REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 2489

BOARD OF ASSESSMENT APPEALS
OF THE CITY OF MANILA and
OFFICE OF THE CITY TREASURER
OF MANILA,
Respondents.

10/24/77

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D E C I S I O N

From the decision of respondent Board of Assessment Appeals of the City of Manila:--

1. Denying the claim of petitioner Philippine National Bank for the refund of the real property tax paid for the years 1968 and 1969 on the Old PNB building located at 84-90 Escolta, Manila, although reducing the assessment for the year 1969 from ₱1,286,600.00 made by the City Assessor to ₱500,000.00;

2. Sustaining the imposition of the real property tax on the same building for the year 1970, and

3. Abstaining to resolve the issue of whether or not petitioner is exempted from paying real property tax,

herein petitioner appealed to this Court.

Following are the facts that gave rise to the present controversy:

Petitioner is a banking institution duly created and existing pursuant to the provisions of Republic

Act No. 1300, as amended, with main office and postal address at PNB Building, Escolta, Manila. As a result of an earthquake which hit Manila and its environs on August 2, 1968, the old PNB building located at 84-90 Escolta, Manila, suffered considerable damage. After an inspection of the building by representatives of the Office of the City Engineer of the City of Manila, the City Engineer in a letter dated August 8, 1968, addressed to the President of petitioner, informed the latter that since the said building had become "unsafe for human habitation", the certificate of occupancy previously issued by his Office "is hereby suspended and said building be immediately vacated upon receipt hereof." (Exhibit A-1). Pertinent portion of which is herein quoted as follows:

> "Inspection was conducted by a representative of this Office after the earthquake of August 2, 1968, on your Old PNB R.C. building located at Escolta, Manila. The damage to the structure is to such an extent that the building is deemed to be unsafe for human habitation.
>
> In view hereof, notice is served that the certificate of occupancy of the building previously issued by this Office is hereby suspended and said building be immediately vacated upon receipt hereof.
>
> It is likewise advised that necessary repair and/or reconstruction of the deteriorated portion be undertaken immediately, the corresponding building permit therefore secured first from this Office. In the meantime, adequate temporary measures should be taken to ensure stability of the building by shoring and bracing the structure."

In compliance with the notice and warning of the City Engineer of Manila as embodied in the aforesaid letter, petitioner and its tenants immediately vacated the premises.

In the meantime, a survey of the extent of the damages brought about by the earthquake and its subsequent series of aftershocks to the building was undertaken, upon request of petitioner, by the engineering firms of DCCD Engineering Corporation, Structural Designers and Consultants, and Avecilla Building Corporations, Works Engineers. In its post-earthquake report dated August 24, 1968 (Exhibits A-2 & B), DCCD Engineering Corporation, after describing in detail its findings on the extent of the damages, complete with drawings and diagrams (Exhibits A-4; B-2), recommended that "replacing the subject structure with a new and more adequate building would be preferable and sounder investment rather than to try to reconstruct of rehabilitate the same." (Exhibits A-3 & B-1) And in letter dated 19 March 1969 to petitioner (Exhibits A-5 & C), the Avecilla Building Corporation, after submitting a detailed floor by floor report on the damages visualized on the building (Exhibit A) and an estimate for the rehabilitation thereof, recommended "that the building be demolished for the security and peace of mind of all concerned." (Exhibits A-5 & C)

Petitioner therefore caused the demolition of the subject building, which demolition started on November 3, 1969 and was completed in the early part of 1970.

Meanwhile, an exchange of correspondence between petitioner on the one hand, and the City Assessor of Manila on the other, ensued.

On March 21, 1969 petitioner requested the City Assessor the re-assessment of its real properties, including the building under consideration, and in connection therewith, informed the latter that as of August 1968, the City Engineer's Office has prohibited the occupancy of the building and therefore asked that the real property tax thereon should be correspondingly reduced from August 1968 until such time as petitioner shall be allowed to occupy the same. (Exhibits B & 3)

On March 11, 1970 the City Assessor of Manila informed petitioner that on the basis of replacement cost less depreciation, his office has decided to reduce the assessed value of the building in question from P1,500,000 to P1,286,600. (Exhibits B-1 & 2)

Thereafter petitioner, by letters dated March 23, 1970 and November 16, 1971, after reiterating its request for a formal reassessment of the old PNB building, advised the City Assessor that since the said building was declared "unsafe for human habitation" and the certificate of occupancy cancelled by the City Engineer, it had to be totally demolished as it was not susceptible of any amount of repair and rehabilitation. Considering that the building ceased to have any assessed value, petitioner requested that the 1968 and 1969 real property tax paid thereon be refunded. (Exhibits B-2 & B-3)

On February 3, 1972 the City Assessor informed petitioner that as per letter dated June 18, 1970, the cancellation of the assessment of the building was made effective 1971 and with respect to the reassessment, his office reduced the assessment from ₱1,550,000.00 to ₱1,286,600.00 effective 1970 on the basis of replacement cost less depreciation. (Exhibits B-5 & 4)

The controversy between the City Assessor of Manila and petitioner culminated in the appeal by the latter to respondent Board of Assessment Appeals. In a decision promulgated on December 27, 1972, respondent Board held: "In view, however, of the damage caused by the earthquake of August 2, 1968 on the said building, it is safe to say that the assessed value of the building is ₱500,000.00." As to the claim of petitioner that the building should be exempted from payment of tax in 1970, the Board found "that the same is not justified because the realty tax being an annual tax accrues on the 1st day of January of each year." And anent petitioner's allegation that the old PNB building is exempt from realty tax, respondent Board abstained from passing upon the issue. (Exhibit E)

This decision of respondent Board of Assessment Appeals finally triggered the instant appeal and is now before this Court for review.

It may not be amiss to make mention here that since the questioned assessment was made prior to the effectivity of Presidential Decrees Nos. 76 and 464, which transferred the jurisdiction, and prescribed the procedure of appeals involving real property assessments, from the Court of Tax Appeals to the Central Board of Assessment Appeals, this Court no doubt can still entertain the instant case in accordance with Sections 7(3) and 11 of Republic Act No. 1125. This law vests upon the Court of Tax Appeals exclusive jurisdiction to review by appeal decisions of provincial or city boards of assessment appeals in cases involving the assessment and taxation of real property under the Assessment Law. (Sec. 7(3), Republic Act No. 1125.)

Presidential Decree No. 76, creating the Central Board of Tax (Assessment) Appeals, which took effect upon its publication in the Official Gazette on December 18, 1972, provides, among others, as follows:

> "7. Any owner who is not satisfied with the action of the Provincial or City Assessor in the assessment of his property under this decree may, within sixty days from the date of receipt by him of the written notice of assessment, appeal to the Board of Tax (Assessment) Appeals of the Province or City x x x x x x x.
>
> The Provincial or City Board of Tax (Assessment) Appeals shall decide the appeal within sixty days from receipt thereof. The decision of the Board shall fully recite the consideration upon which it is founded. Upon receipt of the decision, the Provincial or City Assessor shall thereupon act accordingly. If, however, the owner or administrator of the property or the assessor be not satisfied with the decision of the Board of Tax (Assessment) Appeals, he may, within thirty days after receipt of the decision of the Board, appeal to the Central Board of Tax (Assessment) Appeals composed of x x x, whose decision shall be final. Said Central Board of Tax (Assessment) Appeals shall promulgate rules and regulations governing the procedure in such appeals.
>
> x x x x x x x x x
>
> "12. The Secretary of Finance is hereby ordered to formulate the implementing rules and regulations to be followed by all Provincial and City Assessors for the immediate and successful implementation of this Decree.
>
> "This Decree shall form part of the laws of the land and shall take effect immediately after its publication. All laws, rules and regulations which are inconsistent with this

Decree are hereby repealed" (Underscoring supplied.)

Clearly, Presidential Decree No. 76 covers real property assessments made by Provincial or City Assessors under said decree. There is nothing in the provisions thereof which indicate that they also refer to real estate assessments already made prior to its effectivity. The decree, in other words, is prospective in its operation and not otherwise. Consequently, as the assessment or reassessment of petitioner's property was made on March 11, 1970, and reiterated on February 3, 1972, and petitioner's appeal to respondent Board of Assessment Appeals was perfected sometimes on April 7, 1972, Presidential Decree No. 76 does not apply in this case. (See Julie Siayngco vs. The Tacloban City Assessor & City Board of Assessment Appeals of Tacloban City, CTA Case No. 2524, Resolution dated January 16, 1974.)

Petitioner now poses the following issues:

1. Whether the building in question could still be assessed for taxation purposes after the earthquake of August 2, 1968.

2. Whether realty tax for 1970 could still be imposed on the building in question despite the fact that demolition work started in 1969 and was completed in 1970.

3. Whether petitioner is exempted from paying realty tax based on the Supreme Court decision in the case of Board of Assessment Appeals of Laguna vs. Court of Tax Appeals and Nawasa (L-18125, May 31, 1963).

In support of its thesis that there is no legal basis in the assessment for realty tax purposes of the Old PNB building after the earthquake of August 2, 1968, petitioner contends that the true money value of the building has been reduced to zero level or to no value at all when the same was condenmed for "being unsafe for human habitation" and the certificate of occupancy cancelled by no less than the City Engineer, coupled with the fact that repairing or reconstructing it would cost more than the construction of a new one. Since the earthquake of August 2, 1968 and the subsequent suspension of the certificate of occupancy, the building therefore ceased to have any rental income or profit whatsoever. Consequently, there can be no criterion or basis for ascertaining its value for taxation purposes. Hence, it has no true money value or cash value after the disastrous earthquake of August 2, 1968. (p. 130, CTA records)

For its stand petitioner puts forward this rationale:

> To prominently ventilate the fact that the building in question had no true money value for taxation and assessment purposes, the attention of this Honorable Court is respectfully invited to the following evaluation and recommendation of DCCD Engineering Corporation, Structural Designers and Consultants, a reputable engineering firm dated August 24, 1968, which are as follows -

"Evaluation and Recommendation:

In view of the above findings on the extent of damages, x x x, we feel that a rehabilitation or a reconstruction to render the building earthquake resistant is a very expensive and impractical (underscoring supplied) consideration. x x x x x it is our evaluation that to locate and replace these rusted bars will almost tantamount to demolishing the structure.

In view of the above structural evaluation and other economic considerations, it is our considered opinion and recommendation that replacing the subject structure with a new and more adequate building would be more preferable and sounder investment rather than to try to reconstruct or rehabilitate the same."

(Exhibit "A-3")

This evaluation and recommendation of DCCD Engineering Corporation is further corroborated by the oral testimony of Engineer Avecilla mentioned at the beginning of this memorandum and also by the Avecilla Building Corporation, Works Engineers and Consultants, in separate inspection and studies conducted by their firm upon the petitioner's request, portion of their report dated September 4, 1968 reads as follows -

"We are therefore of the scientific opinion, considering that the building is quite old and had moreover already suffered severe shocks and strain from the 1937 earthquake and from bombing of Manila during Liberation, and in view of the exposure of the reinforcement of certain concrete exterior walls, all of which render the structural integrity of the building doubtful, and so recommend, that the building be demolished for the security and peace of mind of all concerned."

(Exhibit "A-6").

It was on the basis of the aforementioned recommendations of two engineering firms that herein petitioner decided to have the subject building demolished and likewise served as a basis for rightfully claiming that said building had ceased to have any true money value upon which assessment for taxation purposes could be based.

> Under cross-examination, even the witness for the respondents who is the Legal Administrative Assistant in the Office of the City Assessor of Manila, admitted that the true money value of the property is the standard used by the assessor in the assessment of property for taxation purposes, taking all circumstances into consideration (t.s.n. February 19, 1976 pp. 12-13.)
>
> It cannot be denied that after subject building was severely impaired by the earthquake of August 2, 1976 (1968), the same ceased to have any utility whatsoever for the petitioner so much so that demolition of the same was approved by petitioner. And once a building ceased to have no purpose at all it equally ceased to have any true money value.

In brushing aside this stand of petitioner, respondents simply made the sweeping and indiscriminate accusation that "the alleged study and findings made by Engr. Antonio Avecilla or the DCCD Engineering Corporation or the Avecilla Building Corporation was (sic) made-to-order, biased and illegal." (p. 143, CTA records) After what appears to petitioner a fair, just and correct evaluation of the condition of its building after the earthquake of August 2, 1968, respondents, without having presented any evidence to refute or rebut the study and findings of these engineering firms, merely cast adverse and unfounded criticism against the integrity of their reports. Then, the illegality of the demolition of the old PNB building, which was never raised in the pleadings nor during the hearing of the case, is suddenly brought into the picture. (p. 145, CTA records.) Averring that the old

PNB building was demolished without first securing from the Office of the City Engineer the necessary permit in alleged violation of Section 86, Revised City Ordinance 1600, respondents conclude that "to grant now to the petitioner the refund of realty taxes it has already paid and to exempt it from realty tax on the building for 1970 would be in effect to reward downright and deliberate violations of law." (p. 148, CTA records) From this we can readily infer that if this Court should find petitioner entitled to the refund and exemption it is akking, the Court of Tax Appeals would be sanctioning, if not doing, an illegal act. For this Court to countenance such arguments or motivation, when the records of this case fail to show of any step done to prosecute petitioner of the guilty party, would not only be unfair but subversive of the people's faith and confidence in their public officers whose sworn duty is to uphold the law.

After the City Engineer of Manila has declared the old PNB building "unsafe for human habitation" and the certificate of occupancy previously issued by his Office suspended and said "building be immediately vacated" upon notice thereof, we are at a loss to see how respondents deduced the theory that the building "was not yet condemnable". (p. 143, CTA records) If we are to adhere, as we should, to commonly accepted meaning of words in consonance with settled rules of interpretation, the very logical view is that the word "condemn" means "to adjudge or pronounce to be unfit for use or service." (Webster's New International Dictionary, Second Edition). If a building is declared "unsafe for human habitation", its certificate of occupancy suspended and ordered to be immediately vacated, it must necessarily mean that it is unfit or not safe for the use or service for that it has been intended; and for petitioner, unfit or not safe to house its offices or its tenants.

On the strength of the finding that its building is unsafe for human habitation and the order by no less than the City Engineer that it should be immediately vacated, the official of the City of Manila called upon to execute and implement all laws, rules and regulations relating to the construction, occupancy, repair and safety of buildings, petitioner would therefore be an incorrigible optimist if it did not take cognizance of this warning of the City Engineer by consulting or engaging the services of reputable engineering firms to make a study, inspection and investigation of the extent of the damage of its building for the "necessary repair and/or reconstruction" thereof as per advice of the City Engineer. (Exhibit A-1) This exactly was what petitioner did under the premises when it employed the services of the Avecilla Building Corporation and DCCD Engineering Corporation to make a survey of the damages and an estimate of the costs for the repair and/or reconstruction of the building. After detailed reports of the extent of the damages suffered by the building, complete with diagrams, drawings and sketches and floor by floor cost estimate for the proposed rehabilitation thereof, were submitted by these engineering firms, the evaluations and recommendations of which are quoted above, petitioner decided to have the subject building demolished.

This brings us to the problem of valuation for purposes of assessment. After the old PNB building was severely damaged by the earthquake of August 2, 1968, and later, petitioner, upon the evaluation and recommendation of the Avecilla Building Corporation and DCCD Engineering Corporation, decided to demolish it, how should the subject building be valued for the assessment and collection of the real property tax?

Section 4 of the then Assessment Law (Commonwealth Act No. 470) provided that all property subject to taxation 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. In chartered cities, it is generally provided that real property shall be valued at its "cash value" or "fair market value." Obviously, the intention of the law is that taxable property must be valued at its fair market value.

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 sale. Hence, the buyers need not be actual and existing purchasers. What a thing has cost is no infallible criterion of its market value.

Where evidence of values is not readily obtainable, the actual profits made on the property may be considered. But in the case of exceptional property, not designed to yield a rental or income or to be used for commercial purposes, but wholly or mainly for personal use, benefit, and gratification, the rule that the rental or income of property is a proper criterion in ascertaining its value for taxation does not apply. In fact, there exists no rigid rule for the valuation of property which is affected by a multitude of circumstances which no rule could foresee or provide for. (Army & Navy Club vs. Trinidad, 44 Phil. 383; see also City of Manila vs. Estrada, 25 Phil. 208; Manila Railway Co. vs. Fabie, 17 Phil. 206; Manila Railroad vs. Alano, 30 Phil. 500; Hacienda Luisita vs. Board of Tax Appeals, 103 Phil. 770; Landon vs. Jacinto, 60 Phil. 969.)

Section 2 of the Real Property Tax Code (Presidential Decree No. 464) provides that real property must be classified and appraised for assessment purposes on the basis of its actual use.

The accent, it seems, is on the word -"use". As ruled by the Supreme Court in several cases cited above, "all uses to which the property is adapted and might in reason be applied" shall be taken into consideration. And under the Real Property Tax Code, its "actual use" is the basis of the classification and appraisal of the property. And where evidence of values is not readily obtainable the actual profits made on the property may be considered. Accordingly, if a property can no longer be used or utilized in all the uses to which it is adapted and might in reason be applied, or does not yield a rental or income, unless in the case of exceptional property, it has no more "cash value" or "fair market value" for assessment purposes.

Now back to the case at bar.

1. Here, after the earthquake of August 2, 1968, no less than the Office of the City Engineer of Manila, after inspection thereof, condemned the building as unsafe for human habitation, suspended its certificate of occupancy, ordered that the same be immediately vacated and advised petitioner that the necessary repair and/or reconstruction be undertaken.

2. In response to the request of petitioner for an estimate of costs to rebuild the old PNB building, the Avecilla Building Corporation, after submitting a list of the damages which showed that the repair and/or rehabilitation thereof would be costly, and without any assurance that such building can resist another earthquake of the same intensity as that of August 2, 1968, recommended that:

> "We are therefore of the scientific opinion, considering that the building is quite old and had moreover already suffered severe shock and strain from the 1937 Earthquake and from the bombing of Manila during Liberation, and in view of the exposure of the reinforcements of certain concrete sections, very especially of the concrete exterior walls, all of which render the structural integrity of the building doubtful, and so recommend, that the building be demolished for the security and peace of mind of all concerned."

3. The post-earthquake report of DCCD Engineering Corporation, of which Alfredo L. Junio is the structural engineer, after a survey of the damages bfought about by the earthquake, made the following evaluation and recommendation:

"In view of the above findings on the extent of damages, the Front Wing in general and its Mezzanine columns and rear facade in particular, we feel that a rehabilitation or a reconstruction to render the building earthquake resistant is a very expensive and impractical consideration. Also, if the reinforcing bars now exposed on the Archer, the Rear Facade and the portion of the Mezzanine Floor already exposed on collapse of the ceiling are to be considered the gage (sic) of the extent of rustings and scalings of a major portion of the reinforcing bars in the structure (considering the age of the structure a percentage of 50% is not an impossibility) it is our evaluation that to locate and replace these rusted bars will be almost tantamount to demolishing the structure.

"In recent years, there appear (sic) to be subsidence of stretches of Muelle del Banco perhaps due to movement of the retaining walls along Pasig River. This conceivably can affect the buildings along this street unless the foundations had been designed to take care of this possibility.

"In view of the above structural evaluations and other economic considerations, it is our considered opinion and recommendation that replacing the subject structure with a new and more adequate building would be preferable and sounder investment rather than to try to reconstruct or rehabilitate the same."

4. Anent this, Mr. Antonio Avecilla, who was presented an expert witness by petitioner for having:

- O- Started appraising building and real estate since 1923;
- O- Graduated in 1925 as Civil Engineer;
- O- For 12 years, has been a member of the Real Estate Tax Appeals for the City of Manila;
- O- Appointed as Commissioner for appraisals in cases of expropriation in the City of Manila;

O- Member, Real Property Evaluation Committee of the Department of Finance to establish value of lands and improvements in the entire Philippines;

O- Presently, President & General Manager of Avecilla Building Corporation with works devoted in designing and construction, appraisal, reviewing and supervising constructions;

O- Work Engineer for the Central Bank of the Philippines, Bank of the Philippine Islands, Bureau of Internal Revenue, Bank of America and Philippine National Bank.

(t.s.n. Nov. 11, 1974, pp. 4-9.)

testified that:

"Q. x x x. So my question is, in paragraph 10 of respondent Board of Assessment Appeals of Manila, it is alleged therein that 'Even after the earthquake of August 2, 1968, the damage wrought on the PNB Building is not considerable, total or beyond repair, hence, and as such, still retained its value for assessment and taxation purposes.' What can you say about that?

A. I would say it is beyond repair (underscoring supplied) because it will cost you more than what the building costs x x x.

COURT x x x Do You mean to say that changing those reinforcement bars would be more costly than demolishing the building and putting up a new one?

A. Yes, Your Honor.

(t.s.n. Nov. 19, 1974, pp. 33-35.)

COURT: x x x It is about the assessment. The assessment is ₱500,000.00, but I think what they mean is, considering all the circumstances, because an assessment of ₱500,000.00 for the building for that particular year is fair enough.

A. The building, before the earthquake, Your Honor, I think was assessed more than that - one million or one million seven hundred - the building alone. But after the earthquake, I believe it could not be assessed, not even the foundation, because this foundation can not be used as it is . . . .because this foundation can not be used while there is the building that cannot be used. (Underscoring supplied.)

x x x x x

COURT. Do you mean to say that even if it could be repaired, if reparing the building would cost more than the. . . than building a new one then it practically losses its value?

A. Exactly. Yes, Your Honor.

COURT. So, in other words, Mr. Avecilla, in your considered opinion, is the assessed value of ₱500,000.00 imposed on the said PNB Building by the Board of Assessment Appeals in its decision of December 27, 1972 correct and proper?

A. I think I would say, exhorbitant, because it could not render any benefit to the owner x x x . In other words, the Bank would not rebuild or repair that building, so it was not rendering any rental."

(t.s.m. Nov. 19, 1974, pp. 38-41.)

In the absence of any showing to the contrary, and none has been presented by respondents to refute or rebut the findings and conclusions of the City Engineer of Manila, the aforementioned engineering firms of Avecilla Building Corporation and DCCD Engineering Corporation, and the testimony of Engr. Antonio Avecilla, there is no valid reason for this Court not to believe that the old PNB building, after the earthquake of August 2, 1968, could not anymore be used to that (or those) in which it was adapted or might in reason be applied, much less yield any rental or profit. After it was condemned as unsafe for human habitation, its certificate of occupancy suspended and ordered vacated; adjudged to be demolished for the security and peace of mind of all concerned; and, for economic reasons, recommended to be replaced with a new and more adequate building, it would seem to be the height of irresponsibility if the old PNB building should still be used as offices for petitioner or rented to tenants for commercial purposes. Of what use or uses could the building be adapted and might in reasoh be applied when it was already a risk to life and property. To say therefore that the old PNB building had still a cash value or fair market value because it could still be utilized to all the uses in which it was adapted and might in reason be applied is to trifle with the lives and safety of its occupants and tenants, as well as to ignore the warning of the City Engineer and recommendations of reputable engineering firms.

Respondents claim that under Section 275 of the Revised City Ordinances of the City of Manila, it is only when the deterioration is greater than fifty <u>per centum</u> of the value of the building, as estimated by the City Engineer, that it shall be removed. While a perusal of this section will readily show that the more than fifty per cent of the value is the criterion when a building shall be repaired or removed, the decision of respondent Board of Assessment Appeals of the City of Manila dated December 27, 1972 reduced the assessment for the year 1969 from ₱1,286,600 to ₱500,000.00. Since the deterioration of the building after the earthquake is greater than ₱500,000.00 (difference between ₱1,286,600 and ₱500,000.00 is ₱786,600), on this basis alone, the old PNB building should be removed.

In view of the foregoing, we are of the opinion and so hold that after the disastrous earthquake of August 2, 1968, the old PNB building, for purposes of assessment or re-assessment of the real property tax due thereon, had no more cash value or fair market value. Consequently, the building in question could not anymore be assessed for real property tax after August 2, 1968. And as a corollary thereto, for the year 1969 and the year 1970 when the demolition work was completed.

It is to be stressed, however, that under Section 21 of Commonwealth Act No. 470, otherwise known as the Assessment Law, the real property tax for any year accrues on the first day of January and from the same date said tax and all penalties subsequently accruing thereby shall constitute a lien upon the property subject to such tax, which shall be removable only by payment of the tax and the corresponding penalty. Thus, it has been held that since the real property tax accrues on the first day of January each year, the acquisition of property by a religious or charitable institution after January 1st will not render the property exempt for that year. The rule is that if property is not exempt on the tax day, it is liable to taxation for that year although it afterwards becomes exempt. Conversely, the transfer of exempt property after the tax day does not make it taxable for the current year, even though the property is not exempt in the hands of the transferee. (Institucion Teresiana vs. Board of Assessment Appeals of Rizal, CTA Case No. 1110, April 1, 1963, citing II Cooley on Taxation, 4th ed., pp. 1499-1500.) It follows that since the real property tax on the old PNB building for the entire year 1968 accrued on Janaury 1, 1968, and from the same date said real property tax and the penalties subsequently accruing thereby constituted a lien upon the building, the real property tax paid by petitioner on its building for 1968 is not at all refundable as the earthquake occurred during the third quarter of that year. Accordingly, respondent Board of Assessment Appeals' denial of petitioner's claim for refund of the real property tax paid for the year 1968 must be sustained.

While it is true that under the present provision of Section 24 of the Real Property Tax Code, Presidential Decree No. 464, where reassessment of real property is due to partial or total destruction, or to a major change in actual use, or to any great and sudden inflation or deflation of real property values, or to the gross illegality of the assessment, or to any abnormal cause, the new assessment shall take effect at the beginning of the quarter following that in which the assessment was made, no similar provision was found in the then Assessment Law (or in the Charter of the City of Manila). As a rule revenue laws are prospective in operation, unless the legislative intent that the statute operates retrospectively is distinctly expressed or necessarily implied. (Lorenzo vs. Posadas, 64 Phil. 353; Commissioner of Internal Revenue vs. Filipinas Cia. de Seguros, 107 Phil. 1055.) However, there is nothing in the Real Property Tax Code which indicates either expressly or impliedly that it shall be given retroactive effect.

The installment payments of the real property tax for the year 1969 are evidenced by the following documents:

1. Exhibit F-1- Real Estate Tax Receipt No. 02306 A for the 4th quarter;

2. Exhibit F -3 - Real Estate Tax Receipt No. 114631 for the 1st quarter;

3. Exhibit F-4 - Real Estate Tax Receipt No. 237419 for the 2nd quarter,

No evidence was presented by petitioner to prove payment of the 3rd installment of the real property tax for 1969. Annex B-2 of its petition for review seems to be a xerox copy of the receipt of the payment of the 3rd installment of the real property tax for 1969 but the same was denied by respondents under paragraph 4 of their answer. The original thereof was not presented by petitioner before this Court.

Under Section 76 of the Revised Charter of the City of Manila, payment under protest is a condition precedent before a taxpayer can assail the validity of a tax assessed against him. The pertinent portion of Section 76 of the Revised Charter of the City of Manila reads:

> "Sec. 76. Suits assailing validity of tax:- No court shall entertain any suit assailing the validity of a tax assessed under this article until the taxpayer shall have paid, under protest, the taxes assessed against him x x x." (Republic Act No. 409, 45 Off. Gaz. 10)

Moreover, under Sections 25 and 54 of the then Assessment Law, it is required that when a taxpayer desires for any reason to pay his tax under protest, such protest shall be annotated on the tax receipt by writing thereon the words "paid under protest". Verbal protest shall be confirmed in writing, with a statement of the ground or grounds therefor, within thirty days. And if the tax is paid under protest, it shall be the duty of the treasurer to annotate the ground or grounds therefor on the receipt.

The burden of proof that the payment of the tax was made under protest rests of course on the taxpayer. In the case at bar, the only evidence presented by petitioner that the payment of the real property tax under consideration was made under protest is the oral testimony of one Mrs. Ruby Silva to the effect that "the one in charge of preparing the checks for the payments of taxes is just typing it on top of the receipt to read: Paid under Protest," (t.s.n., January 7, 1975, p.86) A scrutiny of the receipts of payment of the real property tax for the year 1969 will readily show that only Exhibit F-3, Real Estate Tax Receipt No. 114631, March 27, 1969, contains the notation: "Paid Under Protest", without any indication as to who made such annotation. The other receipts evidencing payments of the realty tax for the year 1969 do not contain a notation that the installments were "paid under protest."

It seems clear that the purpose of the law in requiring the annotation on the receipt of the words "paid under protest" is to warn or notify tax collecting officers that the amount or portion of the tax paid is contested and should not therefore be considered as revenue but held in trust until the protest is finally decided. With respect to Exhibit F-3, the real estate tax receipt which bears the notation: "Paid Under Protest," there is no indication whatsoever who made such notation. It could not have been made by the collecting officer of the City of Manila because the ground or grounds therefor were not annotated on the receipt as required by law. And granting that the one in charge of preparing the checks for payment of taxes "just typed it on top of the receipt," as claimed by petitioner, without knowledge of the collecting officer, that is not considered as paid under protest because the latter was not properly warned or notified that the amount paid is contested. Then the annotation does not indicate the amount or portion which petitioner is protesting or contesting considering that the tax paid in the sum of ₱17,151.82 represented not only the real property tax on the improvement (building in question) but also on the land.

Accordingly, for failure of petitioner to prove that the payments of its real property tax in question were made under protest and/or for non-compliance with the requirements of the law regarding payment under protest, we are of the opinion and so hold that all the installment payments of the real property tax of petitioner on its old PNB building for the year 1969 are not refundable. For the year 1970, it appears that petitioner did not anymore pay the realty tax on its demolished building.

Having arrived at the conclusion that after the earthquake of August 2, 1968 the old PNB building of petitioner had no more cash value or fair market value for purposes of the assessment of the real property tax, although petitioner is not entitled to the refund of the real estate tax already paid for the years 1968 and 1969, we find it unnecessary to pass upon the question whether petitioner is exempted from paying realty tax in line with the ruling of the Supreme Court in the case of Board of Assessment Appeals, Laguna, vs. Court of Tax Appeals, and NAWASA, No. L-18125, May 31, 1963, 8 SCRA 225, since it is not required for the decision on the merits of the case. Nevertheless, it may be stated by way of personal observation only that the properties owned by the NAWASA are properties owned by the Republic of the Philippines and are exempt from tax if its charter provides for exemption. However, if its charter does not provide for exemption, its real property is taxable. (National Waterworks and Sewerage Authority vs. Quezon City, No. L-25310, April 26, 1968, 23 SCRA 286; Social Security System vs. City of Cebu and City Board of Assessment Appeals, CTA Case No. 2279, April 29, 1972.) Petitioner has not shown that its properties wre owned by the Republic of the Philippines and its charter provides for exemption from tax. The Supreme Court never ruled that NAWASA is exempt from paying real estate tax because Republic Act No. 104, requiring all corporations, agencies, or instrumentalities owned or controlled by the Government to pay such duties, taxes, fees and charges upon their transactions, business, industry, sale, or income as are paid by private persons, is not applicable to NAWASA. The Court merely stated that Section 1 of Republic Act No. 104 is inapplicable to the case at bar for it refers only to duties, fees and other charges upon "transaction, business, industry, sale or income" and does not include taxes on property like real estate tax. (Board of Assessment Appeals, Laguna, vs. Court of Tax Appeals, supra, 8 SCRA at page 236.) In other words, the Supreme Court refused to apply Republic Act No. 104 in that case because the "duties, taxes, fees and other charges" enumerated therein do not include taxes on property like real estate tax.

WHEREFORE, the decision of the Board of Assessment Appeals of the City of Manila is modified in the sense that after the earthquake of August 2, 1968, the old PNB building had no more cash value or fair market value for purposes of assessment of the real property tax, but affirmed in respect to the non-refundability of the realty tax paid for 1968 and 1969.

SO ORDERED.

Quezon City, October 24, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge