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PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,
Petitioner,

June 29, 1957

- versus -

C.T.A.
CASE NO. 300

BOARD OF TAX APPEALS OF
BACOLOD CITY,
Respondent.

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

D E C I S I O N

This is an appeal interposed by the petitioner, Philippine Long Distance Telephone Company, seeking the reversal of a decision of the respondent, Board of Tax Appeals of Bacolod City, sustaining the validity, collection and refusal to refund of real estate taxes inclusive of legal interests made by the Treasurer of said city in the amounts of ₱3,993.89, ₱55.27 and ₱1,842.20 for the years 1953, 1954 and 1955, respectively, on the book value of petitioner's central office equipments, telephone wires, poles, manholes, conduit, terminals, drop wires and other installations amounting to ₱184,218.00 used in the operation of its telephone system in said city.

The following facts appear to be uncontroverted from the pleadings as well as the evidence presented by both parties.

The petitioner herein is a corporation duly organized and existing under the laws of the Philippines. Since 1928 and up to the present time, it has been the holder of a franchise under Act No. 3436 with authority to establish, maintain and operate telephone services, plants and installations throughout the archipelago particularly in large cities and towns like Manila, Pasay, Quezon City, Baguio, Iloilo, Dagupan, San Pablo, Bacolod, Tarlac and Davao. Ever since it had acquired its franchise almost three decades ago, the petitioner was never assessed by the Government nor by its different agencies real estate taxes on the book value of its central office equipments and outside installations such as manholes, conduits, terminals, drop wires, wooden, creosoted, truscon and concrete poles, aerial and underground electric wires, cables, and radio equipments. It is only now that the City Treasurer of Bacolod with the sanction of the respondent Board of Tax Appeals of said city that an attempt was made by the Government to collect real estate taxes for the years 1953, 1954 and 1955 on the book value of the properties in question.

The parties are agreed that the petitioner herein does not own lands nor buildings in Bacolod City on which it should undoubtedly pay real estate taxes. The land and building where its central office equipments are temporarily installed in that city belong to one Antonio Esteban to whom petitioner pays a monthly rental for the use of the premises by virtue of a contract of lease, Exhibits M, M-1, M-2 and M-3 (pp. 60-

75 C.T.A. rec.). The outside installations such as poles (wooden, creosoted, truscon or concrete), cables (aerial and underground), manholes, conduit, terminals and the wires supporting the poles known as guy or drop wires are installed either on government owned lands or lands belonging to local residents to whom petitioner pays rentals by virtue of its verbal or written contracts of lease with the landowners.

The only issue we are called upon to decide in this appeal is whether or not the properties of the petitioner above-described, taking into consideration the condition in which they were installed or located during the years under review, could be classified as immovable or real properties for the purpose of imposing real estate taxes thereon as the City Treasurer of Bacolod City with the sanction of the respondent Board of Tax Appeals of that city have in fact classified them in justification of the assessment and collection of the realty taxes now sought to be refunded.

In trying to justify the impost, respondent's counsel argues that the Charter of Bacolod City, more particularly Section 29 of Commonwealth Act No. 326, as amended by Commonwealth Act No. 404, enumerates the properties that are exempt from taxation and since the properties sought by the petitioner to be exempted from realty taxes are not mentioned therein, following the general rule of statutory construction "Expressio Unius Est Exclusio Alterius", said properties are therefore deemed excluded from the exemption.

Respondent's counsel further contends that even under the Assessment Law, more particularly Section 3 of Commonwealth Act No. 470, which enumerates the properties exempt from real estate taxes, no mention is made whatsoever of the properties herein sought to be exempted, and again, following the cardinal rule of statutory construction just mentioned, said properties are therefore deemed excluded from its benefits.

Lastly, respondent's counsel avers invoking the same principle of statutory construction, that in Articles 416 and 417 of the New Civil Code are enumerated the properties falling under the classification of personal or movable properties and since the properties herein sought to be exempted from realty taxes are not specifically mentioned therein, they are, therefore, deemed ipso facto to be real or immovable properties and therefore subject to real estate taxes.

We have thoroughly examined the provisions of the laws cited by respondent's counsel and we find no merit whatsoever in his arguments.

The Charter of Bacolod City, more particularly Commonwealth Act No. 326, does not define the term "real estate." Neither is there in said charter, as we find in the New Civil Code, a concise classification of properties to serve as good or supplemental guide in the assessment and levy of real estate taxes by the City Assessor, City Treasurer or City Board of

Tax Appeals. Section 27 of the Charter uses the term "real estate" in its general and accepted meaning presumably in reliance of the classification already embodied in the Civil Code. While it is true that under Section 29 of said Charter, there is listed therein properties exempt under certain conditions from realty taxes, obviously, the exemption refers only to lands and buildings, and improvements which are beyond question real or immovable properties under the provisions of the Civil Code such as trees, plants, growing fruits and monuments attached permanently to the land and forming an integral part of an immovable. It is much too unreasonable to expect, as respondent's counsel seems to expect, that the law should, in the classification of properties let us say for realty tax exemption purposes, enumerate to the minutest detail all the properties of petitioner in order to entitle him to exemption. This becomes the more absurd particularly if we are to consider as in the present case that there are certain properties which might be classified either as real or personal depending on the factual circumstances of their use, location, nature and incorporation. The maxim "Espressio Unius Est Exclusio Alterius" requires great caution in its application and in all cases is applicable only under certain conditions (2 Sutherland Statutory Construction 3rd Ed. sec. 4917 p. 418). It is useful only as a guide in determining the probable intention of the legislature, and if it should be clearly apparent, in any particular case, that the legislature did not in fact intend that its express mention of one thing should operate as an exclusion of all other, then the maxim must give way (Black on Interpretation of Laws, 2nd Ed. pp. 219-220).]

The provisions of the Assessment Law, more particularly Section 3 of Act No. 470, cited by respondent's counsel in support of his second argument are not applicable to the case at bar because Section 2 of said Act expressly provides that chartered cities are not covered by the law but by the special provisions of their respective charters.] In this particular case involving city assessment of realty taxes, it should be the Charter of Bacolod City which is Commonwealth Act No. 326, as amended by Commonwealth Act No. 404. Since, as we have found, that the Charter of Bacolod City does not define the term "real estate" nor does it contain a concise classification of properties which could serve as good or supplemental guide to the city authorities (particularly in borderline cases such as the present one), in the assessment, levy and collection of real estate taxes, recourse must be had to the provisions of the New Civil Code which contains such a classification.

Article 414 of the New Civil Code classifies properties into (1) immovable or real; or (2) movable or personal. Listed as immovable or real property under Article 415 of the same Code, which we consider as the nearest approach under which the respondent Board might perhaps cling to, and insist in, its classification of petitioner's properties as immovables for realty tax purposes, are the following:

> (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
>
> (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;
>
> (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. (Underscoring ours.)

After analyzing carefully the above-quoted provisions, we find, however, that none of them is applicable to petitioner's case.

The central office equipments and outside installations of petitioner such as its poles, conduit, terminals, cables, radio equipments and manholes cannot be considered as constructions so as to make them fall within the purview of paragraph 1, Article 415 of the New Civil Code. Constructions generally refer to big improvements which have to undergo the process of building, construction and erection or extensive repairs and alterations (Webster's New International Dictionary, 2nd Edition; pp. 498-500, Vol. 8A Words and Phrases). The setting up of petitioner's central office equipments inside a rented building, the digging of manholes and putting up of telephone poles are not acts of construction, building or erection as the terms are commonly and generally used.

Neither could we classify petitioner's properties as immovables under paragraph 3 of the same article of the New Civil Code. The attachment of movable to immovable property in order that the former could be classified under the category of the latter by attachment or incorporation must be "in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object" (par. 3, Article 415, New Civil Code). As regards the central office equipments of petitioner worth ₱49,394.00 installed inside a rented land and building in Bacolod City belonging to one Antonio Esteban, one will note in the contract of lease, Exhibits N, N-1, N-2 and N-3 (pp. 60-75 C.T.A. rec.) that there is no provision whatsoever therein giving the lessor the right to appropriate for himself these central office equipments upon the termination of the twenty-year lease. This omission clearly indicates that the intention of both parties is to consider said properties as personal or movable in nature and therefore removable by the lessee upon the expiration of the contract of lease. From the context of the contract of lease, the lessee has every right upon the termination of the lease to remove its central office equipments from the rented premises should it decide to transfer them to a building and land of its own.

Aside from the contract of lease, Exhibits N, N-1, N-2 and N-3 (pp. 60-75 C.T.A. rec.) in which both parties impliedly recognize the movable character of petitioner's central office equipments, its very franchise, Act No. 3436, recognizes the movability of petitioner's outside installations thus:

> "SECTION 1. . . . That upon reasonable notice of the Secretary of Commerce and Communications the grantee, its successors or assigns <u>may be required to relocate poles or remove or raise wires or other conductors so as to permit the passage of buildings or other structures from one place to another, one-half the actual cost of such relocation of poles or raising or removal of wires or other conductors to be paid by the person at whose instance the building or structure is moved</u>; and, <u>at the expense of the grantee, its successors or assigns, to relocate conduits, poles, and wires and to raise or remove wires or other conductors when the Secretary of Commerce and Communications so orders and when the public interest so requires</u>: . . .
>
> "Should the grantee, its successors or assigns, fail, refuse, or neglect within a period of ten days after notice to relocate its poles, conduits, wires, or other conductors, or to raise its wires or other conductors when so directed by the Secretary of Commerce and Communications then this official may <u>relocate said poles, conduits, wires, or other conductors or raise said wires or other conductors at the expense of the grantee its successors or assigns</u>: . . .
>
> x x x x
>
> "SEC. 14. . . . the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise or its successors or assigns, <u>to</u>

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> remove, relocate, or replace its poles, wires or conduits; but in such case the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise or his successors or assigns to the grantee of this franchise or its successors or assigns." (Underscoring ours.)

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

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

Considering the nature of petitioner's properties; the use for which they are intended and their temporary attachment to public and private tenement not belonging to petitioner; the intention of the Legislature when it granted the franchise under Act No. 3436 in considering them as movables subject to relocation or removal; the intention of petitioner and the lessors of the lands and building on which they are installed in considering them as such; and, the possibility of their separation from the building or lands on which they are installed without breaking them or without impairing the real property to which they are fixed, the more appropriate provision of law applicable in their classification is paragraph 4, Article 416 of the New Civil Code which reads as follows:

> "The following things are deemed to be personal property:
>
> x x x x

> (4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed."

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

We note in the petition for review that the claim for refund in the total amount of ₱5,891.36 is limited to the years 1953, 1954 and 1955. During the trial of this case, evidence of payment consisting of official receipts, Exhibits H, I, J and K (pp. 41-44 C.T.A. rec.) were introduced to show that petitioner paid ₱3,993.89, ₱55.27, ₱1,842.20 and ₱1,842.20 or a total of ₱7,733.56 for the years 1953, 1954, 1955 and 1956, respectively. In its memorandum, the petitioner seeks the refund of ₱7,733.56 instead of ₱5,891.36 as prayed for in its petition for review. While it is true that as a general rule what is not alleged in the pleadings cannot be proved if objected to by the opposite party, the Court has admitted the last receipt of payment, Exhibit K (p. 44 C.T.A. rec.) in the amount of ₱1,842.20 for the year 1956, there being no objection thereto, the respondent or its counsel having failed to appear during the trial notwithstanding the fact that they were notified months in advance of the scheduled hearing. Even in his eleventh hour "Memorandum for the Respondent" as well as in his "Rejoinder to the Reply to Respondent's Memorandum", respondent's counsel has not questioned the inclusion of this additional item in petitioner's memorandum nor the admission by the Court of the official receipt, Exhibit K. This exhibit appears to be genuine in every respect and there is no doubt that the amount of real estate tax reflected as having been paid under protest in said exhibit, was on the basis of the same properties subject of this appeal. For the sake of expediency and to avoid multiplicity of suits, we have decided as well to consider and resolve the status of this additional item.

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Board of Tax Appeals of Bacolod City appealed from is hereby reversed, and the Treasurer of Bacolod City is hereby ordered to refund to the petitioner, Philippine Long Distance Telephone Company the amounts of ₱3,993.89, ₱55.27, ₱1,842.20 and ₱1,842.20 or a total of ₱7,733.56 representing real estate taxes and penalty for the years 1953, 1954, 1955 and 1956, respectively, illegally assessed and collected by the Treasurer of Bacolod City, with legal interest thereon from the dates the respective amounts were collected and received by the latter (Carcar Electric & Ice Plant Co. vs. Collector of Internal Revenue, G.R. No. L-

9257, October 27, 1956), without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, June 29, 1957.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge
concurs and dissents in a separate opinion.

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PHILIPPINE LONG DISTANCE
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BOARD OF TAX APPEALS
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CONCURRING AND DISSENTING OPINION

I concur in the opinion that office equipments, telephone wires, poles, manholes, conduit, terminals, drop wires and other installations valued at ₱184,218.00 owned by petitioner and used in the operation of its telephone system in Bacolod City are not subject to the real property tax under Commonwealth Act No. 326, the charter of said city. I dissent, however, with respect to the order directing the City Treasurer of Bacolod to refund the sum of ₱7,733.56, which was paid by petitioner as real property tax on the properties mentioned above for the years 1953, 1954, 1955 and 1956. I shall state my reasons very briefly.

This is an appeal from the decision of the Board of Tax Appeals (now Board of Assessment Appeals, Sec. 21, Rep. Act No. 1125) of the City of Bacolod which sustained the decision of the City Assessor holding that the properties used in the telephone system of petitioner in Bacolod are subject to the real property tax. The decision of the City Assessor (whose duties are performed by the City Treasurer under Sec. 27 (e), Com. Act No. 326) is contained in his letter of September 9, 1952 "requiring the petitioner to file for assessment and real estate tax purposes a declaration based on the book value of petitioner's telephone wires, poles and other apparatus which are used in the operation of its telephone system in the said city." (Par. 3, Petition for Review.) It was this decision of the City Assessor (City Treasurer) that was elevated to the Board of Assessment Appeals of Bacolod City and which was sustained by said Board. (Exhs. L & M-1.) Therefore, in appealing to this Court from the decision of the Board, petitioner may raise only the issue of the legality of "requiring the petitioner to file for assessment and real estate tax purposes a declaration based on the book value of petitioner's telephone system in the said city." This Court has no jurisdiction to consider on appeal any issue involved in any matter not raised before and passed upon by said Board.

Even granting that the question of the legality of the collection from petitioner of the real property tax in question was raised in the appeal filed with said Board, it is believed that the Board has no power to pass upon that question. Neither the charter of Bacolod nor the

Assessment Law (Com. Act No. 470) empowers the Board to pass upon the legality of the collection of real property taxes by the City Treasurer. The sole remedy of the taxpayer in such case is to institute an action for recovery in the proper Court of First Instance after complying with the requisites provided by law.

Another weighty consideration which must not be overlooked is the fact that the City Treasurer of Bacolod, in his capacity as such City Treasurer, has not been made a party to this case. He could not have been made a party to this case because his decisions or actions as such City Treasurer, which are to be distinguished from his decisions or actions as City Assessor, are not reviewable by the Board of Assessment Appeals. It would be unfair to the City of Bacolod, represented by the City Treasurer, for it to be required to refund the tax in question without benefit of hearing. The City Treasurer may have defenses against the claim of herein petitioner, defenses which are not available to respondent Board of Assessment Appeals of Bacolod. Under the circumstances, I feel that the order directing the said City Treasurer to refund to petitioner the amount in question violates the constitutional guarantee against depriving a person of his property without due process of law.

ROMAN M. UMALI
Associate Judge