

## THIRD DIVISION

[ G.R. No. 106588, March 24, 1997 ]

**RAUL H. SESBREÑO, PETITIONER, VS. CENTRAL BOARD OF ASSESSMENT APPEALS AND THE CITY ASSESSOR OF CEBU CITY, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

In resolving the validity of retroactive real estate tax assessments, may the Central Board of Assessment Appeals and thereafter the Supreme Court take up and consider issues not raised before the Local Board of Assessment Appeals? For the purpose of assessing back taxes on real estate, what is the meaning of the phrase "declared for the first time?" Specifically, may such back taxes be assessed on a property — initially declared as a "residential house of strong materials" — after the City Assessor discovered years later that such property was after all a residential building consisting of four storeys with a fifth storey used as roof deck?

These are some of the questions raised in this petition to annul and set aside the Resolution<sup>[1]</sup> dated July 28, 1992 of Respondent Central Board of Assessment Appeals<sup>[2]</sup> in CBAA Case No. 257.

### The Facts

On April 3, 1980, petitioner purchased from Estrella Benedicto Tan two (2) parcels of land covered by Transfer Certificate of Title No. T-55917 issued by the Register of Deeds of Cebu City<sup>[3]</sup> and described in the deed of sale as follows:<sup>[4]</sup>

"A parcel of land (Lot 308 of the Cadastral Survey of Cebu), with the improvements thereon, situated in the City of Cebu (formerly Municipality of Cebu), containing an area of Forty Nine (49) square meters, more or less x x x.

A parcel of land (Lot 309 of the Cadastral Survey of Cebu), with the improvements thereon, situated in the City of Cebu, containing an area of Forty Eight (48) square meters, more or less x x x."

The conveyance included "a residential house of strong materials constructed on the lots above-mentioned"<sup>[5]</sup> located in Cebu City.

Thereafter, petitioner declared the real property constructed on the said lots for purposes of tax assessment as a residential house of strong materials with a floor area of sixty (60) square meters. Effective in the year 1980, the declared property was assessed by Respondent City Assessor of Cebu City under Tax Declaration No.

02-20454 at a market value of P60,000.00 and an assessed value of P36,900.00.<sup>[6]</sup>

During a tax-mapping operation conducted in February 1989, the field inspectors of the Cebu City Assessor discovered that the real property declared and assessed under Tax Declaration No. 02-20454 was actually a residential building consisting of four (4) storeys with a fifth storey used as a roof deck. The building had a total floor area of 500.20 square meters. The area for each floor was 100.04 square meters. The building was found to have been made of Type II-A materials. On October 17, 1990, these findings were confirmed by the Board of Commissioners in an ocular inspection conducted on the subject property.

Based on the findings of the field inspectors, Respondent City Assessor of Cebu City issued Tax Declaration No. GR-06-045-00162 effective in the year 1989, canceling Tax Declaration No. 02-20454 and assessing the building therein at a net market value of P499,860.00 and an assessed value of P374,900.00. The 1981-1984 Schedule of Market Value was applied in the assessment.<sup>[7]</sup>

Petitioner protested the new assessment for being "excessive and unconscionable,"<sup>[8]</sup> contending that it was increased by more than 1,000% as compared to its previous market value of P60,000.00 or assessed value of P36,900.00 under Tax Declaration No. 02-20454 and "that he bought the building including the lots for only P100,000.00 on April 3, 1980, which amount should be the market value of the building for purposes of determining its assessed value."<sup>[9]</sup> He questioned the new assessment before the Local Board of Assessment Appeals of Cebu City, which however dismissed petitioner's appeal on January 11, 1990.<sup>[10]</sup> Hence, petitioner elevated his case to Respondent Central Board of Assessment Appeals.

On September 23, 1991, Respondent CBAA rendered a decision,<sup>[11]</sup> the dispositive portion of which reads as follows:<sup>[12]</sup>

"WHEREFORE, premises considered, the appealed Resolution is hereby modified, viz.:

For the purpose of determining the back taxes due on the excess area of subject building for the years 1981 to June 30, 1987, Respondent-Appellee (Respondent City Assessor of Cebu) is hereby directed to issue a new tax declaration effective 1981 based on the following assessments:

Type II-A Building (Residential) at P380.00/sq. m. (Minimum Rate)

	Undeclared Excess Area	Unit Value Per Sq. M.	Market Value
<b>S1 — (95-60)</b>	35 Sq. m.	P 380.00	P13,300.00
<b>S2 —</b>	95 Sq. m.	380.00	36,100.00
<b>S3 —</b>	95 Sq. m.	380.00	36,100.00

<b>S4 —</b>		380.00	36,100.00
	95 Sq. m.		
<b>S5 — Roof deck</b>	95 Sq. m. 30% of	380.00	10,830.00
<b>Total</b>	415 Sq. m		P132,430.00
<b>Assessment Level</b>			x 45%
<b>Assessed Value</b>			P59,593.50

For the purpose of determining the back taxes due on the excess area of subject building for the years July 1, 1987 to 1989, Respondent-Appellee is hereby ordered to issue another tax declaration effective July 1, 1987, to supersede the tax declaration (effective 1981) to be issued above based on the following assessments:

Type II-A Building (Residential) at P1,400.00/sq. m. (Minimum Rate)

	Undeclared Excess Area	Unit Value Per Sq. M.	Market Value
<b>S1 – (95-4)</b>	35 Sq. m.	P1,400.00	P 49,000.00
<b>S2 —</b>	95 Sq. m	1,400.00	133,000.00
<b>S3 —</b>	95 Sq. m.	1,400.00	133,000.00
<b>S4 —</b>	95 Sq. m.	1,400.00	133,000.00
<b>S5— Roof deck</b>	95 Sq. m. 30% of 1,400.00		39,900.00
<b>Total</b>			P 487,900.00

415 Sq. m.

<b>Less : 30 % Depreciation allowance</b>	146,370.00
<b>Net Market Value</b>	341,530.00
<b>Assessment Level</b>	x 65%
<b>Assessed Value</b>	P221,994.50"

Not satisfied, petitioner then filed a motion for reconsideration. During the hearing on said motion, the parties submitted a joint manifestation or compromise agreement which reads:<sup>[13]</sup>

"1. That the revised valuation of the property is P78,330.00 as ASSESSED VALUE, classifying the property as class II-B at P1,110 per sq. m., the building having been completed and occupied in 1950 or forty-two (42) years ago;

2. That Section 23 of Presidential Decree No. 464 APPLIES to this case considering that the appellee has NOT YET SUBMITTED the required CERTIFICATION to the Secretary of Finance to the effect that the GENERAL REVISION OF PROPERTY ASSESSMENTS FOR CEBU CITY HAS BEEN FINISHED. Sec. 23 of P.D. 464 uses the CONJUNCTIVE WORD 'AND' between the phrases: 'ASSESSMENTS SHALL BECOME EFFECTIVE and 'TAXES SHALL ACCRUE AND BE PAYABLE.'"

Thereafter, Respondent CBAA issued the assailed Resolution accepting the joint manifestation "for whatever purpose it may be worth to the case," raising "no objection to Manifestation No. 1 for being not contrary to law or public policy" but finding that "Manifestation No. 2 has no bearing on the instant case because Section 25 and not Section 23 of P.D. 464 is the law applicable x x x."<sup>[14]</sup> The dispositive portion of the now assailed Resolution reads:<sup>[15]</sup>

"WHEREFORE, our Decision on (sic) this case is hereby MODIFIED. For purposes of determining the back taxes due on the excess area of subject building from 1981 to 1989, Respondent-Appellee Assessor of Cebu City is hereby ordered to issue —

1. Tax Declaration effective 1981 to June 30, 1987, based on the minimum rate per sq. m. for a Type II-B building, in accordance with the 1978-79 Schedule of Values;

2. Tax Declaration to supersede Tax Declaration No. 1 to be effective from July 1, 1987 to the year 1988, based on the minimum rate per sq. m. for a Type II-B building, in accordance with the 1981-1984 Schedule of Values; and

3. Tax Declaration to supersede Tax Declaration No. 2 to take effect in 1989, based on the revised valuation provided under No. 1 of the Joint Manifestation of the parties hereof."

### **The Issues**

Disagreeing with the foregoing, petitioner thus filed this "APPEAL BY CERTIORARI" assigning the following errors allegedly committed by Respondent CBAA:[16]

"1. Respondent CBAA gravely erred in resolving the matter of back taxes which was never raised in issue in the Local Board of Assessment Appeals of Cebu City or in the appeal by the petitioner before the Central Board of Assessment Appeals (CBAA).

2. Respondent CBAA gravely erred in disregarding the jurisprudence in *Reyes vs. Almanzor*,[17] 196 SCRA 328 (should be 322).

3. Respondent CBAA gravely erred in mis-interpreting or mis-applying Section 25 of P.D. 464;

4. Respondent CBAA gravely erred in disregarding or failing or refusing to apply Section 23 of P.D. 464."

In his Memorandum dated July 23, 1993, petitioner refined the issues as follows:[18]

"B-1. Whether or not Respondent Central Board of Assessment Appeals erred in resolving the issue of back taxes from 1981 to 1988 despite the fact that such issue was not raised in the appeal, under its pretext that it is applying Section 25 of Presidential Decree No. 464.

B-2. Whether or not Respondent Central Board of Assessment Appeals erred in not strictly applying par. n, Section 3, Presidential Decree No. 464 defining 'market value' as basis for computing the 'assessed value';

B-3. Whether or not Respondent Central Board of Assessment Appeals erred in not strictly applying or refusing to apply Section 23 of Presidential Decree No. 464.

Corollary Issues:

a. Whether or not respondent CBAA's assessment is discriminatory, unjust, confiscatory and unconstitutional.

b. Whether or not P.D. No. 20, as invoked in the doctrinal jurisprudence of *Reyes vs. Almanzor*, 196 SCRA 328, may be applied to the case at bar in relation with par. n, Sec. 3, P.D. 464 defining 'market value' which was cited in the *Reyes vs. Almanzor* case (x x x)."

### **The Court's Ruling**

The petition has no merit.