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From the facts stated above, herein petitioners (defendants in said Civil Case No. 5549-P) were not really in default because they have filed their answer to the complaint within the statutory period. Having answered the complaint, the failure of defendants to attend the court and to adduce evidence did not constitute default. Trial may proceed without them. (Go Changjo *vs.* Roldan Sy-Changjo, 18 Phil. 405)

"As long as the defendant answers he can never be in default and he should therefore not be declared in default (See Rosario et al., *vs.* Alonzo, et al. L-17330, June 29, 1963).

"As long as there has been an answer made by him, the mere non-appearance of the defendant at a hearing is not default, neither is failure to introduce evidence (Siojo *vs.* Tecson, 88 Phil. 531; Ignacio *vs.* Racho and Dolores, 78 Phil 557), BUT, certainly, the trial can proceed without him (Go Changjo *vs.* Roldan Sy-Changjo, 18 Phil. 405)."

From the foregoing, we conclude that herein petitioners had been unjustly deprived of their day in court.

WHEREFORE, the default order dated August 12, 1977 of respondent Judge in Civil Case No. 5549-P as well as the order denying the motion for reconsideration dated October 20, 1977 are hereby set aside and respondent is hereby directed to set the case for hearing with respect to defendants Miguel Violago and Simeon Singalawa and to render judgment accordingly.

SO ORDERED.

Teehankee (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez and *Gutierrez, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. L-47943. May 31, 1982]

MANILA ELECTRIC COMPANY, petitioner, *vs.* CENTRAL BOARD OF ASSESSMENT APPEALS, BOARD OF ASSESSMENT APPEALS OF BATANGAS and PROVINCIAL ASSESSOR OF BATANGAS, respondents.

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SYNOPSIS

Petitioner installed two storage tanks on a lot it leased from Caltex (Phil.) for storing fuel oil for its power plants. The tanks are made of steel plates welded and assembled on the spot and pipelines installed on the sides of each tank. They are not attached to the land but merely sit on concrete foundations. On assessment made by the Provincial Assessor in 1970, the Municipal Treasurer of Bauan, Batangas required petitioner to pay realty taxes on the two tanks. Payment of the realty taxes was upheld by the Batangas Board of Assessment Appeals and subsequently by the Central Board of Assessment Appeals. A motion for reconsideration was filed with the Board but the same was denied. Hence, the present petition. Petitioner claims that said oil storage tanks do not fall within any of the kinds of real property enumerated in Article 415 of the Civil Code.

On review, the Supreme Court held that while the two storage tanks are not embedded in the land, they may be considered as improvements on the land, enhancing its utility and rendering it useful to the oil industry, which are taxable under the provisions of the Real Property Tax Code.

SYLLABUS

1. ADMINISTRATIVE LAW; TAXATION; REALTY TAX; PROPERTIES SUBJECT THERETO.— Section 2 of the Assessment Law provides that the realty tax is due on "real property, including land, buildings, machinery, and other *improvements*" not specifically exempted in Section 3 thereof. This provision is reproduced with some modification in the Real Property Tax Code which provides in Section 38 thereof that "There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem tax* on real property such as land, buildings, machinery and other *improvements* affixed or attached to real property not hereinafter specifically exempted."

2. ID.; ID.; ID.; ID.; STORAGE TANKS NOT EMBEDDED IN THE LAND CONSIDERED TAXABLE IMPROVEMENTS UNDER SECTION 3 (k) OF THE REAL PROPERTY TAX CODE.— While the two storage tanks are not embedded in the land, they may, nevertheless, be considered as taxable improvements on the land, enhancing its utility and rendering it useful to the oil industry as defined under Section 3 (k) of the Real Property Tax Code. It is undeniable that the two tanks have been installed with some degree of permanence as receptacles for the considerable quantities of oil

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needed by Meralco for its operations. Oil storage tanks were held to be taxable realty in Standard Oil Co. of New Jersy *versus* Atlantic City, 15 Atl. 2nd 271.

3. ID.; ID.; REAL PROPERTY FOR PURPOSES OF TAXATION MAY INCLUDE THINGS GENERALLY REGARDED AS PERSONAL PROPERTY.— For purposes of taxation, the term "real property" may include things which generally should be regarded as personal property (84 C.J.S. 171, Note 8). It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property (Standard Oil Co. of New York *vs.* Jaramillo, 44 Phil. 630, 633).

APPEARANCES OF COUNSEL

Quiason, De Guzman, Makalintal, Veneracion and *Barot* for petitioner.

Acting Solicitor General Vicente V. Mendoza, Assistant Solicitor General Nathanael P. de Pano, Jr. and *Solicitor Jesus P. Mapuno* for respondents.

DECISION

AQUINO, *J.*:

This case is about the imposition of the realty tax on two oil storage tanks installed in 1969 by Manila Electric Company on a lot in San Pascual, Batangas which it leased in 1968 from Caltex (Phil.), Inc. The tanks are within the Caltex refinery compound. They have a total capacity of 566,000 barrels. They are used for storing fuel oil for Meralco's power plants.

According to Meralco, the storage tanks are made of steel plates welded and assembled on the spot. Their bottoms rest on a foundation consisting of compacted earth as the outermost layer, a sand pad as the intermediate layer and a two-inch thick bituminous asphalt stratum as the top layer. The bottom of each tank is in contact with the asphalt layer.

The steel sides of the tank are directly supported underneath by a circular wall made of concrete, eighteen inches thick, to

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prevent the tank from sliding. Hence, according to Meralco, the tank is not attached to its foundation. It is not anchored or welded to the concrete circular wall. Its bottom plate is not attached to any part of the foundation by bolts, screws or similar devices. The tank merely sits on its foundation. Each empty tank can be floated by flooding its dike-inclosed location with water four feet deep. (pp. 29-30, Rollo.)

On the other hand, according to the hearing commissioners of the Central Board of Assessment Appeals, the area where the two tanks are located is enclosed with earthen dikes with electric steel poles on top thereof and is divided into two parts as the site of each tank. The foundation of the tanks is elevated from the remaining area. On both sides of the earthen dikes are two separate concrete steps leading to the foundation of each tank.

Tank No. 2 is supported by a concrete foundation with an asphalt lining about an inch thick. Pipelines were installed on the sides of each tank and are connected to the pipelines of the Manila Enterprises Industrial Corporation whose buildings and pumping station are near Tank No. 2.

The Board concludes that while the tanks rest or sit on their foundation, the foundation itself and the walls, dikes and steps, which are integral parts of the tanks, are affixed to the land while the pipelines are attached to the tanks. (pp. 60-61, Rollo.)

In 1970, the municipal treasurer of Bauan, Batangas, on the basis of an assessment made by the provincial assessor, required Meralco to pay realty taxes on the two tanks. For the five-year period from 1970 to 1974, the tax and penalties amounted to ₱431,703.96 (p. 27, Rollo). The Board required Meralco to pay the tax and penalties as a condition for entertaining its appeal from the adverse decision of the Batangas board of assessment appeals.

The Central Board of Assessment Appeals (composed of Acting Secretary of Finance Pedro M. Almanzor as chairman and

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Secretary of Justice Vicente Abad Santos and Secretary of Local Government and Community Development Jose Roño as members) in its decision dated November 5, 1976 ruled that the tanks together with the foundation, walls, dikes, steps, pipelines and other appurtenances constitute taxable improvements.

Meralco received a copy of that decision on February 28, 1977. On the fifteenth day, it filed a motion for reconsideration which the Board denied in its resolution of November 25, 1977, a copy of which was received by Meralco on February 28, 1978.

On March 15, 1978, Meralco filed this special civil action of certiorari to annul the Board's decision and resolution. It contends that the Board acted without jurisdiction and committed a grave error of law in holding that its storage tanks are taxable real property.

Meralco contends that the said oil storage tanks do not fall within any of the kinds of real property enumerated in Article 415 of the Civil Code and, therefore, they cannot be categorized as realty by nature, by incorporation, by destination nor by analogy. Stress is laid on the fact that the tanks are not attached to the land and that they were placed on leased land, not on the land owned by Meralco.

This is one of those highly controversial, borderline or penumbral cases on the classification of property where strong divergent opinions are inevitable. The issue raised by Meralco has to be resolved in the light of the provisions of the Assessment Law, Commonwealth Act No. 470, and the Real Property Tax Code, Presidential Decree No. 464 which took effect on June 1, 1974.

Section 2 of the Assessment Law provides that the realty tax is due "on real property, including land, buildings, machinery, and other *improvements*" not specifically exempted in Section 3 thereof. This provision is reproduced with some modification in the Real Property Tax Code which provides:

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"SEC. 38. *Incidence of Real Property Tax.*— There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem tax* on real property, such as land, building, machinery and other *improvements* affixed or attached to real property not hereinafter specifically exempted."

The Code contains the following definition in its Section 3:

"k) *Improvements*— is a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital and intended to enhance its value, beauty or utility or to adapt it for new or further purposes."

We hold that while the two storage tanks are not embedded in the land, they may, nevertheless, be considered as improvements on the land, enhancing its utility and rendering it useful to the oil industry. It is undeniable that the two tanks have been installed with some degree of permanence as receptacles for the considerable quantities of oil needed by Meralco for its operations.

Oil storage tanks were held to be taxable realty in Standard Oil Co. of New Jersey *vs.* Atlantic City, 15 Atl. 2nd 271.

For purposes of taxation, the term "real property" may include things which should generally be regarded as personal property (84 C.J.S. 171, Note 8). It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property (Standard Oil Co. of New York *vs.* Jaramillo, 44 Phil. 630, 633).

The case of Board of Assessment Appeals *vs.* Manila Electric Company, 119 Phil. 328, wherein Meralco's steel towers were held not to be subject to realty tax, is not in point because in that case the steel towers were regarded as poles and under its franchise Meralco's poles are exempt from taxation. Moreover, the steel towers were not attached to any land or building. They were removable from their metal frames.

Nor is there any parallelism between this case and Mindanao Bus Co. *vs.* City Assessor, 116 Phil. 501, where the tools and

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equipment in the repair, carpentry and blacksmith shops of a transportation company were held not subject to realty tax because they were personal property.

WHEREFORE, the petition is dismissed. The Board's questioned decision and resolution are affirmed. No costs.

SO ORDERED.

Barredo (Chairman), Guerrero, De Castro and *Escolin, JJ.*, concur.

Concepcion Jr., J., is on leave.

Abad Santos, J., did not take part.

FIRST DIVISION

[G.R. No. L-50081. May 31, 1982]

SANTOS CODILLA, petitioner, *vs.* FLORENCIA LOPEZ, TEODORO VILLANUEVA, and THE HONORABLE COURT OF FIRST INSTANCE, Branch III, MASBATE, MASBATE, respondents.

SYNOPSIS

In an action for unlawful detainer and damages, the Municipal Court rendered a decision in favor of private respondent Lopez (plaintiff). Petitioner Codilla (defendant), within the reglementary period to appeal, filed his Notice of Appeal, supersedeas bond and appeal bond in the amount of ₱60.00, with one surety. For failure of petitioner to pay the yearly rental ordered in the lower court's decision, execution was granted pending appeal. Motions filed by petitioner to reconsider the order of execution pending appeal were denied by respondent Judge and, upholding private respondent's arguments in her Opposition, dismissed petitioner's appeal for failure to perfect it on time inasmuch as the appeal bond was not approved by the Municipal Court, relying on Section 5, Rule 41 of the Rules of Court. Respondent Judge denied petitioner's Petition for Relief for lack of jurisdiction.

On review, the Supreme Court ruled that the Rules governing appeal from the Municipal Courts to the Courts of First Instance are found in Rule 40, not Rule 41, of the Rules of Court and nowhere in the said Rules is the