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FIRST DIVISION

[G.R. No. 144486. April 13, 2005]

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), *petitioner, vs.* PROVINCIAL ASSESSOR OF SOUTH COTABATO, PROVINCIAL TREASURER OF SOUTH COTABATO, MUNICIPAL ASSESSOR OF TUPI, SOUTH COTABATO, and MUNICIPAL TREASURER OF TUPI, SOUTH COTABATO, *respondents*.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; SECTION 14 OF REPUBLIC ACT 2036, AS AMENDED BY REPUBLIC ACT 4054; THE "IN LIEU OF ALL TAXES" CLAUSE, CONSTRUED; CASE AT BAR.**— As found by the appellate court, RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. Section 14 of RA 2036, as amended by RA 4054, states that "[i]n consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, *the grantee shall pay the same taxes as are now or may hereafter be required by law* from other individuals, copartnerships, private, public or quasi-public associations, corporations or joint stock companies, *on real estate, buildings* and other personal property x x x." *The clear language of Section 14 states that RCPI shall pay the real estate tax.* The "in lieu of all taxes" clause in Section 14 of RA 2036, as amended by RA 4054, cannot exempt RCPI from the real estate tax because *the same Section 14 expressly states* that RCPI *"shall pay the same taxes* x x x *on real estate, buildings* x x x." The "in lieu of all taxes" clause in the third sentence of Section 14 cannot negate the first sentence of the same Section 14, which imposes the real estate tax on RCPI. The Court must give effect to both provisions of the same Section 14. This means that the real estate tax is an exception to the "in lieu of all taxes" clause.

2. **TAXATION; TAX EXEMPTIONS ARE STRICTLY CONSTRUED AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.**— It is an elementary rule in taxation

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that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

3. ID.; REAL PROPERTY TAX CODE; DEPRECIATION ALLOWANCE; APPLIES ONLY TO MACHINERY AND NOT TO REAL PROPERTY.— We have examined the records of this case and found that RCPI raised before the LBAA and the CBAA the nullity of the assessments due to the non-inclusion of depreciation allowance. Therefore, RCPI did not raise this issue for the first time. However, even if we consider this issue, under the Real Property Tax Code depreciation allowance applies only to machinery and not to real property.

APPEARANCES OF COUNSEL

Rolando A.P. Reyes & Associates for petitioner.
Romeo S. Sucaldito for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] to set aside the Decision[2] dated 29 March 2000 of the Court of Appeals ("appellate court") in CA-G.R. SP No. 47446. The appellate court modified the ruling of the Central Board of Assessment Appeals ("CBAA") and exempted petitioner Radio Communications of the Philippines, Inc. ("RCPI") from paying real property tax assessed on its machinery and radio equipment mounted on its relay station tower as accessories. However, the appellate court held RCPI liable for real property tax on its radio station building, machinery shed, and relay station tower.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice (now Supreme Court Associate Justice) Conchita Carpio Morales, with Associate Justices Teodoro P. Regino and Jose L. Sabio, Jr., concurring.

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The Facts

In 1957, Republic Act No. 2036 ("RA 2036")[3] granted RCPI a fifty-year franchise. Section 14 of RA 2036, as amended by Republic Act No. 4054 ("RA 4054") in 1964, reads:

> Sec. 14. In consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, *the grantee shall pay the same taxes as are now or may hereafter be required by law* from other individuals, copartnerships, private, public or quasi-public associations, corporations or joint stock companies, *on real estate, buildings* and other personal property except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. *Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted.* (Italics supplied)

On 10 June 1985, the municipal treasurer of Tupi, South Cotabato assessed RCPI real property taxes from 1981 to 1985.[4] The municipal treasurer demanded that RCPI pay ₱166,810 as real property tax on its radio station building in Barangay Kablon, as well as on its machinery shed, radio relay station tower and its accessories, and generating sets, based on the following tax declarations:[5]

1. Tax Declaration No. 7639 - Radio station building
2. Tax Declaration No. 7640 - Machinery shed
3. Tax Declaration No. 7641 - Radio relay station tower and accessories (100 feet high)
4. Tax Declaration No. 7642 - Two (2) units machinery [lister generating set]

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[3] An Act Granting the Radio Communications of the Philippines a Franchise to Establish Radio Stations for Domestic Telecommunications.

[4] *Rollo*, p. 26.

[5] *Ibid*, pp. 27-35.

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RCPI protested the assessment before the Local Board of Assessment Appeals ("LBAA").[6] RCPI claimed that all its assessed properties are personal properties and thus exempt from the real property tax. Assuming that the assessed properties are real property, they are still exempt from real property taxes. Section 3 of Presidential Decree No. 464 ("PD 464") states that to be taxable, the machinery should be attached to the real estate and essential for manufacturing, commercial, mining, industrial, or agricultural purposes. RCPI claimed that the assessed properties are not used for manufacturing, commercial, mining, industrial, or agricultural purposes. Besides, the assessed properties are attached to a building on a lot not owned by RCPI.

RCPI also pointed out that its franchise exempts RCPI from "paying any and all taxes of any kind, nature or description in exchange for its payment of tax equal to one and one-half per cent on all gross receipts from the business conducted under its franchise." RCPI further claimed that any deviation from its franchise would violate the non-impairment of contract clause of the Constitution. Finally, RCPI stated that the value of the properties assessed has depreciated since their acquisition in the 1960s.

The Provincial Assessor of South Cotabato ("provincial assessor") opposed RCPI's claims on all points. The provincial assessor insisted that the assessed properties are subject to the real property tax.

The Ruling of the Local Board of Assessment Appeals

In its Decision[7] dated 19 May 1995, the LBAA of Koronadal, South Cotabato affirmed the notices of assessment as valid and consistent with the law. The properties covered by Tax Declaration Nos. 7639, 7640, 7641 and 7642 are real properties for purposes of real property taxation under PD 464. The "in lieu of all taxes" clause in RCPI's franchise does not exempt its properties from the real property tax. Finally, despite its protests, RCPI did not submit evidence as to the date of acquisition, acquisition cost,

[6] *Ibid.*, pp. 42-55.

[7] *Ibid.*, pp. 62-72.

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and condition of the assessed properties to support its claim of depreciation. The LBAA, in the absence of contrary evidence, relied on the validity of the Notice of Assessment and on the presumption that official duty has been regularly performed. The dispositive portion of the LBAA's decision reads:

> WHEREFORE, the appellant is hereby ordered to pay the real property taxes, inclusive of all penalties, surcharges and interest accruing as of the date of actual payment, on the properties covered by Tax Declaration Nos. 7639, 7640, 7641, and 7642, as computed.
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> SO ORDERED.[8]

RCPI appealed to the CBAA.[9] RCPI maintained that the "in lieu of all taxes" clause in its franchise forecloses the imposition of taxes other than the franchise tax. RCPI also reiterated its arguments before the LBAA. Respondent assessors repeated their opposition to RCPI's appeal.

The Ruling of the Central Board of Assessment Appeals

In its Decision[10] dated 7 November 1996, the CBAA dismissed RCPI's appeal. The CBAA held that RCPI's liability for the franchise tax does not exempt RCPI from the real property tax. Under RCPI's franchise, only personal properties such as radio equipment, machinery and spare parts are exempt from customs duties, tariffs and other taxes. The CBAA ruled that RCPI was liable for the real property tax on the assessed properties. RCPI could also not invoke the non-impairment of contract clause since no legal right of RCPI was violated. The dispositive portion of the CBAA's decision reads:

> WHEREFORE, the Decision rendered by the Local Board of Assessment Appeals of the Province of South Cotabato, dated 19 May 1995, is hereby AFFIRMED and the instant appeal is hereby DISMISSED.
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> SO ORDERED.[11]

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[8] *Ibid.*, p. 71.
[9] *Ibid.*, pp. 75-89.
[10] *Ibid.*, pp. 97-120.
[11] *Ibid.*, p. 120.

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The Ruling of the Court of Appeals

RCPI filed its petition for review of the CBAA ruling before the appellate court. In its Decision[12] dated 29 March 2000, the appellate court modified the CBAA ruling. The appellate court ruled that Section 14 of RA 2036, as amended by RA 4054, clearly exempts RCPI from tax on "radio equipment, machinery, and spare parts needed in connection with its business." Therefore, RCPI is not liable for real property tax on the generating sets, and on its radio relay station tower and its accessories consisting of two units of UHF communication equipment, power distribution unit boar, and battery charger, which are actually varying types of radio equipment. The appellate court explained thus:

> The tower upon which these different types of radio equipment are mounted or attached is, however, subject to real property tax since a tower is not strictly a radio equipment as it only serves as a support for antennas or other communication equipment mounted thereon for the transmission and reception of radio signals (Collier's Encyclopedia, Vol. 22, p. 127). Nor could it be classified as machinery, which is a combination of mechanical devices (26 Words and Phrases, p. 7), for without attachments to it, a tower is merely a structure designed primarily with a view to elevation (Webster's New International Dictionary of the English Language, 2nd Ed., Unabridged).
>
> As RCPI's tax exemption covers only its radio equipment, machinery, and spare parts essential to its business, it is liable for realty tax on its radio station building. The machinery shed is likewise taxable as the same is a kind of real property falling within the classification of buildings or permanent structures intended to shelter human beings or domestic animals, or to receive, retain, or confine the goods in which a person deals, or to house the tools or machinery he uses, or the persons he employs in his business (5 Words and Phrases, p. 877).[13]

The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the decision of the Central Board of Assessment Appeals is hereby MODIFIED. Petitioner is declared exempt from paying the real property taxes assessed upon its machinery and radio equipment

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[12] *Ibid.*, pp. 165-170.

[13] *Ibid.*, pp. 168-169.

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mounted as accessories to its relay tower. The decision assessing taxes upon petitioner's radio station building, machinery shed, and relay station tower is, however, AFFIRMED.[14]

RCPI filed a partial motion for reconsideration, claiming that its exemption from real property tax applies to the radio relay station tower, the radio station building, and the machinery shed.[15] The appellate court denied the motion.[16]

The Issues

RCPI filed its petition for review before this Court. RCPI presented the following issues for resolution:

1. The appellate court erred when it excluded RCPI's tower, relay station building and machinery shed from tax exemption; and
2. The appellate court erred when it did not resolve the issue of nullity of the tax declarations and assessments due to non-inclusion of depreciation allowance.[17]

The Ruling of the Court

Exemption from Real Property Tax

Respondents assert that RCPI not only changed its arguments, RCPI also made incorrect arguments. RCPI earlier maintained that its radio relay station tower, radio station building, and machinery shed are personal properties and are thus not subject to the real property tax. RCPI now argues that its radio relay station tower, radio station building, and machinery shed are tax-exempt because of the "in lieu of all taxes" clause in its franchise, which exempts RCPI from the real estate tax.

RCPI contends that the "in lieu of all taxes" clause in its amended franchise exempts it from paying all taxes other than franchise tax. It is thus no longer necessary to determine whether the

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[14] *Ibid.*, p. 169.
[15] *Ibid.*, pp. 171-176.
[16] *Ibid.*, pp. 177-78.
[17] *Ibid.*, pp. 10-11.

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tower, relay station building, and machinery shed are radio equipment for purposes of exemption from the real estate tax.

RCPI also states that legislative enactments during the pendency of this petition caused it to lose and then regain its tax-exempt status. RCPI enumerated thus:

> First, Congress passed the Local Government Code that withdrew all the tax exemptions existing at the time of its passage — including that of RCPI's.
>
> Second, Congress enacted the franchise of telecommunications companies, such as Islacom, Bell, Island Country, IslaTel, TeleTech, Major Telecoms, and Smart, with the "in lieu of all taxes" *proviso*.
>
> Third, Congress passed RA 7925 entitled "An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services" which, through Section 23, mandated the equality of treatment of service providers in the telecommunications industry.[18]

We are not persuaded.

As found by the appellate court, RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. Section 14 of RA 2036, as amended by RA 4054, states that "[i]n consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, *the grantee shall pay the same taxes as are now or may hereafter be required by law* from other individuals, copartnerships, private, public or quasi-public associations, corporations or joint stock companies, *on real estate, buildings* and other personal property x x x"[19] *The clear language of Section 14 states that RCPI shall pay the real estate tax.*

The "in lieu of all taxes" clause in Section 14 of RA 2036, as amended by RA 4054, cannot exempt RCPI from the real estate tax because the *same Section 14 expressly states that* RCPI *"shall pay the same taxes x x x on real estate, buildings x x x."*

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[18] *See Rollo*, pp. 240-241.

[19] Italics supplied.

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The "in lieu of all taxes" clause in the third sentence of Section 14 cannot negate the first sentence of the same Section 14, which imposes the real estate tax on RCPI. The Court must give effect to both provisions of the same Section 14. This means that the real estate tax is an exception to the "in lieu of all taxes" clause.

Subsequent legislations have radically amended the "in lieu of all taxes" clause in franchises of public utilities. As RCPI correctly observes, the Local Government Code of 1991 *"withdrew all the tax exemptions existing at the time of its passage — including that of RCPI's"* with respect to local taxes like the real property tax. Also, Republic Act No. 7716 ("RA 7716") abolished the franchise tax on telecommunications companies effective 1 January 1996. To replace the franchise tax, RA 7716 imposed a 10 percent value-added-tax on telecommunications companies under Section 102[20] of the National Internal Revenue Code. The present state of the law on the "in lieu of all taxes" clause in franchises of telecommunications companies was summarized as follows:

> The existing legislative policy is clearly against the revival of the "in lieu of all taxes" clause in franchises of telecommunications companies. After the VAT on telecommunications companies took effect on January 1, 1996, Congress *never* again included the "in lieu of all taxes" clause in any telecommunications franchise it subsequently approved. Also, from September 2000 to July 2001, all the fourteen telecommunications franchises approved by Congress uniformly and expressly state that the franchisee shall be subject to all taxes under the National Internal Revenue Code, except the specific tax. The following is substantially the uniform tax provision in these fourteen franchises:
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> > Tax Provisions. — The grantee, its successors or assigns, shall be *subject to the payment of all taxes, duties, fees, or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws:* Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications entities shall likewise be extended to the grantee.

[20] Now Section 108 of the Tax Reform Act of 1997, Republic Act No. 8424.

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Thus, after the imposition of the VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax. More importantly, the uniform tax provision in these new franchises expressly states that the franchisee shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "*other applicable laws*." One of the "other applicable laws" is the Local Government Code of 1991, which empowers local governments to impose a franchise tax on telecommunications companies. This, to reiterate, is the existing legislative policy.[21]

RCPI cannot also invoke the equality of treatment clause under Section 23 of Republic Act No. 7925.[22] The franchises of Smart,[23] Islacom,[24] TeleTech,[25]

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[21] Concurring Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 588, 595-596 (2003). Citations omitted. Emphasis in the original.

[22] This provision states:

Equality of Treatment in the Telecommunications Industry. — Any advantage, favor, privilege, exemption, or immunity granted under existing franchise, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchise and shall be accorded immediately and unconditionally to the grantees of such franchises: *Provided, however*, that the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

[23] Section 9 of Republic Act No. 7294, the franchise of Smart Information Technologies, Inc., states:

Tax provisions. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[24] Section 14 of Republic Act No. 7372, the franchise of Isla Communications Co., states:

The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[25] Section 10 of Republic Act No. 7617, the franchise of Telecommunications Technologies Philippines, Incorporated, states:

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Bell,[26] Major Telecoms,[27] Island Country,[28] and IslaTel,[29] *all expressly declare that the franchisee shall pay the real estate tax,* using words similar to Section 14 of RA 2036, as amended. The provisions of these subsequent telecommunication franchises imposing the real estate tax on franchisees only *confirm* that RCPI is subject to the real estate tax. Otherwise, RCPI will stick out like a sore thumb, being the only telecommunications company exempt from the real estate tax, in mockery of the spirit of equality of treatment that RCPI is invoking, not to mention the violation of the constitutional rule on uniformity of taxation.

It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the the taxing authority.

Tax Provisions. — The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[26] Section 9 of Republic Act No. 7692, the franchise of Bell Telecommunication Philippines, Inc., states:

Tax Provisions. — The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[27] Section 14 of Republic Act No. 7783, the franchise of Major Telecoms., Inc., states:

Tax Provisions. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[28] Section 10 of Republic Act No. 7939, the franchise of Island Country Telecommunications, Inc., states:

Tax Provisions. — The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. x x x. (Italics supplied)

[29] Section 10 of Republic Act No. 8095, the franchise of Islatel Corporation, states:

Tax Provision. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. x x x. (Italics supplied)

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It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted.[30]

Exclusion of Depreciation Allowance

RCPI contends that the tax declarations and assessments covering its radio relay station tower, radio station building, and machinery shed are void because the assessors did not consider depreciation allowance in their assessments.

We have examined the records of this case and found that RCPI raised before the LBAA and the CBAA the nullity of the assessments due to the non-inclusion of depreciation allowance. Therefore, RCPI did not raise this issue for the first time. However, even if we consider this issue, under the Real Property Tax Code depreciation allowance applies only to machinery and not to real property.[31]

WHEREFORE, we DENY the petition. We AFFIRM the Decision of the Court of Appeals in CA-G.R. SP No. 47446 dated 29 March 2000.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Ynares-Santiago, and *Azcuna, JJ.,* concur.

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[30] *See Province of Tarlac v. Alcantara*, G.R. No. 65230, 23 December 1992, 216 SCRA 790.

[31] Section 29, Real Property Tax Code, PD 464 reads:

Depreciation Allowance for Machinery. — For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding ten per cent of its original cost or its replacement or reproduction cost (new), as the case may be, for each year of use: *Provided*, That the remaining value for all kinds of machinery shall be fixed at not less than twenty per cent of such original or replacement cost for so long as the machinery is useful and in operation.

The Local Government Code, Republic Act No. 7160, has a similar provision, which reads:

Section 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.