

**VICTORIAS MILLING CO., INC., PETITIONER, VS. THE COURT OF TAX APPEALS, THE PROVINCIAL ASSESSOR AND THE PROVINCIAL TREASURER OF NEGROS OCCIDENTAL, RESPONDENTS.***G.R. No. L-24213. March 13, 1968*

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b605bd028c85/>**BENGZON, J.P., J.:**

In 1947 the Provincial Assessor assessed for purposes of the 1948 real property tax, machineries belonging to Victories Milling Co., Inc. at a value of P4,012,180.00 after allowing a deduction of 50% for depreciation. In due time, Victories Milling Co., Inc. (Victorias for short) paid under protest the corresponding tax.

For the year 1949, the same machineries were assessed at P3,904,310.00, which is equivalent to the assessed value for 1948 minus 3% depreciation. Victorias again paid the tax under protest.

For the years 1950 through 1953 the same and other machineries were assessed as follows:

Year Assessed Value

1950 P4,101,490.00

1951 4,060,060.00

1952 3,273,930.00

1953 3,023,910.00

The corresponding taxes due on the said machineries were paid under protest.

Victorias, however, did not appeal from all the afore-said assessments to the Provincial Board of Assessment Appeals as required in Section 17 of the Assessment Law. Instead, on April 24, 1953 it filed a complaint with the Court of First Instance of Negros Occidental against the Provincial Treasurer of Negros Occidental, alleging inter alia, that the assessor erroneously did not follow the "straight-line method" in determining the depreciation of its machineries as provided for by Provincial Circular (unnumbered) dated February 7, 1940 of the Department of Finance; that for the tax year 1948 the value of its prewar machineries should be depreciated at 74%<sup>[1]</sup> instead of only 50%; and that depreciation for 1949, 1950, 1951, 1952 and 1953 should be at 77%, 80%, 83%, 86% and 89%, respectively. It prayed for the refund of the sum of P134,969.70, computed as follows:

**Second Cause of Action**

Year

Tax Paid

Adjusted Tax

Refundable

1948

P35,957.80

P18,698.00

P17,259.80

1949

34,879.10

16,540.60

18,338.50

1950

36,850.90

15,590.40

21,260.50

1951

36,436.60

13,494.00

22,942.60

1952

30,657.30

11,112.70

19,544.60

1953

28,282.00

8,731.40

19,550.60

Total refundable amount -----

P 118,896.60

#### Fourth Cause of Action

Year

Tax Paid

Adjusted Tax

Refundable

1948

P4,164.00

P1,082.60

P3,081.40

1949

4,164.00

957.70

3,206.30

1950

4,164.00

832.80

3,331.20

1951

4,164.00

707.90

3,456.10

1952

2,082.00

583.00

1,499.00

1953

1,957.10

458.00

1,499.10

Total refundable amount -----

P16,073.10

The Court of First Instance of Negros Occidental found for Victorias and ordered refund in the total amount of P134,969.70. The Provincial Treasurer appealed to this Court in L-11523 but his appeal was dismissed on June 11, 1957 for failure to file brief.

On October 3, 1957, upon motion of Victorias, the Court of First Instance of Negros Occidental issued a writ of execution, but before said writ could be enforced the Provincial Treasurer filed with this Court a petition for

certiorari, prohibition and injunction with preliminary injunction, seeking to enjoin the enforcement of the writ of execution and to declare null and void the judgment ordering refund.[2]

On July 30, 1962 this Court set aside the aforesaid judgment for the reason that at the time the judgment was rendered on January 24, 1956 the trial court did not have jurisdiction over the case, jurisdiction having been transferred to the Court of Tax Appeals pursuant to Section 22 of Republic Act 1125. Consequently, the case was remanded to the Court of Tax Appeals for further appropriate proceedings.

On September 3, 1964 the Court of Tax Appeals held that the assessment in controversy which allegedly did not conform with the provisions of the Department of Finance's Provincial Circular dated February 7, 1940, were merely "erroneous", rather than "illegal" and "null and void", for which reason it was incumbent upon Victorias to prosecute its appeal first in the Provincial Board of Assessment Appeals before resorting to the courts. The Tax Court consequently dismissed the case with costs against Victorias. Hence, this appeal of Victorias.

The issue is whether or not the Court of First Instance had jurisdiction to entertain the complaint of Victorias.

It is settled in our jurisdiction that where an assessment is illegal and void, the remedy of a taxpayer, who has already paid the realty tax under protest, is to sue for refund in the competent court of first instance. On the other hand, where the assessment is merely erroneous, his recourse is to file an appeal in the Provincial Board of Assessment Appeals within 60 days from receipt of the assessment.[3]

Victorias maintains that the assessments in question are illegal and void because they contravene mandatory provisions of Provincial Circular (unnumbered) dated February 7, 1940, of the Department of Finance, which, being a regulation promulgated pursuant to Section 57 of the Assessment Law which states:

"SEC. 57. Promulgation of rules by the Secretary of Finance. - The Secretary of Finance shall promulgate rules and prescribe the blank forms to be used and procedure to be followed in carrying out the provisions of this Act."

has the force and effect of law.

On the other hand, respondents contend that the assessments are simply erroneous on the ground that the method used in depreciating the machineries was the "fixed percentage of diminishing book value method", instead of the "straight-line method" as dictated in the aforesaid provincial circular.

In the "fixed percentage of diminishing book value method", the rate of yearly depreciation remains the same but the base - the book value - upon which the rate is applied diminishes from year to year. For instance, the depreciation of a machinery which cost P100,000.00, depreciated at 5%, is as follows:

Book Value

Depreciation

First year,

5% of

P 100,000.00

P 5,000.00

Second year,

5% of

95,000.00

4,750.00

Third year,

5% of

90,250.00

4,512.50

Whereas, in the "straight-line method", the rate and the base - the cost - are constant. For example, the depreciation of the same machinery depreciated at the same rate, will be as follows:

Book Value

Depreciation

First year,

5% of

P 100,000.00

P 100,000.00

P 5,000.00

Second year,

5% of

95,000.00

95,000.00

5,000.00

Third year,

5% of

90,000.00

90,000.00

5,000.00

An assessment is illegal and void when the assessor has no power to act at all. It is erroneous when the assessor has the power but errs in the exercise of that power.[4]

In this case, the Provincial Assessor of Negros Occi-dental had the power to make the assessments in question under Section 7 of the Assessment Law. At any rate, the authority of the assessor is not disputed by Victorias.

Since the Provincial Assessor had the power to make the assessments, but in the exercise of such power he de-viated from the procedure set down by law, in that he em-ployed the "fixed percentage of diminishing book value method" instead of the "straight-line method" in depreciating the machineries, logically, the assessment should be considered as erroneous. In which event, Victorias' remedy, pursuant to Section 17 of the Assessment Law, was to appeal to the Provincial Board of Assessment Appeals.

By the doctrine of the primacy of administrative re-medey, the Provincial Board of Assessment Appeals had ju-risdiction over the dispute to the exclusion of the Court of First Instance.[5]

WHEREFORE, the decision appealed from is hereby af-firmed. No costs.

**SO ORDERED.**

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.  
Concepcion, C.J., on leave.

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[1] 3% yearly from 1940 to 1957 plus 50% initial depreciation as of 1940 for used machineries.

[2] Docketed as G.R. No. L-13654.

[3] See Section 17, Assessment Law; Roxas v. Rafferty, 37 Phil. 957.

[4] See Ford v. McGregor, 20 Nev. 446, 23 P. 508, 509.

[5] See Pacis v. Averia, G.R. No. L-22526, Nov. 29, 1966; Acting Col-lector of Customs v. Caluag, G.R. No. L-23925, May 24, 1967, 1967B Phild. 434.

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