



Republic of the Philippines
Department of Finance
CENTRAL BOARD OF ASSESSMENT APPEALS
7th Floor, EDPC Bldg., BSP Complex
Roxas Boulevard, Manila

ATTY. RACIMO R. ESTAMPADOR,
Petitioner-Appellant,

CBAA CASE NO. L-123
(LBAA CASE NO. 96-3704)

-versus-

**LOCAL BOARD OF ASSESSMENT
APPEALS OF THE CITY OF
MANILA,**

Appellee,

-and-

THE CITY ASSESSOR OF MANILA,
Respondent-Appellee.

X ----- X

DECISION

This appeal, filed with this Board on February 16, 2012 by Petitioner-Appellant, is from the Resolution rendered on November 28, 2011 by the Local Board of Assessment Appeals of the City of Manila (the "LBAA") in LBAA Case No. 96-3704, which denied Petitioner-Appellant's appeal before said LBAA. Petitioner-Appellant acknowledged that he received a copy of said resolution on January 20, 2012.

ANTECEDENTS

1. On January 8, 1996, Petitioner received from the Office of the City Assessor a copy of the Notice of Assessment of Real Property dated December 29, 1995.

DECISION

2. On January 31, 1996, the City Assessor, Madam Lourdes D. Ladera, City Assessor, received from Petitioner a Request for Exemption and Dropping of Lot/Land Area from Taxable Properties dated January 26, 1996.

3. On February 23, 1996, Petitioner appealed before the LBAA the assessment made by the City Assessor under Notice of Assessment No. 96-00009, which appeal was docketed by the LBAA as LBAA Case No. 96-3704.

4. On March 15, 1996, Petitioner filed with the LBAA his Motion to Admit Documentary Evidence as Proof of Exemption dated March 11, 1996.

5. On March 15, 1996, Petitioner filed with the LBAA his Supplemental Motion dated March 15, 1996.

6. On March 18, 1996, the Asst. City Assessor for Operations and Acting Legal Officer filed his Comment/Manifestation dated March 18, 1996.

7. On March 19, 1996, Petitioner filed with the LBAA an Urgent Motion to Submit Appealed Case for Decision/Resolution.

8. On January 17, 1997, Petitioner received two (2) Notices of Adjusted Assessment of Real Property from the Office of the City Assessor.

9. On January 29, 1997, Petitioner filed with the LBAA an Urgent Motion/Manifestation praying that the new notices of assessment be consolidated with the pending appeal.

10. On February 28, 1997, Petitioner filed with the City Treasurer's Office a letter-protest (Protest No. 74) dated February 27, 1997 involving payment of realty taxes per "Prudential Bank Manager's Check No. 051702 dated Feb. 28, 1997 in the amt. of P623,278.08".

11. On March 14, 1997, Petitioner filed with the City Treasurer's Office a letter-protest dated March 13, 1997 involving payment of realty taxes per "Prudential Bank Manager's Check No. 051799 dated Mar. 13, 1997 in the amt. of P109,560.60".

12. On June 10, 1997, Petitioner filed with the City Treasurer's Office a letter-protest dated June 10, 1997 involving payment of realty taxes per "Prudential Bank Manager's Check No. 052283 dated June 10, 1997 in the amt. of P109,560.60".

13. On December 11, 1997, Petitioner filed with the City Treasurer's Office a letter-protest dated December 11, 1997 involving payment of realty taxes per "Prudential Bank Manager's Check No. 053465 dated Dec. 11, 1997 in the amt. of P109,560.60".

14. On March 17, 1998, Petitioner filed with the City Treasurer's Office a letter-protest dated March 17, 1998 involving payment of realty taxes per "Prudential Bank Manager's Check No. 054011 dated Mar. 17, 1998 in the amt. of P109,560.60".

15. On June 26, 1998, Petitioner filed with the City Treasurer's Office a letter-protest dated June 25, 1998 involving payment of realty taxes per "Prudential Bank Manager's Check No. 054517 dated June 25, 1998 in the amt. of P109,560.60".

DECISION

16. On December 22, 1998, Petitioner filed with the City Treasurer's Office a letter-protest dated December 21, 1998 involving payment of realty taxes per "Prudential Bank Manager's Check No. 059049 dated Dec. 21, 1998 in the amt. of P109,560.60".

17. On March 17, 1999, Petitioner filed with the City Treasurer's Office a letter-protest dated March 17, 1999 involving payment of realty taxes per "Prudential Bank Manager's Check No. 059360 dated March 17, 1999 in the amt. of P109,560.60".

18. On June 23, 1999, Petitioner filed with the City Treasurer's Office a letter-protest dated June 23, 1999 involving payment of realty taxes per "Prudential Bank Manager's Check No. 089741 dated June 23, 1999 in the amt. of P109,560.60".

19. On September 29, 1999, Petitioner filed with the City Treasurer's Office a letter-protest dated September 28, 1999 involving payment of realty taxes per "Prudential Bank Manager's Check No. 060162 dated Sept. 22, 1999 in the amt. of P109,560.60".

20. On December 6, 1999, Petitioner filed with the City Treasurer's Office a letter-protest dated December 6, 1999 involving payment of realty taxes per "Prudential Bank Manager's Check No. 060420 dated December 6, 1999 in the amt. of P109,560.60".

21. On March 23, 2000, Petitioner filed with the City Treasurer's Office a letter-protest dated March 23, 2000 involving payment of realty taxes per "Prudential Bank Manager's Check No. 060871 dated March 23, 2000 in the amt. of P109,560.60".

22. On June 27, 2000, Petitioner filed with the City Treasurer's Office a letter-protest dated June 26, 2000 involving payment of realty taxes per "Prudential Bank Manager's Check No. 061278 dated December 6, 1999 in the amt. of P109,560.60".

23. On July 2, 2000, Petitioner received Letter to Atty. Estampador from the City Treasurer's Office dated June 29, 2000 informing Petitioner that the words "PAID UNDER PROTEST" had already been annotated on the Official Receipts for the June 27, 2000 realty tax payments.

24. On September 26, 2000, Petitioner filed with the City Treasurer's Office a letter-protest dated September 26, 2000 involving payment of realty taxes per "Prudential Bank Manager's Check No. 061632 dated December 6, 1999 in the amt. of P109,560.60".

25. On December 13, 2001, Petitioner received a copy of the LBAA's Order dated October 4, 2001 dismissing the appeal for failure to pursue appeal.

26. On December 21, 2001, Petitioner filed with the LBAA a Motion for Reconsideration from the Board's Order dated October 4, 2001.

27. On March 28, 2008, the LBAA received a letter from Petitioner dated March 26, 2008 requesting for the LBAA to act on his appeal.

28. On April 27, 2009, the LBAA received a letter from Petitioner dated April 27, 2009 reiterating Petitioner's request for the LBAA to act on his appeal.

29. On December 28, 2009, the LBAA received a letter from Petitioner dated December 22, 2009 reiterating Petitioner's request for the LBAA to act on his appeal.

30. On January 5, 2011, the LBAA received a letter from Petitioner dated December 17, 2010 reiterating Petitioner's request for the LBAA to act on his appeal.

31. On November 28, 2011, the LBAA issued a Resolution denying Petitioner's appeal.

FINDINGS OF THIS BOARD

It appears that on June 25, 1974, Petitioner-Appellant, as the Lessee, entered into a Contract of Lease with the Bureau of Building and Real Property Management, Department of General Services, created and constituted pursuant to Executive Order No. 290, over a parcel of land consisting of 4,778.87 square meters, more or less, for a period of twenty-five (25) years.

Term and Condition No. 8 of said Contract of Lease provides as follows:

"8. All taxes and assessments levied or to be levied upon the leased premises shall be for the exclusive account of the LESSOR, and all taxes and assessments levied for the improvements shall be for the exclusive account of the LESSEE;"

In his Memorandum under the LBAA Case No. 96-3704, Petitioner-Appellant stated, thus:

"The law enforced at the time of the execution of the contract of lease between appellant and the Bureau is Presidential Decree, PD 464, otherwise known as the Real Property Tax Code, which took effect in 1974. Under par. A, Section 40, PD 464, it provides:

'(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: Provided, however, That this exemption shall not apply to real property, of the abovenamed entities the beneficial

use of which has been granted, for consideration or otherwise, to a taxable person.'

"The aforesaid provision of PD 464 does not grant exemption in the payment of realty taxes to when the real property has been granted to a taxable person like the appellant in this particular case. PD 464 does not apply in this present situation of the appellant as the law itself has impaired the obligation of contract between appellant and the Bureau in violation of the 1974 constitution and under the new constitution. The impairment clause provided for by the new constitution as well as the old constitution of the Philippines provides that laws enacted should not interfere or tamper with or modify the intention and rights of the parties covered by a valid and written contract."

Section 40 of PD 464, which took effect on June 1, 1974, provided thus:

"Sec. 40. Exemptions from Real Property Tax. — The exemption shall be as follows:

"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: Provided; however, That this exemption shall not apply to real property of the abovenamed entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person.

"x x x."

Section 234 of R.A. 7160, otherwise known as the Local Government Code of 1991 ("LGC"), which superseded PD 464, among others, provides thus:

"SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

"x x x."

The provisions of Section 40 of PD 464 as well as those of Section 234 of the LGC do not in any way affect the terms and conditions embodied in the Contract of Lease by and between the

Petitioner-Appellant, as Lessee, and the Bureau of Building and Real Property Management (now Philippine Ports Authority), as Lessor. Therefore, the claim of Petitioner-Appellant that Section 40 of PD 464 violated the non-impairment clause of the constitutional is bereft of merit.

The said Contract of Lease is a private agreement or undertaking between the lessor and the lessee, which contract is binding and enforceable only between themselves. The realty tax liability is the liability arising from law that the local government unit can rightfully and successfully enforce. A liability arising from a contract is enforceable between the parties to that contract.

Thus, in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*,¹ the Supreme Court ruled:

“On liability for taxes, the NPC indeed assumed responsibility for the taxes due on the power plant and its machineries, specifically, “all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant].” . . . The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, **not the contractual liability that is enforceable between the parties to a contract** as discussed below. By law, the tax liability rests on Mirant based on its ownership, use, and possession of the plant and its machineries.” (Emphasis supplied)

There is, therefore, no doubt that the subject property is subject to real property tax being used by a taxable person. As to who is directly liable for the realty tax, the Supreme Court, in *Testate Estate of Concordia T. Lim v. City of Manila*,² ruled:

¹ G.R. No. 171586, July 15, 2009.

² 182 SCRA 482 1990.

"In real estate taxation, therefore, **the unpaid tax attaches to the property** and is chargeable against the taxable person who had **actual** or **beneficial use** and **possession** of it regardless of whether nor not he is the owner." (Emphasis Supplied)

In the instant case, it is the Petitioner-Appellant who has the **actual use** and **possession** of the subject property. Petitioner-Appellant, therefore, is the one liable for the real property tax on the subject property. Of course, pursuant to the provisions of Term and Condition No. 8 of the Contract of Lease and the Bureau of Building and Real Property Management/PPA, Petitioner-Appellant may wish to ask the Lessor for reimbursement for realty taxes paid by Petitioner-Appellant.

The claim of Petitioner-Appellant that he is exempt from payment of the real property tax on the subject property because the same property is owned by the LESSOR, which is exempt from real property taxation, is misplaced, to say the least. Such claim is exactly the opposite of what the law provides.

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, August 15, 2013.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member