REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AMERICAN
DRUG CO.,
Petitioner,

versus

C.T.A. CASE NO. 2367

THE CITY ASSESSOR OF
THE CITY OF MANILA and
THE BOARD OF ASSESSMENT
APPEALS OF THE CITY OF
MANILA,
Respondents.

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

GRAPHIC PUBLISHING
COMPANY,
Petitioner,

versus

C.T.A. CASE NO. 2368

THE CITY ASSESSOR OF
THE CITY OF MANILA and
THE BOARD OF ASSESSMENT
APPEALS OF THE CITY OF
MANILA,
Respondents.

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

D E C I S I O N

The above-captioned cases were consolidated by the Court in its Order dated January 15, 1973, considering the nature of the issues involved therein.

In both cases, petitioners appealed to this Court from the decisions of respondent Board of Assessment Appeals of the City of Manila declaring itself without jurisdiction to decide the issue since the appeal involves a question of law, and that its jurisdiction is only to determine whether the assessment

(95)

fixed by the City Assessor is fair and reasonable or excessive and exhorbitant.

In C.T.A. Case No. 2367, petitioner Philippine American Drug Company received a form letter dated October 5, 1970 from respondent City Assessor of the City of Manila, informing it that its machineries and equipment installed in its building located at Escolta Street, District of Binondo, Manila, have been assessed for taxation purposes effective 1970 at ₱240,900.00.

In its letter dated December 17, 1970 to the City Assessor petitioner protested the assessment, on the ground that the said assessment has no legal basis as the said machineries and equipment could not be considered as used for industrial or manufacturing purposes; in the same breath, it notified respondent of its intention to appeal to the Board of Assessment Appeals. On the same date, December 17, 1970, petitioner addressed a letter to the Board of Assessment Appeals of the City of Manila appealing the assessment of the City Assessor of the City of Manila on the same ground that the machineries and equipment were not used for industrial and manufacturing purposes and requested an early hearing. Again, in a letter dated December 29, 1970, petitioner reiterated its appeal to the Board of Assessment Appeals on the same ground.

The properties that are the subject of the assessment in C.T.A. Case No. 2367 are the following:

(1)	Centralized Air Conditioning, 215 h.p.	₱ 147,400
(2)	1 passenger elevator, 2,000 lbs.	42,320
(3)	1 Freight elevator, 4,000 lbs. capacity	28,300
(4)	2 Water tanks, 2500 gal. ea.	2,880
	Total	₱ 240,900

In C.T.A. Case No. 2368, petitioner Graphic Publishing Company, also received a form letter dated October 16, 1970, from the City Assessor, Office of the City of Manila, informing petitioner that its printing and publishing machines and equipment located at 14th Street corner Atlanta Street, Port Area, Manila, have been assessed for taxation purposes effective 1970 at ₱31,100.00. The machines and equipment assessed by respondent are the following:

(1)	1 Address-O-Graph	₱ 18,108
(2)	1 Enlarger Equipment	3,216
(3)	2 Remitting Furnace	2,397
(4)	1 Photo Camera	3,740
(5)	1 Elliot Posting Machine	3,618
	Total	₱ 31,079

In its letter dated December 17, 1970, petitioner protested the assessment of respondent on the ground that the said assessment has no legal basis, as the said machineries and equipment could not be considered as used for industrial or manufacturing purposes, and at the same time notified respondent of its intention to appeal to the Board of Assessment Appeals. On the same date, December 17, 1970, said petitioner appealed the decision of respondent City Assessor of the City of Manila to the Board of Assessment Appeals on the ground that the assessment in question has no legal basis, since the said machineries and equipment were not used for industrial or manufacturing purposes. However, on December 15, 1971, respondent Board of Assessment Appeals rendered a resolution against each petitioner in the above entitled cases to the effect that it has no jurisdiction to resolve a question of law, as the said body only determines whether the assessment fixed by the City Assessor is fair and reasonable or excessive and exhorbitant. Hence, petitioners in both cases appealed to this Court.

The pertinent provision of the law relied upon by the parties reads as follows:

> SEC. 53. Powers and duties of the City Assessor. - There shall be a city assessor who shall have charge of the department of assessment. The City Assessor and his authorized deputies, who are empowered to administer any oath authorized to be administered in connection with the valuation of real estate for the assessment or collection of taxes, shall appraise and value all the real estate not expressly exempt, including machines, mechanical contrivances,

> instruments, tools, implements, appliances, apparatus, and paraphernalia used for industrial, agricultural or manufacturing purposes subject to exemption for the first five years of their original purchase or acquisition. He shall prepare and file with the City Treasurer before April first of every year a list of the real estate so valued which is exempt from taxation and a separate list of the taxable real estate. (Republic Act No. 409 as amended by Rep. Act No. 6053; underlining supplied.)

In C.T.A. Case No. 2367 petitioner contends that the machineries and equipment in question were not used for industrial purposes because renting a building is not an industry.

With respect to the elevators, the issue raised in this case is no longer one of first impression to this Court. In Lourdes R. de Ortega v. City Board of Assessments Appeals of Manila, C.T.A. Case No. 2199, January 31, 1972, this Court held the following:

> The business of petitioner of renting her building is not merely a commercial but also an industrial undertaking or activity; in short, the construction of her building was for an industrial purpose. This Court has interpreted a substantially similar provision (Section 3[f]) of the Assessment Law to the effect that the term "industry" means any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labor and capital and is a distinct branch of trade, or a productive enterprise which employs relatively large amounts of capital and or labor.

> (Philippine Bulk Corporation v. Prov. Board of Assessment Appeals of Negros Occidental, CTA 1730, Dec. 26, 1967, citing Philippine Acetylene Company v. Comm. of Customs, CTA No. 1147, Dec. 26, 1963.) This Court expressed the view in the latter case that a productive enterprise, among others, is one devoted to the production or net return of wealth; and that "a person engaged in commerce or trade employing much labor and capital is engaged in industry because the enterprise is productive of results, profits or benefits." On the basis of this interpretation as to the meaning of "industry," petitioner, by constructing her apartment building and by renting it, is engaged in an industry. This is so because the enterprise of renting property entails much capital and labor which produces results, profits and benefits. The elevator of said building, therefore, which is a machinery or mechanical contrivance used to carry the tenants and the general public to the various floors of the building, is a device used for the efficient operation of the building; hence, it is machinery or instrument used in an industry. . . (underlining supplied.)

With respect to the centralized air conditioning unit, and the two water tanks, attached to the building owned by petitioner, being machineries or equipment used for the efficient operation of the building, they necessarily are in the same category as the elevators.

In C.T.A. No. 2368, petitioner also urges that it was not engaged in an industry. In the light of what has been said in C.T.A. No. 2367, it seems needless to say that petitioner, publisher of "Graphic", a weekly magazine sold to the general public, is in the business for profit and, perforce engaged in an industry.

Petitioner however contends that the properties in question were not real properties because they could be carried from place to place or change location without causing injury to the immovable to which they were attached and are therefore not subject to assessment under Section 53 of Republic Act No. 409 as amended. Respondent, on the other hand thinks otherwise.

Section 53 of Republic Act 409 as amended is a common provision in laws that impose a tax on real property including land, buildings, machineries and other improvements. Although they may not be worded in exactly the same words the same intent underlie them. There is good authority that real property and machinery as the terms are used in these laws unless the contrary clearly appears, should be interpreted in the light of Article 415, paragraph (5) of the Civil Code of the Philippines which provides:

> ART. 415. <u>The following are immovable property</u>:
>
> x x x x x
>
> (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;

In the case of B. H. Berkenkotter v. CuUnjieng, 61 Phil. 663, the Supreme Court said that Article 415, paragraph (5) aforequoted gives the character of real property to machinery, liquid containers, instruments or implements for use in connection with an industry or trade when they are expressly adopted to meet the requirements of such trade or industry. For machinery, instruments or implements to be immobilized and converted to real properties they must be essential and principal elements of an industry, that is, without them the work involved in the industry cannot be done. The case of Mindanao Bus Co. v. City Assessor and Treasurer, 6 SCRA 197, elucidates this point in this apt language:

> . . . So that movable equipments to be immobilized in contemplation of the law must first be "essential and principal elements" of an industry or works without which such industry or works would be "unable to function or carry on the industrial purpose for which it was established." We may here distinguish, therefore, those movables which become immobilized by destination because they are <u>essential and principal elements</u> in the industry from those which may not be so considered immobilized because they are <u>merely incidental</u>, not essential and principal. Thus, cash registers, typewriters, etc., usually found and used in hotels, restaurants, theaters, etc. are merely incidentals and are not and should not be considered immobilized by destination, for these businesses can continue or carry on their functions without these equipments. Airline companies use forklifts, jeep-wagons,

> pressure pumps, IBM machines, etc. which are incidentals, not essentials, and thus retain their movable nature. On the other hand, machineries of breweries used in the manufacture of liquor and soft drinks, though movable in nature, are immobilized because they are essential to said industries; but the delivery trucks and adding machines which they usually own and use and are found within their industrial compounds are merely incidentals and retain their movable nature.
>
> Similarly, the tools and equipments in question in this instant case are, by their nature, not essential and principal elements of petitioner's business of transporting passengers and cargoes by motor trucks. They are merely incidentals — acquired as movables and used only for expediency to facilitate and/or improve its service. Even without such tools and equipments, its business may be carried on, as petitioner has carried on, without such equipments, before the war. The transportation business could be carried on without the repair or service shop if its rolling equipment is repaired or serviced in another shop belonging to another.

From the foregoing authorities the two furnaces which are used in the composing section for melting lead, which is fed to the composing machine of the press is an immovable property subject to assessment because they are expressly adopted to meet the requirements of the industry; without them the printing press could not operate. They are subject to assessment.

The Adress-O-Graph, a machine used to facilitate the addressing of the magazine slated for subscribers; the photo camera; the Enlarger equipment which is used for enlarging pictures; the Elliot Posting machine which is an accounting machine, are not immovable properties by destination because they are not essentials but are merely incidentals and retain their movable natures, hence are not subject to assessment.

In fine, the assessment in C.T.A. Case No. 2368 should be reduced to ₱2,397.

WHEREFORE, the assessment in C.T.A. Case No. 2367 is hereby affirmed, and the assessment in C.T.A. Case No. 2368 is hereby reduced to ₱2,397. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 23, 1974.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge