that the present case involves not a void but merely an erroneous assessment.

As correctly stated by the plaintiff, "the main issue in this case is the question of which method of assessment should have been applied." (P. 7, Memorandum for the Plaintiff, pp. 541-556, CTA rec.) The defendants contend that they acted properly in applying the "fixed percentage of diminishing book value method." On the other hand, the plaintiff claims that the provincial assessor should have applied the "straight-line method" pursuant to an unnumbered and unpublished Provincial Circular of the Secretary of Finance, dated February 7, 1940 on the subject of Assessment of Machinery for Taxation. (Pp. 268-271, CTA rec.) Viewed realistically, not the illegality of the assessment, but merely the correctness of said assessment is involved in this case. Therefore, the rule of taxation that where the tax is illegal, the taxpayer may bring an action directly in the courts to recover back the tax cannot be invoked in the case at bar.

Considering our resolution of the first issue, we deem it not necessary to resolve the other questions presented for determination.

WHEREFORE, in view of the foregoing considerations, this case is hereby dismissed, with costs against the

DECISION -
Negros Occidental
Civil Case No. 2670

plaintiff.

SO ORDERED.

Manila, Philippines, September 3, 1964.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO [illegible]
Presiding Judge

ROMAN M. UMALI
Associate Judge