



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

CAMARINES SUR I ELECTRIC
COOPERATIVE, INC. (CASURECO I),
Petitioner-Appellant,

-versus-

CBAA CASE NO. L-76
Province of Camarines Sur

THE LOCAL BOARD OF ASSESSMENT
APPEALS OF THE PROVINCE OF
CAMARINES SUR,
Appellee,

-and-

THE PROVINCIAL ASSESSOR OF
CAMARINES SUR,
Respondent-Appellee.

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DECISION

This is a Petition for Review of the Decision rendered by the Local Board of Assessment Appeals on January 29, 2007 (LBAA) of the Province of Camarines Sur in LBAA Case entitled "CAMARINES SUR I ELECTRIC COOPERATIVE (CASURECO I), versus THE PROVINCIAL ASSESSOR, PROVINCE OF CAMARINES SUR."

As stated by the Local Board in its questioned Decision, Petitioner CASURECO I is an electric cooperative duly organized and existing under the laws of the Philippines engaged in the business of electric power distribution to various end-users and consumers within its franchise area.

The records disclose that on October 11, 2006 Petitioner-Appellant received a letter dated September 22, 2006 from the Municipal Assessor of Camaligan, Camarines Sur, enclosing therewith copies of two (2) Notices of Assessment and corresponding ARP (Assessment of Real Properties) issued by the Provincial Assessor of Camarines Sur on August 14, 2006 and

September 6, 2006, respectively. The said APR's cover assessments of petitioner's properties located in Bgys. San Roque, San Marcos, San Jose/San Pablo, San Juan/San Ramon and Sto. Domingo, Municipality of Camaligan, Province of Camarines Sur, and are more specifically described therein as follows:

Notice of Assessment dated August 14, 2006:						
ARP No.	Real Property	Market Value	Classification	Assessment Level	Assessment Value	Effectivity
97-007-0382	Electrical Posts	P 18,000.00	Commercial	10%	P 1,800.00	2005
97-007-0383	Transformers	210,000.00	Commercial	10%	21,000.00	2005
97-009-0853	Electrical Posts	52,500.00	Commercial	10%	5,250.00	2005
97-009-0854	Transformers	450,000.00	Commercial	10%	45,000.00	2005

Notice of Assessment dated September 6, 2006:						
ARP No.	Real Property	Market Value	Classification	Assessment Level	Assessment Value	Effectivity
97-004-0192	Electrical Posts	P 18,000.00	Commercial	10%	P 1,800.00	2005
97-004-0193	Transformers	240,000.00	Commercial	10%	24,000.00	2005
97-005-0315	Electrical Posts	24,000.00	Commercial	10%	2,400.00	2005
97-005-0316	Transformers	150,000.00	Commercial	10%	15,000.00	2005
97-010-0260	Electrical Posts	15,000.00	Commercial	10%	1,500.00	2005
97-010-0261	Transformers	90,000.00	Commercial	10%	9,000.00	2005

On December 12, 2006 petitioner-appellant filed a petition with the Local Board of Assessment Appeals (LBAA) of the Province of Camarines Sur questioning the said assessments. Petitioner-appellant argues that the electric posts and transformers, subject of the assessments, are not real properties defined in Article 415 of the Civil Code of the Philippines as expounded upon by the Supreme Court in the case of Board of Assessment Appeals vs. MERALCO, January 31, 1964.

On January 29, 2007, the Local Board rendered its Decision, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, petitioner CASURECO I is liable to pay real property tax on its electric posts and transformers pursuant to Section 222 of RA 7160, the Local Government Code of 1991.”

Hence, this Petition for Review on Appeal.

Alleging that it received aforesaid LBAA Decision on February 8, 2007, petitioner filed with this Board on March 8, 2007 the instant Petition for Review on Appeal, with the following issues, viz:

- A. *Whether or not the assessment of the electric poles of CASURECO I as “real properties” based on the definition of the term “Machinery” under Section 199 (O) of R.A. 7160 is valid; and*
- B. *Whether or not the correct definition of poles should be the one defined by the Civil Code and as clarified by the Supreme Court.*

The arguments of Petitioner-Appellant, as found in of its petition (Records, pp. 3 and 4) are as follows:

*“9. That with due respect, this decision equating the electric poles and the transformers as real properties within the term ‘machinery’ is contrary to the established definition of real properties as decided by the Supreme Court in the case of Board of Assessment Appeals, City Assessor and City Treasurer of Quezon City, vs. Manila Electric Company, L-15334, Jan. 31, 1964, which may be quoted as follows: “x x x **The term ‘pole’ refers to an upright standard to the top of which something is affixed or by which something is supported, and includes a steel tower of an electric power company, like the Meralco. x x x The steel towers of an electric company do not constitute real property for the purpose of the real property tax. x x x” (emphasis supplied);***

“10. The said decision is based on the provision of Article 415 of the New Civil Code which defines what are immovable properties;

“11. That from the provision of Article 415, the Supreme Court clarified that poles and steel towers of MERALCO should not be considered real properties for at least three reasons, namely: a) they do not fall under paragraph 1 of Article 415 since they are neither buildings nor constructions adhered to the soil; b) they do not come under paragraph 3 since they are not attached to an immovable in a fixed manner, that is, they can be separated without breaking the material or causing deterioration of the object to which they are attached, and c) they do not come under paragraph 5 because they are not machineries, receptacles, or instruments, but even if they are, they are not intended for an industry, to be carried on in the premises;

Respondent-Appellee, Provincial Assessor of Camarines Sur filed his Answer dated November 29, 2007 which was received by this Board on December 6, 2007, as follows:

“3. Reading through the petition, there is only one issue to be resolved, that is ‘Whether or not the electric poles and transformers of CASURECO I are considered real properties based on the definition of ‘machinery’ under Section 199 (o) of R.A. 7160, otherwise known as ‘The Local Government Code of 1991’”, for purposes of real property taxation;

“4. In contending that its electric poles (posts) and transformers are personal properties and therefore not subject to real property tax, petitioner-appellant merely relied on the case of **Board of Assessment Appeals vs. Manila Electric Company**, L-15334, January 31, 1964;

“5. Respondent-appellee humbly submits that the case of **Board of Assessment Appeals vs. Manila Electric Company** is inapplicable in this extant case and thereby stands firm that the poles and transformers of petitioner-appellant are subject to real property tax as it is covered by the definition of ‘machinery’ under Section 199 (o) of R.A. 7160, which states:

‘Machinery’ embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily to the real property. It includes the physical facilities for production, the installation and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes. (underscoring and emphasis ours)

“6. It is indubitable that petitioner-appellant’s electric poles and transformers are necessary and essential to the operation of distributing electric power to its consumers without which it cannot carry out its purpose to which it was established;

“7. Petitioner may not have defined or stated the nature or purpose of the transformers in its business, but it is understood that transformers are devices that changes electrical energy to certain voltage. Hence, transformers are considered as machinery for being equipment, instruments, or facilities that tend to directly meet the needs of the business of the petitioner-appellant;

“8. In contrast to the case of **Board of Assessment Appeals vs. Manila Electric Company**, the electric poles or steel towers of Meralco were attached to square metal frames by means of bolts and could be moved from place to place when unscrewed and dismantled. Thus, the High Court considered them as personal property and not subject to real property tax. (*Caltex Philippines, Inc. vs. CBAA*, 114 SCRA 296);

“9. As an affirmative defense, respondent-appellee raises the issue of jurisdiction, which can be raised anytime and even on appeal, on the ground that petitioner-appellant CASURECO I failed to comply with the requirement of payment under protest provided under Section 252 (a) of R.A. 7160, which states:

“Section 252. **Payment under Protest.** – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words ‘paid under

protest'. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty days from receipt."

In its Position Paper dated April 30, 2009 and received by this Board on May 29, 2009, Petitioner-Appellant reworded the issues, thus:

"I. WHETHER OR NOT THE ELECTRIC POLES OF CASURECO I BE CONSIDERED AS REAL PROPERTY FOR PURPOSES OF THE ISSUANCE OF A TAX DECLARATION FOR TAXATION BY THE LGU."

"II. WHETHER OR NOT THE MUNICIPAL ASSESSOR OF CAMALIGAN, CAMARINES SUR AND THE PROVINCIAL ASSESSOR OF THE PROVINCE OF CAMARINES SUR HAVE THE AUTHORITY TO ISSUE A REAL PROPERTY TAX DECLARATION FOR TAXATION PURPOSES THE ELECTRIC POLES AND ACCESSORIES OWNED BY CASURECO I."

As far as the first issue stated above is concerned, Petitioner-Appellant's Position Paper contains substantially the same arguments as those raised in its Petition for Review. The second issue, however, is raised for the first time. In questioning the assessors' authority to issue tax declarations for the subject properties, Petitioner-Appellant argues:

1. That, pursuant to the provisions of Section 202 of R.A. 7160, "it is the owner of the land or real property/s who should declare the alleged land and improvements or REAL PROPERTIES by way of a sworn statement and filed with the corresponding Municipal or Provincial Assessor's Office."

2. "That, in the case of the poles and accessories of CASURECO I, these are standing along public roads and streets as well as private lands. They are not owned or used by the said private owners for their own business or industry. Furthermore, these poles could not be made permanent fixtures of said land where they are standing since they are movable and could easily be transferred from one place to another under certain circumstances."

3. "That as such, therefore, they could not be the subject of a unilateral issuance of the alleged Tax Declaration for purposes of taxation by said owners of the said land or real property where they are standing on. Neither could these poles and accessories be issued a tax declaration or assessment by the Municipal Assessor or the Provincial Assessor on their own initiative for taxation purposes since Section 202 of R.A. 7160 is explicit in its directive, and does not need any interpretation. Doing so would be violative of the provision of Section 202

of R.A. 7160. It is in fact, and an ultra vires act, the same not being within the authority granted by law.”

Respondent-Appellee’s Position Paper, dated May 22, 2009 and received by this Board on May 29, 2009 took after the issues appealed by Petitioner-Appellant and presented them as follows:

- I. WHETHER OR NOT ELECTRIC POSTS AND TRANSFORMERS OF CASURECO I ARE CONSIDERED REAL PROPERTIES FOR PURPOSES OF REAL PROPERTY TAXATION PURSUANT TO THE PROVISIONS OF THE LOCAL GOVERNMENT CODE OF 1991 (R.A. 7160).*
- II. WHETHER OR NOT THE HONORABLE CBAA HAS JURISDICTION OVER THE INSTANT APPEAL CONSIDERED THAT PETITIONER CASURECO I FAILED TO COMPLY WITH THE REQUIREMENT OF PAYMENT UNDER PROTEST PROVIDED UNDER SECTION 252 (a) OF R.A. 7160.*

We deem it best to discuss first the second issue, that is, the lack of jurisdiction of this Board, to hear the instant case.

Section 252 of R.A. 7160 provides, thus:

“Section 252. Payment Under Protest. – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words ‘paid under protest’. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer in the case of a municipality within the Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof of paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.

This Board is not concerned with the provisions of Section 252 of R.A. 7160. Under paragraph (a) above-quoted, it is the treasurer concerned – not

this Board nor, for that matter, the Local Board – who is prohibited from entertaining a taxpayer’s protest unless the latter first pays the tax under protest. Under said Section 252 of R.A. 7160, a taxpayer must first pay, under protest, the tax involved before filing with the treasurer concerned a claim for refund or tax credit thereof. If and when his claim for refund or tax credit is denied by the treasurer concerned, the taxpayer may appeal such denial to the Local Board. If and when such appeal is denied or dismissed by the Local Board, the taxpayer may appeal such dismissal to this Board.

Anyhow, the provisions of Section 252 R.A. 7160 is applicable when the assessment has already been consummated and the question is on the implementation thereof by the treasurer, such as whether there are deductions or adjustments to be made in the assessment and the treasurer made no deduction nor adjustment therein. The taxpayer may not tender his protest unless he has paid the tax first and have the tax receipts annotated with “paid under protest”.

Be that as it may, the ultimate issue in the herein case is WHETHER OR NOT THE ELECTRIC POST OF CASURECO IS TAXABLE OR NOT.

Petitioner-Appellant’s appeal relied solely on the Supreme Court’s ruling in Board of Assessment Appeals, City Assessor and City Treasurer of Quezon City, vs. Manila Electric Company, L-15334, Jan. 31, 1964, that under Section 415 of the Civil Code poles are not real property; they are personal property, hence not subject to tax. Said decision however, was promulgated on Jan. 31, 1964 yet and is no longer obtaining with the passage of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (LGC of 1991), which took effect on January 1, 1992.

Among others, said R.A. No. 7160 devoted **Title Two** thereof to **Real Property Taxation** and among the provisions therein are: (a) the withdrawal of exemptions under paragraph 6 Section 234 thereof as follows:

“Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or – controlled corporations are hereby withdrawn upon the effectivity of this Code.”

and (b) Section 232 or the Power to Levy Real Property Tax as follows:

“A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.”

As above-provided therefore, machinery is real property and electric posts and transformers of electric power plants are machinery. Hence, to reiterate Section 199 (o), R.A. 7160:

“(o) ‘Machinery’ embraces machines, equipment, mechanical contrivances, instruments, appliances, or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes.”

Whether such machinery of Petitioner-Appellant is exempted or not is determined under Section 234, R.A. 7160 as follows:

“Section 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;*
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements,*

actually, directly and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or –controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.”

Petitioner-Appellant alleges that:

“13. CASURECO I just like all the rest of the electric cooperatives in the country was established and organized with one hundred per cent capital from the national government with minimal, in fact negligible contribution from their respective member-consumers;

“14. That as such, the electric cooperatives in its By-Laws is beholden to the national government. It is in fact a controlled corporation by the government through the National Electrification Administration (NEA) since the hiring and firing of its General Manager is within the prerogative of the NEA;

“15. CASURECO I in all its operation including management actions are closely monitored by NEA and other government agencies such as the Energy Regulatory Commission (ERC);

“16. As an electric cooperative it could not even mortgage or dispose its properties without the express consent of NEA and the ERC;

*“17. CASURECO I is therefore a government controlled corporation and is merely rendering service to all its member-consumers. **CASURECO I is not a business concern but a service utility;***

This Board is not persuaded; cooperatives by nature are not corporations, hence not exempted under Section 234(c) of R.A. 7160. Its exemption is under par. (d) of the same Section 234, thus: “(a)ll real property owned by duly registered cooperatives as provided for under R.A. No. 6938”, but CASURECO I has not bothered to register itself under said R.A. No. 6938.

Apropos, on May 3, 2001 this Board has had occasion to decide against the case of Manila Electric Company, Petitioner-Appellant vs. the City Assessor and City Treasurer of Lucena City, Respondents-Appellees (CBA Case No. L-

20-98), pursuant to R.A. 7160, on the former's claim that poles, wires, insulators, transformers and electric meters are personal property, hence not subject to tax. This decision was affirmed in toto by the Court of Appeals in CA-G.R. SP No. 67027 of May 13, 2004, denying due course to the petition and accordingly dismissing the same for lack of merit.

As in the CASURECO I case the same issues were substantially raised in CBAA Case No. L-20-98, (*supra*). Holding that the latter's poles, wires, etc. are taxable, the principle of *stare decisis* impels this Board to abide by its decision, to stand as precedence for future judgments.

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

SO ORDERED.

Manila, Philippines, May 31, 2011.

(Signed)
OFELIA A. MARQUEZ
Chairman

(Signed)
RAFAEL O. CORTES
Member

(Signed)
ROBERTO D. GEOTINA
Member