



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n i l a

GMA NETWORK, INC.,
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-100
(LBAA Case No. 2008-01)
Province of Ilocos Norte

**THE LOCAL BOARD OF
ASSESSMENT APPEALS OF THE
PROVINCE OF ILOCOS NORTE,**
Appellee,

-and-

**JOSEHPINE P. CALAJATE, in her
capacity as the Provincial Treasurer
of Ilocos Norte,**
Respondent-Appellee.

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D E C I S I O N

This Appeal, received by this Board on January 19, 2009, is from the Decision rendered by the Local Board of Assessment Appeals of the Province of Ilocos Norte on October 5, 2009, the dispositive portion of which reads as follows:

“Undoubtedly, this Board is devoid of any authority to interpret laws and to order a refund, and moreso, has no power to exempt the herein petitioner from payment of real property taxes of its properties located at San Nicolas, Ilocos Norte.

“WHEREFORE, in view of the foregoing, this Board resolves to DENY the above-entitled petition for lack of jurisdiction.”

Alleging that it received a copy of the decision appealed from on October 20, 2009, Petitioner-Appellant GMA Network, Inc. (“GMA” for brevity) states:

1. Petitioner GMA is a grantee of the legislative franchise to operate radio and television broadcasting stations in the country under Republic Act No. 7252, otherwise known as "*An Act Granting the Republic Broadcasting System, Inc. A Franchise to Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines*", which took effect on March 2, 1992; In particular, Congress granted petitioner GMA the license "to construct, install, operate and maintain for commercial purposes and in the public interest, **radio and television broadcasting stations** in the Philippines **with the corresponding auxiliary, special broadcast and other program and distribution services and relay stations**, and to install radio communications facilities for private use in its broadcast services" for a term of 25 years. Copies of R.A. 7252 and of the Amended Articles of Incorporation which reflects the change of corporate name from *Republic Broadcasting System, Inc.* to *GMA Network, Inc.* are hereto attached as **Annexes "B" and "C"**;

2. In pursuit of this legislative franchise, petitioner GMA acquired lands, constructed buildings and improvements, and placed machineries thereon that are necessary and essential to the operation of a television network and radio broadcasting stations in Metro Manila and various provinces;

3. In 1998, petitioner GMA opened its television relay station in San Nicolas, Ilocos Norte;

4. The machineries and improvements situated in San Nicolas, Ilocos Norte are being used by petitioner GMA for its television relay station;

5. The machineries and improvements are listed in the assessment roll pursuant to which a tax declaration was issued by the Office of the Provincial Assessor, Ilocos Norte; Copies of Tax Declaration No. 05-020-00031, 05-020-0032, 05-020-00033 and 05-020-00034 for the machineries and Tax Declaration Nos. 05-020-00848, 05-020-00849 and 05-020-00850 for the improvements situated in San Nicolas, Ilocos Norte are attached hereto as Annexes "**D**" to "**J**", respectively;

6. As a consequence of the listing, the Province of Ilocos Norte imposed real property tax on the said property;

7. For the years 2006 and 2007 petitioner GMA paid real property taxes on the said property in the principal amount of Php160,170.04. This amount is different from that claimed in the request for refund as this is the correct sum of the amounts paid by petitioner GMA as evidenced by official receipts attached thereto, and not Php160,330.50 as stated in the letter-request dated January 25, 2008. Copies of Official Receipt (O.R.) No. 7824132 for the amount of Php55,104.66, O.R. No. 7824129 for the amount of Php3,792.78, O.R. No. 2247075 for the amount of Php43,403.68 and O.R. No. 2247073 for the amount of Php57,868.92 are attached hereto as Annexes "**K**" and "**N**", respectively;

8. In year 2006, the Supreme Court promulgated a decision in the case of *City of Government of Quezon City v. Bayan Telecommunications, Inc.* (March 6, 2006, 484 SCRA 169), where the Supreme Court upheld Bayantel's exemption from real estate tax on its real estate, buildings and personal property located in Quezon City which are actually, directly and exclusively used in the pursuit of its franchise on the basis of the "*exclusive of this franchise*" clause found in Bayantel's legislative franchise;

9. The following year, the Supreme Court again interpreted the “exclusive of this franchise” clause in the case of *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan* (February 23, 2007, 516 SCRA 558) as an express exemption from payment of real property taxes on real properties that are exclusively, actually and directly used in pursuit of Digitel’s franchise;

10. Pursuant to the Bayantel and Digitel rulings, petitioner GMA served a letter on **February 1, 2008** to the respondent Provincial Treasurer claiming for refund of real property taxes erroneously collected from the province for the years 2006 and 2007 in the principal amount of Php160,330.50 (should be Php160,170.04 as explained in paragraph 8) pursuant to Section 253 of R.A. 7160; A copy of the letter dated January 25, 2008 is attached hereto as Annex “O”;

11. On February 29, 2008, petitioner GMA received the letter reply dated February 20, 2008 signed by the respondent-appellee Provincial Treasurer denying its claim for refund as follows:

“Sir:

This refers to your letter dated January 25, 2008 claiming for refund of real property tax payments of GMA Network, Inc. amounting to *One Hundred Sixty Thousand Three Hundred Thirty & 50/100 Pesos (P160,330.50)* which were alleged to be erroneously collected by this office.

Consistent with the long line of Supreme Court decisions, this office stands by its previous rulings and finds GMA Network, Inc. liable for real property taxes as assessed and collected by the Municipal Treasurer of San Nicolas, Ilocos Norte, in connection with the company’s operation thereat.

Basic is the rule that tax exemption is construed in *strictissimi juris* against the taxpayer and liberal (*sic*) in favor of the taxing authority. Tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception. Moreover, there is nothing in the language of Sec. 8 of RA 7252 which shows that the grantee or *the Republic Broadcasting System, Inc.* shall be exempted from payment of real property taxes, instead, it clearly states that “*The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.*” It is worth stressing that a franchise is a different type of property or privilege distinct and separate from real estate, buildings and personal property which is expressly excluded from the latter types of property that GMA Network is liable.

GMA Network, Inc. cannot claim total tax exemption simply by implication or reference to a case decided by the Supreme Court which it is not a party thereto. It must show by clear and unequivocal terms that it is entitled by law and jurisprudence to an exemption.

Accordingly, the claim for refund is hereby DENIED.

Very truly yours,

(signed)
JOSEPHINE P. CALAJATE
Provincial Treasurer”

A copy of the letter reply dated February 20, 2008 is attached hereto as Annex “P”;

12. Thus, on April 29, 2008, petitioner-appellant GMA filed a petition with the LBAA of the Province of Ilocos Norte from the denial by respondent-appellee Provincial Treasurer of the claim for refund as allowed under Section 253 of the Local Government Code (R.A. 7160, hereinafter, “the Code”) in relation to the *2005 Manual of Assessment of Real Property and Assessment Operations* which provides that a real property taxpayer who is aggrieved by the decision, action or inaction of the local treasurer over a claim for refund of erroneously collected real property tax may appeal to the LBAA within sixty (60) days from the receipt of the decision or within sixty (60) days from receipt by the local treasurer of the claim without any action on his or her part. Thus:

“RULE 2. Local Board of Assessment Appeals - -

SECTION 1. Jurisdiction. –**The Local Board shall have original jurisdiction to hear and decide appeals of owners/administrators of real property** from the action of the Provincial or City Assessors, or the Municipal Assessors in the Metro Manila Area, in the assessment of their properties, and **from the action of the Provincial or City Treasurers, or Municipal Treasurers in the Metro Manila Area, regarding collection of real property taxes**, special levies, or other real property taxes under Title Two, Book II of R.A. No. 7160.

Section 2. Person Who May Appeal. – Any owner or administrator of real property, or any person having legal interest therein, who is not satisfied with the action of the provincial, city or municipal assessor in the appraisal/assessment of his property may appeal to the Local Board of Assessment Appeals of the province or city, or municipality within the Metro Manila Area, where the property is located. **A real property taxpayer who is aggrieved by the decision, action or inaction of the provincial, city or municipal treasurer over excessive real property tax paid under protest, or on claim for refund of illegally or erroneously collected real property tax, including special levies on real property, may likewise appeal to the Local Board as provided in this (sic) rules.**

Section 4. Period of Appeal. – (a) The owner, administrator or person who is not satisfied with the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Local Board concerned.

Any real property taxpayer who is aggrieved by the decision, action or inaction of the provincial or city treasurer, or municipal treasurer within the Metropolitan

Manila Area, on his written claim for refund or credit may appeal to the Local Board concerned as follows:

A. If, within sixty (60) days from the date or (*sic*) receipt by the treasurer concerned of the written claim for refund or credit for tax paid under protest, the treasurer concerned fails to make any decision thereon, the appeal may be made within sixty (60) days from the date of receipt by the treasurer concerned of the said written claim for refund or credit, or

xxx.”

A copy of the Petition (*sans* annexes) dated April 29, 2008 is attached hereto as Annex “Q”;

13. On September 11, 2008, petitioner GMA received a copy of the Urgent Motion to Extend Time to File Answer dated September 4, 2008 filed by respondent-appellee Calajate requesting for an additional period of four (4) days within which to submit her comment or answer; A copy of the Urgent Motion for Extension dated September 4, 2008 is hereto attached and made an integral part As Annex “R”;

14. On September 17, 2008, petitioner GMA received a copy of respondent-appellee Calajate’s Answer (Comment) dated September 10, 2008 alleging that (i) petitioner GMA’s legislative franchise does not or did not exempt it from payment of real property taxes; and (ii) petitioner GMA cannot claim exemption simply by implication of, or reference to a ruling of the Supreme Court in another case of which it is not a party; A copy of the Answer dated September 10, 2008 is hereto attached and made an integral part as Annex “S”;

15. On September 29, 2008, petitioner GMA filed by registered mail its Reply to Answer dated September 24, 2008 refuting the allegations of the Provincial Treasurer in his Answer. Petitioner-appellant GMA maintained that: (i) the exemption granted to it is clear and categorical as sufficiently discussed in its Petition and is in fact supported by opinions rendered by the Bureau of Local Government Finance (“BLGF”); (ii) the ruling of the Supreme Court in the cases of *City Government of Quezon City v. Bayan Telecommunications, Inc.* and *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan, February 23, 2007, 516 SCRA 558* cited by petitioner-appellant are applicable to the present case as the said cases interpreted the exact same provision in Bayantel’s and Digitel’s legislative franchises, particularly the “*exclusive of this franchise*” clause; Copy of the Reply to Answer dated September 24, 2008 is hereto attached and made an integral part as Annex “T”;

16. On October 20, 2009, petitioner GMA received a copy of the Decision dated October 5, 2009 which denied the appeal of petitioner-appellant GMA;

17. Under Section 229 of the Local Government Code, the owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals. Hence, this appeal.

Petitioner-Appellant GMA says that:

THE LBAA OF THE PROVINCE OF ILOCOS NORTE ERRED WHEN IT RULED THAT IT IS WITHOUT JURISDICTION TO RULE ON PETITIONER-APPELLANT GMA'S PETITION WHICH ASSAILS THE DENIAL BY RESPONDENT-APPELLEE OF THE CLAIM FOR REFUND OR REAL PROPERTY TAXES PAID FOR ITS PROPERTIES LOCATED IN SAN NICOLAS, PROVINCE OF ILOCOS NORTE.

In denying the petition of GMA, the LBAA of Ilocos Norte cited the following reasons, namely: (a) Based on the provisions of Article 317 of the Implementing Rules and Regulations ("IRR") of R.A. 7160, the jurisdiction of the LBAA "is only with respect to the assessment made by the Provincial Assessor" and (b) The interpretation of the laws surrounding GMA's claim for refund or tax credit "falls within the domain of the appropriate court" citing the provisions of Article 285 of the Implementing Rules and Regulations ("IRR") of R.A. 7160 and Sections 195 and 196 of R.A. 7160.

Articles 317 and 285 of the LGC's IRR, as well as Sections 195 and 196 of the LGC, provide as follows:

"Art. 317. Local Board of Assessment Appeals. – (a) Any property owner or person having legal interest or claim in the property who is not satisfied with the assessment of his property made by the provincial, city or municipal assessor pursuant to the provisions of this Rule may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to local board of assessment appeals of the province or city where the subject property is situated by filing a petition under oath in the standard form prescribed therefore, together with copies of the tax declaration and such affidavits or documents in support of the appeal.

(b) In the case of municipalities within MMA, the appeals may be filed with the Municipal Board of Assessment Appeals of each municipality as provided in Art.318 of this Rule."

"ART. 285. Protest on Assessment.- When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge the amount of deficiency, the surcharges, interests, and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executor. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be

wholly or partly meritorious, he shall issue a notice of cancelling wholly or partially the assessment. If the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.

The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed in this Article within which to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.”

“SEC. 195. **Protest on Assessment.**- When the local treasurer or his duly authorized representative finds that correct taxes, fees or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice of cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.”

“SEC. 196. *Claim for Refund of Tax Credit.* – No case of proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.”

The provisions of Article 317 of the rules and regulations implementing R.A. 7160 (the “LGC”) are identical with those of Section 226 of the LGC which the former Article is “implementing”. For discussion on this matter, let us concentrate on Section 226. which provides:

“SEC. 226. *Local Board of Assessment Appeals.* – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.”

The LBAA interpreted Section 226 of the LGC independently of, and without regard to, the other provisions of the same LGC on real property taxation. In fairness to the LBAA, the way Section 226 (or for that matter, Article 317) is worded, it would seem that the same Article **deals only with “the action of the provincial, city or municipal assessor in the assessment”** of real properties, **nothing more**.

As it happens, however, Sections 252 and 253 of the LGC provide that a taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC if a protest filed under Section 252 or a claim for refund or credit filed under Section 253 is denied by the treasurer. Said Section 253 provides:

“SEC. 253. *Repayment of Excessive Collections.* – When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title Two, Book II of this Code. (Emphasis supplied)

The only remedy available to an aggrieved taxpayer in Chapter 3, Title Two, Book II of the LGC is an appeal first to the LBAA. By analogy, the taxpayer may appeal the treasurer’s denial of his claim:(a) within sixty (60) days from the date of receipt of the treasurer’s written denial of the claim; or (b) in case the treasurer does not act on the claim within sixty (60) days from receipt thereof, within sixty (60) days from the expiration of the period allowed the treasurer to decide on the claim.

Upon the other hand, Article 285 of the LGC’s IRR is a copy of Section 195 of the LGC. Article 285 is “implementing” Section 195. However, Article 285,

Section 195 and, for that matter, Section 196, have no application to real property taxation. They pertain to local taxes governed by the provisions in Title One, Book II of the LGC. Real Property Taxation is governed by the LGC provisions in Title Two, Book II.

Therefore, the LBAA erred in denying the appeal of GMA for lack of jurisdiction. This leaves us with the question of whether or not GMA's claim for refund or tax credit is valid.

As already stated, Petitioner GMA based its claim for exemption on the pronouncements of the Supreme Court in the cases of *The City Government of Quezon City and the City Treasurer of Quezon City, Dr. Victor G. Endriga vs. Bayan Telecommunications Incorporated* (Bayantel) (G.R. No. 162015, March 6, 2006) and *Digital Telecommunications Philippines Incorporated* (Digitel) vs. *Province of Pangasinan, represented by Ramon A. Crisostomo, Pangasinan Provincial Treasurer* (G.R. No. 152534, February 23, 2007).

In *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas represented by Hon. Angelito Dondon A. Dimacuha, Batangas City Mayor, Mr. Benjamin S. Pargas, Batangas City Treasurer, and Atty. Teodulfo A. Dequito, Batangas City Legal Officer* (G.R. No. 156040, December 11, 2008) the Supreme Court decided **en banc** to reverse the decisions of its Second and Third Divisions' in the *Bayantel* and *Digitel* cases, respectively. Said the Court:

Bayantel and Digitel Cases

In *City Government of Quezon City v. Bayan Telecommunications, Inc.* (G.R. No. 162015, 6 March 2006, 484 SCRA 169, 181), this Court's Second Division held that "all realties

which are actually, directly and exclusively used in the operation of its franchise are 'exempted' from any property tax." The Second Division added that Bayantel's franchise being national in character, the "exemption" granted applies to all its real and personal properties found anywhere within the Philippines. x xx

x xx

In *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan* (G.R. No. 152534, 23 February 2007, 516 SCRA 541, 559-560), this Court's Third Division ruled that Digitel's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax under the first sentence of Section 5 of RA 7678. x xx

xxx

Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that petitioner, as the franchisee, shall pay the "same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay."

The heading of Section 5 is "Tax Provisions," not Tax Exemptions. To reiterate, the phrase "exemption from real estate tax" or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase "exclusive of this franchise" in the first sentence of Section 5 merely qualifies the phrase "personal property" to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the "franchise tax." Thus, there is no grant of tax exemption in the first sentence of Section 5. (emphasis supplied)

The interpretation of the phrase "exclusive of this franchise" in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao* (G.R. No. 143867, 25 March 2003, 399 SCRA 442, 453), the Court held that tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication of inference."

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.

Since the ruling by the Supreme Court's Second Division in the Bayantel case (G.R. No. 162015, March 6, 2006) and by the Third Division in the Digital case (G.R. No. 152534, February 23, 2007) were, as aforesaid, reversed by the Court *en banc* in *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et. al.* (G.R. No. 156040, December 11, 2008), the claim for refund or tax credit by Petitioner-Appellant GMA must necessarily fail for lack of legal basis.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED**.

SO ORDERED.

Manila, Philippines, May 22, 2012.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member