REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ALGUE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 641

BOARD OF ASSESSMENT APPEALS OF RIZAL,
Respondent.

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# D E C I S I O N

This is an appeal of Algue, Inc. from the decision of respondent Board of Assessment Appeals of Rizal holding just and reasonable the valuation made by the Provincial Assessor of Rizal of petitioner's parcel of land at ₱3.00 per square meter.

Petitioner owns a parcel of land situated in Marikina Heights Subdivision, Marikina, Rizal. This piece of land (Lot No. 1, Block No. 30), containing an area of 2,509.90 square meters, was purchased by petitioner from the Tuason Land Development, Inc. on September 13, 1955 for ₱10,282.55, but the transfer Certificate of title thereon was issued to Algue, Inc. only on December 18, 1957. It is a part of a subdivision which was formerly a pasture land (BAA rec. p. 6).

It appears that prior to its subdivision, the land comprising the Marikina Heights Subdivision was assessed at ₱700.00 per hectare. Thenceforth, it was

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assessed at ₱1.00 per square meter or ₱10,000.00 per hectare by agreement between its owners and the Provincial Assessor of Rizal. Upon the sale of any lot and the transfer of its tax declaration to the new owner, the rate of assessment is increased to ₱3.00 per square meter or ₱30,000.00 per hectare. (BAA rec. p. 6; Answer, CTA rec. p. 8.)

On February 19, 1958, petitioner received Tax Declaration No. 10741 from the Provincial Assessor of Rizal wherein the assessed value of the lot in question was fixed at ₱3.00 per square meter, or a total assessed value of ₱7,530.00. (Exh. C, CTA rec. p. 46.) From this appraisal, petitioner appealed to the respondent Board of Assessment Appeals, which held the same just and reasonable. Hence the present appeal, seeking the cancellation of Tax Declaration No. 10741; fixing the value of the parcel of land in question at ₱1.00 per square meter; and the refund of the alleged overpayment of realty tax.

In the interim, the petitioner paid under protest the real estate tax due thereon from 1958 to 1961 based on the assessed value of ₱3.00 per square meter, or in the total amount of ₱301.20. (Exhs. F to F-3, & G, CTA rec. pp. 83-87.)

We are called upon to resolve the question whether or not the action of the Provincial Assessor of Rizal in increasing the assessed value of the lot in question is in accordance with law.

Petitioner assails the enhanced valuation of the land in question at ₱3.00 per square meter as discriminatory and unjust. On the other hand, respondent contends that the new assessment is in accordance with law and is predicated on the fact that the lot in question is an improved residential land, being a part of a subdivision.

There is no question as to the authority of the Provincial Assessor to assess real properties at their true and full value. What the true and full value of the lot in question is, both parties did not attempt to prove. What seems to be the controversial issue is the arbitrariness of the new assessment.

As afore-stated, prior to the issuance of the tax declaration to the petitioner, the land in question and the lots in the adjoining blocks of the subdivision were classified as residential and valued for purposes of taxation at ₱1.00 per square meter. Thenceforth, the valuation of the former was increased by the Provincial Assessor to ₱3.00 per square meter, leaving undisturbed that of the latter lots which were not sold and for which no tax declarations have yet been issued to the buyers. The increase in the valuation of the land at bar is being justified merely by its sale and transfer of the corresponding tax declaration to the petitioner.

This mode of fixing the assessed value is clearly arbitrary. Uniformity in taxation means that all kinds of property of the same class shall be taxed at the same rate. (Churchill vs. Concepcion, 34 Phil. 969; Eastern Theatrical Co. vs. Alfonso, 83 Phil. 852.) Mere change of ownership over a parcel of land, unaccompanied by improvements or other circumstances, is not sufficient to justify unequal valuation of a property by increasing its value over and above that of the nearby lots of similar classification. To enhance the valuation for taxation purposes for reason of mere change in the ownership of the land is arbitrary and violative of the uniform rule of taxation guaranteed by the Constitution.

In the case at bar, there is no showing that improvements have been made on the land in the interim or that circumstances justifying the disproportionate valuation have supervened. Clearly, the increased appraisal to ₱3.00 per square meter is unconstitutionally discriminatory. There is an intentional violation of the uniform rule of taxation which warrants judicial interference.

As regards the claim of the petitioner for the refund of overpaid real estate tax, we believe that inasmuch as the provincial government of Rizal, to whom the taxes sought to be refunded were paid, is not a party respondent in the case we cannot order the refund prayed for. (Tan vs. de la Fuente, G. R. No. L-3925, December 14, 1951; Shell Co. of P.I., Ltd. vs. Vaño, 50 O.G. 1046; Jos. S. Johnston & Sons, Inc. vs. Regondola, G. R. No. L-9355, November 26, 1957.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby reversed and Tax Declaration No. 10741 cancelled. The Clerk of Court is hereby ordered to send a copy of this decision to the Provincial Treasurer of Rizal for his information and guidance. Without pronouncement as to costs.

SO ORDERED.

Manila, March 12, 1962.

AUGUSTO M. LUCIANO
Associate Judge

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

Presiding Judge MARIANO NABLE dissents in a separate opinion.

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## CONCURRING OPINION

I fully concur in the opinion penned by Associate Judge Augusto M. Luciano. I wish to add, however, the following observations.

There is no dispute here as to the facts. The Tuason Land Development Company, Inc. is the owner of a parcel of land in Marikina, Province of Rizal, which it subdivided into lots for sale. The said property is assessed for land tax purposes at ₱1.00 per square meter. Petitioner acquired one lot containing 2,509 square meters, and when title to said lot was transferred from the subdivision owner to petitioner, the assessed value was increased from ₱1.00 to ₱3.00 per square meter, while the unsold lots remain assessed at ₱1.00 per square meter. In other words, petitioner has been required to pay a property tax which is 300% of the tax being paid by the subdivision owner on lots similarly classified. The records do not show that the property of petitioner has been classified differently from the unsold lots of the subdivision owner in order to justify a difference in valuation. The Provincial Assessor of Rizal based the increased valuation of petitioner's property solely on the fact that ownership of said property was transferred from the subdivision owner to petitioner. Said the Provincial Assessor:

> "As usual, the assessment of land for taxation purposes in any place is fixed pursuant to the schedule of land values enforced in the municipality where the property is located. When the Tuason Land Development subdivided their property which was formerly pasture land, we found upon changing the classification of this property that our schedule of land values does not fix any rate for residential land in the particular place where lot 1, Block 30 is located. Following an agreement between this office and the owners of the subdivision, we fixed only a nominal assessment of ₱1.00 per sq. m. for the newly subdivided lots of Tuason Land Development for taxation purposes.
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> "Whenever a sale of the subdivision lot is made by the Tuason Development, the rate of assessment is changed by this office from ₱1.00 to ₱3.00 per sq. m. upon the transfer of the corresponding tax declaration of the sold lot for purposes of taxation in favor of the buyer (new owner)." (2nd Indorsement of the Prov. Assessor of Rizal, dated Oct. 17, 1958, page 6, B.A.A. records.)

The Provincial Board of Assessment Appeals of Rizal, in sustaining the valuation made by the Provincial Assessor, based its decision solely on the ground that "the value fixed by the Provincial Assessor on the property (land) of the petitioner is just and reasonable in comparison with the prevailing market value of lands in the same place." (See Minutes of the Meeting of the Board of Assessment Appeals for the Province of Rizal held on February 6, 1959, pp. 16-17, B.A.A. records.)

Section 4 of Commonwealth Act No. 470 (Assessment

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Law) requires that all real property subject to taxation shall be valued and assessed for taxation at its true and full value. In the exercise of the powers of taxation, the Constitution provides that the rule of taxation shall be uniform (Art. VI, Sec. 22/1/). The Constitution also provides that no person shall be denied the equal protection of the laws (Art. III, Sec. 1/1/). Applying these statutory and constitutional requirements, it is essential that real property must be valued for tax purposes at its true and full value, or at its fair market value, and that such valuation must be uniform. Property cannot be valued at fair market value, while other property of the same class, situated under the same circumstances, are valued at less than fair market value. Neither is it permissible to have property of the same class valued differently, even if both valuation are less than fair market value, for to do so would be to consider the statutory requirement that property be valued at its fair market value as superior to the fundamental requirement of uniformity. In other words, where it is not possible to have all property of the same class valued at fair market value, the valuation must at least adhere to the uniformity rule. We have had occasion to state this view in C. N. Hodges v. Board of Assessment Appeals of Iloilo City, C.T.A. Nos. 361 and 362, November 21, 1958, from which we quote:

> "The law requires that real property shall be assessed at its true and full value, or cash value, or fair market value. This requirement must be observed. But in deter-

> mining or fixing the fair market value of property for tax purposes it is essential that the rule of uniformity be observed. More important than the obligation to seek the fair market value of property is the obligation of the assessor to see to it that the 'rule of taxation shall be uniform,' for this is a rule which is guaranteed by the Constitution. A taxpayer should not be made to pay more taxes on his property while owners of surrounding property, under the same circumstances, pay less."

The principle enunciated above is not without precedent. In Sioux City Bridge Company v. Dakota County, Nebraska, 260 U.S. 441, 67 L. ed. 340, 43 Sup. Ct. Rep. 190, the petitioner, Sioux City Bridge Company, sought to have the valuation of its property reduced to the same level of valuation placed on property of the same class owned by others. The Supreme Court of Nebraska held that the assessment was valid and that the remedy in such cases was to raise the valuation of property which were assessed at less than fair market value. This opinion was reversed by the Supreme Court of the United States on appeal. Said the U. S. Supreme Court, speaking through Mr. Chief Justice Taft:

> "The supreme court (of Nebraska) does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutoty requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of

the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of Taylor v. Louisvill & N. R. Co., 31 C.C.A. 537, 60 U.S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in Greene v. Louisville & Inter-urban R. Co., 244 U.S. 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of under-assessed property in the taxing district. <u>This court holds that the right ofthe taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.</u> In substance and effect, the decision of the Nebraska supreme court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment." (Emphasis supplied.)

I think that the doctrine laid down in the case of the Sioux City Bridge Company, cited above, applies with equal force to the case at bar. The discriminatory valuation made of petitioner's property is a violation of the uniformity rule and consequently denies to petitioner the equal protection of the laws guaranteed by the Constitution. Hence, I have no hesitancy in voting

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for reversal of the decision appealed from.

ROMAN M. UMALI
Associate Judge

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DISSENTING OPINION

Land tax, among the different taxes levied by the government, is a peculiar tax. By the very nature of this levy, it is difficult to attain an absolute uniformity, that is why there are different valuations in agricultural lands as well as in urban localities. In farm lands, for example, there are different classifications - first class, second class, third class, etc.; and in urban areas, there are the so-called commercial sections, residential sections, etc. The progress attained by a locality is also another factor being considered in this regard, and even the human equation as well. To be more specific, even a poor agricultural land, say in the so-called sugar region in Negros Occidental, is valued much higher than the best agricultural land in Mindanao; again, a commercial lot in a business section in Manila certainly is valued very much higher than the best commercial lot, say in Cebu City. In short, valuation in land, for the purpose of taxation, is very conventional. It is next to impossible to attain uniformity which can be easily achieved in other kinds of taxes.

I have said that human factor sometimes counts, although improper, because sometimes people close to the officials are able to obtain lower assessments than others on properties having the same use, the same location, the same improvements, and the same marketability.

Assuming, arguendo, the existence of differences in valuation under the same circumstances, the solution should be directed in ascertaining the real value or the market value of the property in question. As long as the valuation does not go over this limit, the assessment should be sustained; in cases of apparent discrimination, the authorities concerned should be warned or even ordered to correct the error immediately, rather than jeopardize the just source of revenue of the government by denying the same its rightful collection of taxes.

On these bases, I am constrained to dissent.

MARIANO NABLE
Presiding Judge