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

NAVAL CABLE TELEVISION,
Petitioner-Appellant,

CBAA CASE NO. V-21
Re: LBAA CASE NO. 01-02

- versus -

LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF BILIRAN,
Appellee

- and –

PROVINCIAL ASSESSOR OF BILIRAN, MUNICIPAL ASSESSOR AND MUNICIPAL TREASURER OF NAVAL, BILIRAN,
Respondents-Appellees,
x----------x

D E C I S I O N

This is an appeal from the Resolution of the respondent Local Board dated October 15, 2003 denying Petitioner-Appellant's motion for reconsideration dated August 2, 2003. The appeal or petition itself, minus Annexes "B" to "L", was received by this Board on December 11, 2003, although the envelope containing the said appeal appears to have been postmarked at Naval, Biliran on November 14, 2003.

Alleging that it received a copy of said resolution on the same day it was promulgated, Petitioner-Appellant listed as its grounds for appeal the following:

1. The Local Board of Assessment Appeals erred in not considering the newly discovered evidence that the disputed assessment was based on the total project cost of the Naval Cable Television, Inc.; and

2. The assessment is confiscatory, unreasonable and erroneous in not considering the economic life time of the machineries subject of the assessment.

Although Petitioner-Appellant does not make the lack of jurisdiction on the part of the Local Board as an issue, it, nevertheless, states that it "never received

a notice of tax assessment which specified the value of the property subject to tax. What was received by the corporation was ARP 00557 (ANNEX “B”), a tax declaration where the commercial machineries of the corporation was assessed at Php1,294,937.50 as market value and Php1,035,950.00 as assessed value. However, the corporation was notified of the delinquency in payment of real property taxes beginning in fiscal year 1993.”

Citing Manila Electric Company vs. Nelia A. Barlis, et al. (G.R. No. 114232, February 1, 2002) where the Supreme Court nullified the new assessment for lck of the required notice, Petitioner-Appellant implies that the assessment in this case is also null and void for the same reason.

The Municipal Assessor and the Municipal Treasurer, in their separate Comments received by this Board on February o4, 2004, both contend that the protest was “filed beyond the period prescribed under Section 252 of the Local Government code.” The Municipal Treasurer further states that “Appellant did not make the corresponding protest within the thirty (30) day period as required by Section 252 of R.A. 7160, as amended” and that “Appellant is estopped from questioning the assessment on the machineries used for its cable business in view of the tax payment made for the year 1995.”

There is no doubt that both the Municipal Assessor and the Municipal Treasurer had in mind the provisions of Section 226 of the Code where it is provided that appeals to the Local Board should be made within sixty (60) days from the date of receipt of the written notice of assessment.

Petitioner-Appellant’s original protest-letter was addressed to the Municipal Treasurer and dated March 20, 2002. The records do not disclose when the Municipal Treasurer received such protest-letter but, in a 1st Indorsement dated March 26, 2002, the Municipal Treasurer forwarded the same to the Provincial Treasurer who, in turn, in a 2nd Indorsement dated April 04, 2002, forwarded the very same letter-protest to the Local Board which acknowledged receipt thereof on April 10, 2002.

On February 26, 2002 the Provincial Treasurer issued a Notice of Delinquency (apparently based on the Municipal Treasurer's Tax Notice No. 01) wherein the following data were stated:

Tax Dec. No. 00361 R10 Assessed Value P1,035,950.00

Tax Due: Current Year 2002 Basic P10,359.50

1% Additional Tax SEF	10,359.50	
Total	P20,719.00	P20,719.00
Tax Previous Years 1997-1999		168,157.08
Grand Total		P188,876.08
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The records show that Petitioner received a copy of ARP 00557 on October 19, 1995 and, on January 08, 1996 made a partial payment thereon in the amount of Ten Thousand Pesos (P10,000.00) as evidenced by Official Receipt No. 9201249-Q. However, the letter-protest dated March 20, 2002 by Petitioner was in reaction to the Notice of Delinquency by the Provincial Assessor involving Tax Declaration No. 00361 R10. Except for the fact that Petitioner received a copy of ARP 00557 on October 19, 1995, there is nothing in the records which show that written notices of assessment were served on the Petitioner for ARP Nos. 00557, 88-001-00342 and 00361.

Strictly speaking, the written notice of assessment contemplated in Section 223 of R.A. 7160 is separate and distinct from the tax declaration or the ARP. Even the Real Property Tax Order of Payment (RPTOP) or the Collection Letter from the Treasurer could not be considered as substitute for the required written notice of assessment (Filipinas Synthetic Fiber Corp. v. Provincial Assessor of Batangas, CBAA Cas No. 123, also cited in Leticia B. Agawin v. City Assessor of Manila, CBAA Case No. 192). Said Section 223 provides as follows:

> "SEC. 223. Notification of New or Revised Assessment. – When real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial, city or municipal assessor shall within thirty (30) days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally or by registered mail or through the assistance of the punong barangay to the last known address of the person to be served."

Statutes requiring the assessor to notify the taxpayers has been said to be mandatory and jurisdictional (Viuda o Hijos de Pedro Roxas v. Rafferty, 31 Phil. 957). In the absence of a valid notice, the prescriptive period for appeal to the local board of assessment appeals is inapplicable (Basey Wood Industries, Inc. v. Provincial Assessor of Samar, CBAA Case No. 100).

There being no valid notice, the prescriptive period of sixty (60) days provided under Section 226 of R.A. 7160 did not run against Petitioner. Upon the other hand, Petitioner-Appellant could not, as it does not, raise the issue of lack of jurisdiction because it is barred by estoppel. Petitioner willingly participated in the proceedings of the Local Board by filing that letter-protest dated May 2, 2003 without, at anytime, raising the said issue of jurisdiction.

In Benguet Corporation vs. Central Board of Assessment Appeals, et al., G.R. No. 100959, June 29, 1992 (In re: CBAA Case No. 237, May 28, 1990), the Supreme Court ruled:

> "The Solicitor General observes that the petitioner is estopped from raising the question of lack of authority to issue the challenged assessments inasmuch as it was never raised before, hence, not passed upon by the municipal and provincial assessors, LBAA and CBAA. This observation is well taken. The rule that the issue of jurisdiction over subject matter may be raised anytime, even during appeal, has been qualified where its application results in mockery of the tenets of fair play, as in this case when the issue could have been disposed of earlier and more authoritatively by any of the respondents who are supposed to be experts in the filed of realty assessment. As we held in Suarez v. Courts of Appeals (G.R. No. 80199, June 6, 1990, 186 SCRA 339);
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> > "x x x It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. The only exception is where the party raising the issue is barred by estoppel (Tijan v. Sibonghanoy, 23 SCRA 29, reiterated in Solid Homes, Inc. v. Payawal and Court of Appeals, G.R. No. 84811, August 29, 1989).
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> "While petitioner could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent. Upon the premises, petitioner cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the

court to which they had submitted themselves voluntarily (Tijam v. Sibonghanoy, supra).

"In Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals (L-29790, February 25, 1982, 112 SCRA 136), We held:

> "To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal."

On the requirement of payment under protest, We do not agree with the Municipal Assessor's position. Protests filed with the treasurer under the provision of Section 252 (Payment Under Protest) and, for that matter, under Section 253 (Refund of Excessive Collection), both of R.A. 7160, are necessarily actions for refund of taxes which have, of course, already been paid. In these cases, the assessments, payments on which are sought to be refunded, should not be in dispute. Otherwise, such action or actions should be governed by the provisions of Section 226 of R.A. 7160.

This case is not a claim for refund falling under the provisions of Section 252 of the code. Rather, this is an appeal against the assessment itself which falls squarely under the provisions of Section 226 of the same Code.

Petitioner, in its said original letter-protest against Tax Declaration No. 00361 R10 stated, in effect, that the subject cable television equipment were not subject to the real property tax since the same equipment were considered personal property under Article 416(4) of the New Civil Code.

In its motion for reconsideration of the Local Board's decision, Petitioner listed as its grounds for the motion the following:

1. Failure by the Honorable Board to appreciate the facts stated in the May 2, 2003 letter-protest to the warrant of distraint and levy; and

2. The validity of the assessment based on an erroneous, unjust and confiscatory appraisal was not resolved.

In dismissing Petitioner's motion for reconsideration the Local Board stated, in essence, that the first ground was new and should have been raised before, not in the motion for reconsideration.

The "letter-protest" mentioned in No. 1, above, was addressed to the Provincial Treasurer and is actually an opposition to the warrant of levy issued by the same Provincial Treasurer on April 25, 2003.

The Local Board could not deny that it was ignorant of the existence of said letter-protest before it promulgated its decision on July 2, 2003. The records show that a copy of same letter was received by the Local Board on May 6, 2003.

Section 229(b) of the Local Government code of 1991 states that ". . . The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to the technical rules applicable in judicial proceedings."

Even in judicial proceedings, appellate courts possess broad discretionary power to waive lack of assignment of errors. Thus, in Royal Shirt Factory vs. Co Bon Tic, No. L-6313, May 14, 1954, the Supreme Court held:

> "While an assignment of error which is required by law or rule of court has been essential to appellate review, and only those assigned shall be considered, there are a number of cases which appear to accord the appellate court a broad discretionary power to waive the lack of proper assignment or errors and consider errors not assigned. And an unassigned error closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned, will be considered by the appellate court notwithstanding the failure to assign it as error." (Hernandez vs. Andal, No. L-273, March 29, 1947; 44 O.G. 2672; 78 Phil. 1961); or "make findings of fact, in a particular case, contrary to the findings of the trial court, even if no specific error is assigned." (Sec. 5, Rule 53, 2 Moran's, pp. 333-336; Alimpolos et al., CA-G.R. No. 7771-R, June 28, 1950); or "the appellate court motu propio takes cognizance of palpable errors committed by the trial court and

proceeds to correct the same even if the correction favors the appellee." (Sec. 5, Rule 53, Rules of Court)

We believe, therefore, and so hold, that the Local Board should have taken into consideration the contents of said letter-protest dated May 2, 2003.

The grounds upon which the instant appeal is based are essentially the same as those which were made the basis of Petitioner's motion for reconsideration before the Local Board, albeit worded differently.

Enclosed with the same May 2, 2003 letter was a "Product Costing" statement dated March 14, 1994 and prepared by Fil Products, Inc. Said statement itemized the equipment needed by Petitioner in its cable television operations. The total project cost was estimated at P1,294,337.50, thus:

No.	Unit	Description	Unit Cost	Total
15	Units	Line Amplifier	P 7,500.00	P112,500.00
10	Units	Line Extender	4,200.00	42,000.00
3000	Ft.	RG-6 Mess. Feederline (15 Reels)	57.80	173,400.00
2000	Ft.	RG-11 Mess. Trunkline (1 Reel)	12.00	24,000.00
7	Units	Modulator	8,500.00	59,500.00
4	Units	Satellite Receiver	157,875.00	63,500.00
2	Units	PAL to NTSC Converter	25,000.00	50,000.00
1	Unit	GMA Decoder	45,000.00	45,000.00
1	Unit	16 Footer Satellite Dish	60,000.00	60,000.00
1	Unit	Dual Horn Jumbo	22,000.00	22,000.00
2	Units	LNB	5,500.00	11,000.00
1	Unit	Rock Mount Head End	15,000.00	15,000.00
180	Pcs.	50-24 4 Way Tops	420.00	75,600.00
20	Pcs.	2 Way Splitter	265.00	5,300.00
20	Pcs.	3 Way Splitter	265.00	5,300.00
20	Pcs.	Tap Off	95.00	1,900.00
300	Pcs.	F Type RG-6 Connectors	5.00	1,500.00
50	Pcs.	F Type RG-11 Connectors	15.00	750.00
50	Pcs.	J Hook	34.00	1,700.00
1	Unit	Cut to Channel Antenna	2,000.00	2,000.00
	Total for Machinery			P771,950.00
	Add: Installation (25%)			192,987.50
	Sub-Total			P964,937.50
	Add: ASIASAT:			
1	Unit	35 Footer Disc		P 219,000.00
1	Unit	Feed Horn		4,600.00
1	Unit	25 Degrees LNB		3,800.00
4	Units	Satellite Receiver		63,500.00
4	Units	Modulator		34,000.00
1	Reel	RG-59 Dropline		5,100.00
	Total for Asiasat			P 330,000.00
	Grand Total Market Value			P1,294,937.50

The items above-listed and their corresponding estimated costs are exactly the same as those appearing in ARP 00557 which was made effective the year

1995. In fact, we could safely say that ARP 00557 was copied verbatim from that "Project Costing" statement prepared by Fil Products for Petitioner.

Sections 224 and 225 of the Local Government Code of 1991 provide the mechanics in the appraisal and assessment of machinery, thus:

> "SEC. 224. *Appraisal and Assessment of Machinery.* – (a) The fair market value of a brand-new machinery shall be the acquisition cost. In all other cases, the fair market value shall be determined by dividing the remaining economic life of the machinery by its estimated economic life and multiplied by the replacement or reproduction cost.
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> "(b) If the machinery is imported, the acquisition cost includes freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus cost of inland transportation, handling, and installation charges at the present site. The cost in foreign currency of imported machinery shall be converted to peso cost on the basis of foreign currency exchange rates as fixed by the Central Bank."
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> "SEC. 225. *Depreciation Allowance for Machinery*. –
> For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use: Provided, however, That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement or reproduction cost for so long as the machinery is useful and in operation."

When the assessment was supposedly revised on February 13, 1996 (ARP 00342 effective 1997) and again on August 09, 1999 (ARP 00361 effective 2000), no allowance for depreciation was ever provided, contrary to the above-cited provisions of Section 225 of the Local Government Code of 1991. All three ARPs (Nos. 00557, 00342 and 00361) are identical as far as market value and assessed value are concerned, thus:

Fair Market Value	P1,294,937.50
Assessment Level	80.00%
Assessed Value	P1,035,950.00

WHEREFORE, the decision dated July 2, 2003 and the resolution dated October 15, 2003, both rendered by the Local Board of Assessment Appeals of the Province of Biliran, are hereby VACATED.

Respondents Provincial Assessor of Biliran and Municipal Assessor of Naval, Biliran are hereby ORDERED to revise ARP Nos. 00342 and 00361 by providing a depreciation allowance equivalent to five percent (5%) of the total project cost of P1,294,937.50 for every year of use starting from 1995 to 1999, thus:

For ARP 00342 (Effective 1997):	
Replacement/Reproduction Cost	P1,294,937.50
Less: Depreciation for 1995-1996 (10%)	129,493.75
Fair Market Value	P1,165,443.75
Assessment Level	80.00%
Assessed Value	P 932,355.00
For ARP 00361 (Effective 2000):	
Replacement/Reproduction Cost	P1,294,937.50
Less: Depreciation for 1995-1999 (50%)	647,468.75
Fair Market Value	P 647,468.75
Assessment Level	80.00%
Assessed Value	P 517,975.00

SO ORDERED.

Manila, Philippines, March 19, 2003.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member