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FIRST DIVISION

[G.R. No. 170901. January 20, 2009]

DAVAO ORIENTAL ELECTRIC COOPERATIVE, INC., *petitioner, vs.* **THE PROVINCE OF DAVAO ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE RULES AND REGULATIONS; FISCAL INCENTIVE REVIEW BOARD RESOLUTION NO. 24-87 RESTORING THE TAX EXEMPTION OF ALL ELECTRIC COOPERATIVES HAS NO RETROACTIVE APPLICATION.— First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

2. TAXATION; GENERAL PRINCIPLES; DOCTRINE OF STRICT INTERPRETATION IN CONSTRUING TAX EXEMPTION, APPLIED.— [B]ecause taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.

3. ID.; REAL PROPERTY TAX; TAXPAYER REMEDIES; EFFECT OF FAILURE TO APPEAL THE ASSESSMENT OF THE PROPERTIES TO THE BOARD OF ASSESSMENT APPEALS.— [P]etitioner does not deny having duly received the two Notices of Assessment dated October 8, 1985 on

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> October 10, 1985. It also admits that it did not file a protest before the Board of Assessment Appeals to question the assessment. x x x Having failed to appeal the assessment of its properties to the Board of Assessment Appeals, petitioner cannot now assail the validity of the tax assessment against it before the courts. Petitioner failed to exhaust its administrative remedies, and the consequence for such failure is clear – the tax assessment, as computed and issued by the Office of the Provincial Assessor, became final. Petitioner is deemed to have admitted the correctness of the assessment of its properties. In addition, Section 64 of PD No. 464 requires that the taxpayer must first pay under protest the tax assessed against him before he could seek recourse from the courts to assail its validity.

APPEARANCES OF COUNSEL

Casia Sembrano and Valles Law Offices for petitioner.
Alejandro A. Aquino for respondent.

D E C I S I O N

PUNO, *C.J.*:

On appeal is the Court of Appeals' (CA's) November 15, 2005 Decision[1] in CA-G.R. CV No. 67188 setting aside the March 15, 2000 Decision[2] of the Regional Trial Court (RTC) of Mati, Davao Oriental in Civil Case No. 1550 that dismissed the complaint for collection of delinquent real property taxes filed by the Province of Davao Oriental against the Davao Oriental Electric Cooperative, Inc.

The facts are as follows:

Petitioner Davao Oriental Electric Cooperative, Inc. was organized under Presidential Decree (PD) No. 269 which granted a number of tax and duty exemption privileges to electric

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[1] *Rollo*, pp. 14-27.

[2] CA *rollo*, pp. 49-64.

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cooperatives.[3] In 1984, PD No. 1955[4] was enacted by then President Ferdinand E. Marcos. It withdrew all exemptions

[3] PD No. 269. National Electrification Administration Decree (1973).

Sec. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

x x x x x x x x x

[4] Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in any Economic Activity, and for Other Purposes.

WHEREAS, the current economic crisis amounts to a grave emergency which affects the stability of the nation and requires immediate action;

WHEREAS, the issuance of this decree is an essential and necessary component of the national economic recovery program formulated to meet and overcome the emergency;

WHEREAS, Section 20 of Batas Pambansa Blg. 391, otherwise known as the Investment Incentives Policy Act of 1983, authorizes the President to restructure/rationalize all existing incentive systems/legislations to align them with overall economic development objectives and make them more responsive and meaningful to changing circumstances;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

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from or any preferential treatment in the payment of duties, taxes, fees, imposts, and other charges granted to private business enterprises and/or persons engaged in any economic activity.

Due to the failure of petitioner to declare the value of its properties, the Office of the Provincial Assessor assessed its properties.[5] On October 8, 1985, the Provincial Assessor sent the Notice of Assessment to petitioner which duly received it.

Section 1. The provisions of any special or general law of the contrary notwithstanding, all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby withdrawn, except those enjoyed by the following:

(a) Those registered by the Board of Investments under Presidential Decree No. 1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No. 66, as amended by Presidential Decree Nos. 1449, 1776-A and 1786;

(b) The copper mining industry in accordance with the provisions of LOI 1416;

(c) Those covered by international agreements to which the Philippines is a signatory;

(d) Those covered by the non-impairment clause of the Constitution; and

(e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance.

Section 2. The Ministry of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of this Decree.

Section 3. All other laws, decrees, executive orders, administrative orders, rules, regulations or parts thereof which are inconsistent with this Decree are hereby repealed, amended or modified accordingly.

Section 4. This Decree shall take effect on October 15, 1984.

[5] P.D. No. 464, Sec. 7. Declaration of Real Property by the Assessor. — When any person, natural or juridical, by whom real property is required to be declared under Section six hereof refuses or fails for any reason to make such declaration within the time prescribed, the provincial or city assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provisions of this Code. No oath shall be required of a declaration thus made by the provincial or city assessor.

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During the same year of 1985, the Fiscal Incentive Review Board (FIRB) issued FIRB Resolution No. 13-85, the Ministry of Finance issued Local Tax Regulation No. 3-85, and the Office of the Local Government Finance, Region XI, Davao City issued Regional Office Memorandum Circular No. 42-85, all of which reiterated the withdrawal of tax exemptions previously granted to business entities including electric cooperatives.

On January 8, 1986, then Pres. Marcos issued PD No. 2008,[6] requiring the Minister of Finance to immediately restore the tax exemption of all electric cooperatives. However, in December 1986, then Pres. Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax and duty exemptions granted to private entities effective March 10, 1987. But Memorandum Order No. 65, dated January 23, 1987, suspended the implementation of the said EO until June 30, 1987 for cooperatives. Effective July 1, 1987, FIRB No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. FIRB Resolution No. 24-87 reads:

BE IT RESOLVED, as it is hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of

[6] Further Strengthening the Cooperative Movement by Amending Certain Provisions of Presidential Decree Numbered One Hundred Seventy-Five, as Amended by Presidential Decree Numbered Nineteen Hundred and Fifty-Five.

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their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.

(SGD.) JAIME V. ONGPIN
Secretary of Finance
Chairman, FIRB

In May 1990, respondent filed a complaint for collection of delinquent real property taxes against petitioner for the years 1984 until 1989, amounting to one million eight hundred twenty-five thousand nine hundred twenty-eight pesos and twelve centavos (₱1,825,928.12).

Petitioner contends that it was exempt from the payment of real estate taxes from 1984 to 1989 because the restoration of tax exemptions under FIRB Resolution No. 24-87 retroacts to the date of withdrawal of said exemptions. Further, petitioner questions the classification made by respondent of some of its properties as real properties when it believes them to be personal properties, hence, not subject to realty tax.

On March 15, 2000, the RTC rendered its decision in favor of petitioner. It ruled, thus:

Inasmuch as the Fiscal Incentive Review Board (FIRB) Resolution No. 24-87 issued on June 14, 1987, RESTORED the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of Executive Order No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda[7] case, there is no question that the herein defendant as an electric cooperative established under PD 269 is exempt from the payment of its realty taxes during the period covered by the herein complaint – 1985 to December 31, 1987.

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The dispositive portion of the decision reads as follows:

WHEREFORE, in view of the foregoing, judgment is rendered dismissing the complaint.

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[7] *Maceda v. Macaraig*, G.R. No. 88291, May 31, 1991, 197 SCRA 771.

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Counterclaim is likewise dismissed.

No pronouncement as to costs.

SO ORDERED.[8]

Respondent appealed to the CA which set aside the ruling of the RTC. It held that:

A cursory reading of the aforecited resolution fails to indicate any semblance of retroactivity of the restoration of tax exemptions, in contrast to the ruling of the court *a quo* and to the contention of the Appellee that such restoration is retroactive from the date of withdrawal of exemption. The *FIRB Resolution No. 24-87* is very specific and clear that the tax and duty exemption privileges of electric cooperatives are restored effective 1 July 1987. Besides, it is settled that laws have no retroactive effect. It is settled that a "sound statutory construction is that a statute operates prospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication." . . .

The dispositive portion of the decision of the CA reads as follows:

WHEREFORE, premises considered, herein Appeal is GRANTED and the assailed Decision of the court *a quo* is hereby SET ASIDE. Plaintiff-Appellee Davao Oriental Electric Cooperative is hereby ordered to PAY Plaintiff-Appellant Province of Davao Oriental delinquent real property taxes from 1 January 1985 up to 31 December 1989 plus the corresponding penalties and surcharges imposed by law.

SO ORDERED.[9]

Hence, this appeal.[10]

Petitioner raises the following issues:

(1) WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD GRAVELY ERRED IN RULING THAT THE

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[8] RTC Records, p. 315.

[9] *Rollo*, p. 26.

[10] *Id.* at 3-10.

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RESTORATION OF THE TAX EXEMPTION UNDER FIRB RESOLUTION NO. 24-87 WAS NOT RETROACTIVE TO THE DATE OF EFFECTIVITY OF PD 1955.

(2) WHETHER OR NOT THE HONORABLE COURT OF APPEALS WAS CORRECT IN HOLDING THAT NOTWITHSTANDING THE RESTORATION OF SUCH TAX EXEMPTIONS UNDER FIRB RESOLUTION NO. 24-87, THE PETITIONER SHOULD STILL BE LIABLE FOR UNPAID TAXES FOR THE SUPPOSED FAILURE TO SUBMIT TO THE FIRB FINANCIAL STATEMENTS OF ITS OPERATIONS.

(3) WITHOUT CONCEDING ON THE FOREGOING, WHETHER OR NOT THE PETITIONER COULD BE MADE TO PAY TAXES BASED ON A WIDE-SWEEPING AND ERRONEOUS ASSESSMENT OF ITS REAL PROPERTIES.[11]

First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

Further, because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.[12]

Second, we rule on the issue of assessment of petitioner's real properties.

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[11] *Id.* at 6.

[12] *Paseo Realty & Development Corporation v. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004, 440 SCRA 235.

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Petitioner contests the assessment by respondent of its properties. It claims that the tax declarations covering its properties were issued without prior consultation, and without its knowledge and consent. In addition, it argues that respondent classified its poles, towers and fixtures, overhead conductors and devices, station equipment, line transformers, *etc*. as real properties "when by [their] nature, use, purpose, and destination and by substantive law and jurisprudence, they are personal properties."[13]

However, petitioner does not deny having duly received the two Notices of Assessment dated October 8, 1985 on October 10, 1985.[14] It also admits that it did not file a protest before the Board of Assessment Appeals to question the assessment.[15] Section 30 of PD No. 464,[16] otherwise known as the "The Real Property Tax Code," provides:

> Sec. 30. Local Board of Assessment Appeals. — Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province or city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavit or documents submitted in support of the appeal.

Having failed to appeal the assessment of its properties to the Board of Assessment Appeals, petitioner cannot now assail the validity of the tax assessment against it before the courts. Petitioner failed to exhaust its administrative remedies, and the consequence for such failure is clear – the tax assessment, as computed and issued by the Office of the Provincial

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[13] "Answer with Affirmative Defenses & Counterclaim," RTC Records, p. 12.

[14] Exhibits "K", "K-1", "L", and "L-1", Exhibits of the Plaintiff, Civil Case No. 1550.

[15] *Rollo*, p. 9.

[16] Took effect on June 1, 1974.

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Assessor, became final. Petitioner is deemed to have admitted the correctness of the assessment of its properties. In addition, Section 64 of PD No. 464 requires that the taxpayer must first pay under protest the tax assessed against him before he could seek recourse from the courts to assail its validity. The said section provides:

> SEC. 64. *Restriction upon power of court to impeach tax.* — No court shall entertain any suit assailing the validity of tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within this time herein specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any portion of the tax assessed under the provisions of Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding. (Emphasis supplied)

IN VIEW WHEREOF, petitioner's appeal is *DENIED*. The November 15, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 67188 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.