

Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

FILIPINO TELEPHONE CO. INC.
(PILTEL),
Petitioner-Appellant,

CBAA CASE NO. M-17

LBAA CASE NO. 01-02

- versus -

CITY ASSESSOR AND CITY TREASURER
OF GENERAL SANTOS CITY,
Respondents-Appellees,

- and -

LOCAL BOARD OF ASSESSMENT
APPEALS OF GENERAL SANTOS CITY,
Appellee.

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DECISION

This is an appeal from the decision of the Local Board of Assessment Appeals (LBAA) of the City of General Santos dated January 06, 2003 in LBAA Case No. 0102, which appeal was received by this Board on February 14, 2003.

Petitioner-Appellant Filipino Telephone Co. Inc. (PILTEL), alleging that it received the aforementioned decision on 16 January 2003, stated that the appeal is based on the following grounds, to wit:

1. The Local Board of Assessment Appeals did not take into consideration Petitioner-Appellant's exemption from real property tax; and
2. The Local Board of Assessment's assessed values far exceeded the fair market value of Petitioner-Appellant's machinery/equipment.

Respondent-Appellant PILTEL prays:

1. That the aforementioned decision rendered by the Appellee Local Board of Assessment Appeals of General Santos City be reversed and accordingly modified;
2. That Petitioner-Appellant be considered exempt from paying the aforestated real property tax;

3. That the Respondent-Appellees refund the tax paid under protest by the Appellant in the amount of Php 6,723,671.29; and

4. That the Respondent-Appellees City Assessors of General Santos City assessment be modified and lowered in accordance with real and true value.

The records show that on or about July 09, 2002 Petitioner-Appellant paid under protest the City Treasurer of General Santos City the total amount of SIX MILLION SEVEN HUNDRED TWENTY-THREE THOUSAND SIX HUNDRED SEVENTY ONE & 29/100 PESOS (P6,723,671.29), more or less, as real property taxes due for the years 2000 through 2002 on certain real properties. Supposedly, PILTEL, in a letter dated July 18, 2002, demanded from the City Treasurer the immediate refund of said amount claiming that it (PILTEL) was exempt from the payment of real property taxes.

The City Treasurer, in a letter dated August 23, 2002, denied PILTEL's claim for refund, citing the Supreme Court's ruling in PLDT vs. City of Davao (G.R. No. 143867). PILTEL went to the Local Board of Assessment Appeals (LBAA) of General Santos City which received PILTEL's appeal on September 25, 2002 and docketed it as Case No. 01-02. In a resolution dated January 06, 2003, the Local Board dismissed PILTEL's appeal for being filed out of time.

Hence, this appeal.

As strange as it may seem, PILTEL's instant appeal completely avoided any mention of the ground for which PILTEL's appeal was dismissed by the Local Board. PILTEL, therefore, is considered to have admitted, without any qualms, that it's appeal with the Local Board was filed out of the reglementary period provided for under Section 226 of R.A. 7160, otherwise known as the Local Government Code of 1991.

The Local Board did not touch on the issue of exemption raised by PILTEL, saying that this "calls for an interpretation of specific provisions of law which only an appropriate court can decide."

We disagree. Section 229 of R.A. 7160 empowers and obligates all Local Boards of Assessment Appeals to decide appeals appropriately brought before said boards. Consequently, in order to decide every appeal before them, the local boards are also clothed with the power to interpret any and all laws affecting said appeals.

Technically, due to PILTEL's failure to file its appeal with the Local Board on time, there would be no need to discuss the grounds advanced by PILTEL in the instant appeal. However, we believe that it is prudent to discuss the first ground in light of the provisions of Section 206 of R.A. 7160 which is quoted as follows:

“SEC. 206. Proof of Exemption of Real Property from Taxation. – Every person by or for whom real property is declared who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

“If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax-exempt, the same shall be dropped from the assessment roll.” (Underscoring supplied.)

Failure to file its appeal with the Local Board on time notwithstanding, PILTEL may still present evidence of tax exemption with respect to future taxes.

On the first ground, Petitioner-Appellant argues that it is exempt from the payment of the real property tax because of the passage on 20 February 1995 of R.A. 7925, otherwise known as the Telecommunications Act of the Philippines, which came after the effectivity of R.A. 7160, otherwise known as the Local Government Code of 1991 on 1 January 1992 and the grant of PILTEL's franchise on 27 March 1992.

PILTEL anchored its arguments on the so-called ipso facto provisions of Section 23 of R.A. 7925 and the interpretation thereof by the Bureau of Local Government Finance (BLGF). Section 23 of R.A. 7925 provides as follows:

“Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply or affect provisions of

telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or type of service authorized by the franchise.”

On the other hand, in a letter-opinion dated February 24, 1998 and addressed to Globe Telecom, the Executive Director of the BLGF stated in part as follows:

“It appears that RA 7229 is an act approving the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System and the consequent transfer of the franchise of Clavecilla Radio System granted under RA No. 402, as amended by RA Nos. 1606 and 4540 to Globe Mackay Cable and Radio Corporation, extending the life of said franchise and repealing certain Sections of RA 402 as amended.

“SEC. 5, Section twenty of the same Act is hereby amended to read as follows:

“Section 20. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for, however, in the event of any competing individual, partnership, or corporation receiving from the Congress of the Philippines more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall ipso facto become part of the terms hereof, and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.”

“It is noted that the transfer of the franchise of Clavecilla Radio System as well as the rights, privileges and licenses accessing transform has been approved under RA 7229.

“Considering, therefore, that RA 7229 having been approved on March 19, 1992 is a later law, its provisions should prevail over those of the LGC which took effect on January 1, 1992.

“Accordingly, Globe should be considered exempt from the franchise and business taxes that local governments may impose under Sections 137 and 143, respectively, of the Code. However, all real properties of the corporation not directly, actually and exclusively used in the telecommunication operations or services shall be subject to the real property taxes that provinces and cities levy under the pertinent provisions of the Code. . .”

The opinion of the BLGF did not expressly state that Globe was exempted from payment of the real property tax but, nevertheless, by saying that “. . . all real properties of the corporation not directly, actually and exclusively used in the telecommunication operations or services shall be subject to the real property taxes that provinces and cities levy under the pertinent provisions of the Code”, it seemed to convey that Globe’s real properties which were directly, actually and used in the telecommunication operations or services are exempt from the payment of the real property taxes.

PILTEL argues that, since Globe is exempt from the real property tax per above-quoted opinion of the BLGF, it follows that PILTEL must likewise be

exempt from the same tax, pursuant to the provisions of Section 23 of R.A. 7925 and/or Section 5 of R.A. 4540.

With due respect, the basis of BLGF's opinion escapes us. There is nothing in Section 23 of R.A. 7925 or in Section 5 of R.A. 4540 which remotely suggests exemption from payment of real property tax. On the contrary, Section 06 of R.A. 7293 (PILTEL's franchise) specifically provides that "the grantee shall be liable to pay the same taxes on its real estate, buildings. . . as other persons or corporations which are now or hereafter may be required by law to pay" thus:

"SEC. 6. Tax Provisions. – The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property exclusive of this franchise as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days from the audit and approval of the accounts, three per centum (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof. . ."

The phrase "in lieu of all taxes on this franchise or earnings thereof" refers to taxes on the franchise, which is a personal property as contra-distinguished from real property, other than the three percent (3%) franchise tax imposed in said Section 6 of R.A. 7293.

In *Philippine Long Distance Telephone Company vs. City of Davao, et al* (G.R. No. 143867 August 22, 2001), the Supreme Court said:

"To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts . . . the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of Section 23 of R.A. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields."

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. ([*Commissioner of Internal Revenue v. Court of Appeals*, 298 SCRA 83 (1988); *Commissioner of Customs v. Philippine Acetylene Company*, 39 SCRA 70 (1971); *Commissioner of Internal Revenue v. Guerrero* 21 SCRA 180 (1967)])

In *Asiatic Petroleum Co. vs. Llanes* [49 Phil. 466, 472 (1926), cited in *PLDT vs. City of Davao*, G.R. No. 143867), the Supreme Court held:

“. . . Exemptions from taxation are highly disfavoured, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right . . . As was said by the Supreme Court of Tennessee in *Memphis vs. U. & P. Bank* (91, Tenn., 546, 550), “The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.” Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. And Trust Co. vs. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, “unless the intention to surrender it is manifested by words too plain to be mistaken.” In the case of the *Delaware Railroad Tax* (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arises as to the intent of the legislature, that doubt must be solved in favor of the State. In *Erie Railway Company vs. Commonwealth of Pennsylvania* 921 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that a State cannot strip itself of the most essential power of taxation by doubtful words. “It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty.” In *Tennessee vs. Whitworth* (117 U.S., 129, 136), it was said: “In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power.” In *Farrington vs. Tennessee and County of Shelby* (95 U.S., 679, 686), Mr. Justice Swayne said: “. . . When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim, It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.”

In *Philippine Long Distance Telephone Company, Inc. vs. City of Davao*, et al (G.R. No. 143867, August 22, 2001), the Supreme Court said:

“R.A. 7925 is thus a legislative enactment designed to set the national policy on telecommunications and provide the structures to implement it to keep up with the technological advances in the industry and the needs of the public. The thrust of the law is to promote gradually the deregulation of the entry, pricing, and operations of all public telecommunications entities and thus promote a level playing field in the telecommunications industry. There is nothing in the language of Section 23 of R.A. 7925 nor in the proceedings of both the House of Representatives and the Senate in enacting R.A. 7925 which shows that it contemplates the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by the LGC.” (Underscoring Supplied)

We believe, therefore, and so hold, that the subject real properties of petitioner-appellant Filipino Telephone Co. Inc. located in General Santos City are liable to payment of the real property tax.

On the second ground of the appeal, PILTEL merely states that “Granting for the sake of argument but not admitting that Petitioner-Appellant is liable for the aforementioned real property tax, petitioner-appellant reiterates to this Honorable Board that the Assessments levied by the respondent-appellees City Assessors of are over valued and exorbitant. The Assessments are not reflective

of the market value of the machinery and are mere arbitrary amounts levied by the City Assessors.” At any rate, the failure of PILTEL to file its appeal with the Local Board in time is fatal to its case.

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, July 29, 2003.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(VACANT)
Member