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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.*

SYLLABUS

1. **TAXATION; CENTRAL BOARD OF ASSESSMENT APPEALS; DECISIONS OR RESOLUTIONS THEREOF MAY BE RAISED IN A PETITION FOR *CERTIORARI* UNDER RULE 65, NOT RULE 45, OF THE RULES OF COURT.**— "Appeal by *certiorari*" or a petition for review under Rule 45 of the Rules of Court is not the correct remedy in questioning the decisions and resolutions of the Central Board of Assessment Appeals. Rather, a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion should be filed.

2. **REMEDIAL LAW; COURTS; PAYMENTS UNDER PROTEST OF CONTESTED ASSESSMENT; JURISDICTIONAL REQUIREMENT.**— The CBAA decision dated September 30, 1991 and the assailed Resolution dated July 28, 1992 show that petitioner failed to pay under protest the tax assessed against his property. This is a violation of Section 64 of Presidential Decree No. 464 which requires that, before a court may entertain any suit assailing the validity of a tax assessment, the taxpayer must first pay under protest the tax assessed against him.

3. **ID.; ACTIONS; APPEALS; APPELLATE COURT WITH INHERENT AUTHORITY TO REVIEW UNASSIGNED ERRORS.**— As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. The Court has held in several cases, however, that an appellate court has an inherent authority to review unassigned errors (1) which are closely related to an error properly raised, or (2) upon which the determination of the error properly assigned is dependent, or (3) where the Court finds that consideration of them is necessary in arriving at a

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just decision of the case. Although the foregoing citations specifically referred to "appellate courts," there appears no reason why these should not apply to appellate administrative agencies, where rules of procedure are liberally construed.

4. **ID.; ID.; ID.; ID.; CASE AT BAR..**— In the present case, we hold that Respondent CBAA did not err in considering the issue of back taxes, the same being closely related to an error properly raised. Petitioner himself assailed the subject assessment before the Respondent CBAA for being "excessive and unconscionable." In resolving this issue, Respondent CBAA was duty-bound to review the factual antecedents of the case and to apply thereon the pertinent provisions of law. In the process, Respondent CBAA applied Section 25 of PD 464 which had authorized the imposition of back taxes. In any event, consideration of the question of back taxes is essential to a just decision on the case, as will be shown below.

5. **TAXATION; REAL PROPERTY TAX CODE; "DECLARED FOR THE FIRST TIME" IN SECTION 25 THEREOF, CONSTRUED.**— In *Lopez vs. Crow* which involved the interpretation of Section 12 of Act 2238, a provision similar to Section 25 of PD 464, the Court rejected a parallel argument that the said provision "refers solely to real estate declared for the first time and does not apply to the area which, upon revision, has been shown to be in excess of that which was formerly declared." The Court held that the area in excess of that declared by the taxpayer was deemed declared for the first time upon its discovery.

6. **ID.; ID.; PROSPECTIVE APPLICATION OF ASSESSMENT UNDER SECTION 24 THEREOF DOES NOT ELIMINATE IMPOSITION OF BACKWAGES.**— Section 24 merely lays down the general rule that assessments under PD 464 are to be given prospective application. It cannot be construed in such a manner as to eliminate the imposition of back taxes. If Section 24, instead of Section 25, were made to apply as suggested by petitioner, he would in effect be excused from the payment of back taxes on the undeclared excess area of his property. The Court, clearly, cannot allow a taxpayer to evade his obligation to the government by letting him pay taxes on a property based on its gross undervaluation at P60,000.00, when the same had then a current market value of P449,860.00.

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7. **STATUTORY CONSTRUCTION; CONSTRUCTION WHICH WILL RESULT IN GREAT INCONVENIENCE SHOULD BE AVOIDED.**— It is another well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words. (25 R. C. L., pp. 1025-1027).

8. **ID.; WHERE A LEGAL PROVISION IS SUSCEPTIBLE OF TWO INTERPRETATIONS, ONE WHICH IS IN CONSONANCE WITH THE PRESUMED INTENTION OF THE LEGISLATURE SHOULD BE ADOPTED.**— If Section 24 is the only applicable provision in cases where a taxpayer has eluded the payment of the correct amount of taxes for more than nine (9) years, as in this case, Section 25 of PD 464 which requires the payment of back taxes will be rendered superfluous and nugatory. Such interpretation could not have been intended by the law. It is a familiar rule in statutory construction that "(t)he legal provision being therefore susceptible of two interpretations, we adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective and harmonious with other provisions of law."

9. **TAXATION; REAL PROPERTY TAX CODE; BASIS OF MARKET VALUE OF PROPERTY.**— Acquisition cost cannot be and is not the sole basis of the current and fair market value of a property. The current value of like properties and their actual or potential uses, among others, are also considered. Petitioner also argues that "the number of stories that a building has or its floor area are irrelevant, immaterial or impertinent in the determination of market value as basis for computing the assessed value." This deserves scant consideration. It is a matter of plain common sense that a building with more floors has a higher market value than one with fewer floors, provided that both are of the same materials. Hence, the tax declaration of the building in question should have accurately reflected its actual area and number of floors, these being necessary for the accurate valuation thereof.

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10. **ID.; ID.; CERTIFICATION REQUIRED IN SECTION 23 THEREOF, NOT APPLICABLE WHERE ASSESSMENT WAS NOT BASED ON GENERAL REVISION OF PROPERTY ASSESSMENTS.**— Petitioner claims that Respondent City Assessor of Cebu City has not yet completed the general revision of property assessments for years 1981-1984 and has not yet submitted the certification required by Section 23 of PD 464 to the Secretary of Finance; hence, he may not yet be held liable to pay any assessment. This claim lacks merit. As found by Respondent CBAA, the questioned assessment had not been imposed pursuant to a *general* revision of property assessments that had not yet taken effect.

11. **ID.; ID.; SECTION 25 THEREOF NOT PENAL IN CHARACTER, HENCE MAY NOT BE CONSIDERED AN *EX POST FACTO* LAW.**— When both Public Respondents CBAA and City Assessor imposed back taxes on petitioner's property, they did not violate the rule that laws shall have only prospective applicability. Respondents were only applying PD 464 which had been in effect since 1974. Besides, Section 25 of PD 464 is not penal in character; hence, it may not be considered as an *ex post facto* law.

12. **REMEDIAL LAW; SUPREME COURT, NOT A TRIER OF FACTS.**— The submission of these documents before us cannot establish that his property is covered by PD No. 20. The documents were never presented as documentary exhibits before the City Assessor of Cebu City, Local Board of Assessment Appeal or CBAA. This Court, not being a trier of facts, cannot consider these alleged evidence submitted for the first time in this special civil action.

APPEARANCES OF COUNSEL

Raul S. Sesbreño in his own behalf.
The Solicitor General for respondents.

DECISION

PANGANIBAN, *J.*:

In resolving the validity of retroactive real estate tax assessments, may the Central Board of Assessment Appeals

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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[1] dated July 28, 1992 of Respondent Central Board of Assessment Appeals[2] 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[3] and described in the deed of sale as follows:[4]

"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"[5] located in Cebu City.

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[1] *Rollo*, pp. 23-33.

[2] Composed of Margarita G. Magistrado, Chairman, and Eleanor A. Santos and Alfonso M. Medado, Members.

[3] *Rollo*, p. 166.

[4] *Ibid.*, p. 65.

[5] *Ibid.*

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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.[6]

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.[7]

Petitioner protested the new assessment for being "excessive and unconscionable,"[8] 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."[9] He questioned the new

[6] *Ibid.*, p. 167.

[7] *Ibid.*, pp. 107-108.

[8] *Ibid.*, p. 110.

[9] *Ibid.*

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assessment before the Local Board of Assessment Appeals of Cebu City, which however dismissed petitioner's appeal on January 11, 1990.[10] Hence, petitioner elevated his case to Respondent Central Board of Assessment Appeals.

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

"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*
S1 — (95-60)	35 sq. m.	P380.00	P13,300.00
S2 —	95 sq. m.	380.00	36,100.00
S3 —	95 sq. m.	380.00	36,100.00
S4 —	95 sq. m.	380.00	36,100.00
S5 — Roof deck	95 sq. m.	30% of 380.00	10,830.00
Total	415 sq. m.		P132,430.00
Assessment Level			x 45%
Assessed Value			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*
S1 — (95-4)	35 sq. m.	P1,400.00	P 49,000.00

[10] *Ibid.*, p. 5.

[11] *Ibid.*, pp. 107-118.

[12] *Ibid.*, pp. 117-118.

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S2 —	95 sq. m.	1,400.00	133,000.00
S3 —	95 sq. m.	1,400.00	133,000.00
S4 —	95 sq. m.	1,400.00	133,000.00
S5 — Roof deck	95 sq. m.	30% of 1,400.00	39,900.00
Total	415 sq. m.		P487,900.00
Less: 30 % Depreciation allowance —			146,370.00
Net Market Value			P341,530.00
Assessment Level			x 65%
Assessed Value			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:[13]

"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."[14] The dispositive portion of the now assailed Resolution reads:[15]

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[13] *Ibid*, p. 105.

[14] *Ibid.*, p. 26.

[15] *Ibid.*, pp. 32-33.

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"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]

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[16] *Ibid.*, pp. 7-8.

[17] Promulgated on April 26, 1991.

[18] *Rollo*, p. 282; original text in upper case.

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"*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.

Preliminary Matters

At the outset, it should be emphasized that "appeal by *certiorari*" or a petition for review under Rule 45 of the Rules of Court is not the correct remedy in questioning the decisions and resolutions of the Central Board of Assessment Appeals. Rather, a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion should be filed.[19]

Moreover, the CBAA decision dated September 30, 1991 and the assailed Resolution dated July 28, 1992 show that

[19] As a *caveat*, we should add that at present, under Revised Administrative Circular 1-95 which took effect on June 1, 1995, appeals from judgments or orders of the CBAA should be filed with the Court of Appeals.

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petitioner failed to pay under protest the tax assessed against his property. This is a violation of Section 64 of Presidential Decree No. 464[20] which requires that, before a court may entertain any suit assailing the validity of a tax assessment, the taxpayer must first pay under protest the tax assessed against him. 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." (Italics supplied)

For the foregoing lapses, if for no other, this case ought to be dismissed. However, there are other cogent reasons showing that the petition has no merit. These will be shown as we tackle the various issues raised by petitioner in his memorandum.

Petitioner's First Issue: Propriety of Raising the Issue of Back Taxes

Petitioner argues that the issue of back taxes has never been raised before the Local Board of Assessment Appeals or the Central Board of Assessment Appeals. Hence, respondents are barred by due process and fair play from alleging them before Respondent CBAA and now before this Court.

As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.[21] The Court has held in several cases, however, that an appellate

[20] Otherwise known as "The Real Property Tax Code."

[21] *Manila Bay Club Corporation vs. Court of Appeals*, 249 SCRA 303, 307, October 13, 1995; *Lopez Realty, Inc. vs. Fontecha*, 247 SCRA 183, 191, August 11, 1995 citing *Anchuelo vs. IAC*, 147 SCRA 434, January 29, 1987.

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court has an inherent authority to review unassigned errors (1) which are closely related to an error properly raised, or (2) upon which the determination of the error properly assigned is dependent, or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case. Thus:

"x x x In line with the modern trends of procedure, we are told that, 'while an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive the lack of proper assignment of errors and consider errors not assigned. And an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.' (4 C.J.S., 1734; 3 C.J., 1341, footnote 77)."[22]

"At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case x x x"[23]

Although the foregoing citations specifically referred to "appellate courts," there appears no reason why these should not apply to appellate administrative agencies, where rules of procedure are liberally construed.

In the present case, we hold that Respondent CBAA did not err in considering the issue of back taxes, the same being closely related to an error properly raised. Petitioner himself assailed the subject assessment before the Respondent CBAA for being "excessive and unconscionable." In resolving this issue, Respondent CBAA was duty-bound to review the factual antecedents of the case and to apply thereon the pertinent provisions of law. In the process, Respondent CBAA applied

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[22] *Hernandez vs. Andal*, 78 Phil. 196, 209-210 (1947).

[23] *Vda. de Javellana vs. Court of Appeals*, 123 SCRA 799, 805, July 29, 1983; citing *Ortigas vs. Lufthansa German Airlines*, 64 SCRA 610, June 20, 1975.

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Section 25 of PD 464 which had authorized the imposition of back taxes. In any event, consideration of the question of back taxes is essential to a just decision on the case, as will be shown below.

Second Issue: Applicability of Section 24, PD 464

Arguing that he should not be liable for back taxes, petitioner states that Respondent CBAA should have applied Section 24, instead of Section 25, of PD 464. These statutory provisions read:

"Section 24. *Date of effectivity of Assessment or Reassessment.*— All assessments or reassessments made after the first day of January of any year shall take effect on the first day of January of the succeeding year: *Provided, however*, That the reassessment of real property due to its (1) partial or total destruction, or to (2) a major change in its actual use, or to any (3) great and sudden inflation or deflation of real property values, (4) or to the gross illegality of the assessment when made or to any other abnormal cause, shall be made within ninety days from the date any such cause or causes occurred, the same to take effect at the beginning of the quarter next following the reassessment.

Section 25. *Assessment of Property Subject to Back Taxes.* — Real property declared for the first time shall have back taxes assessed against it for the period during which it would have been liable if assessed from the first in proper course but in no case for more than ten years prior to the year of initial assessment; *Provided, however*, that the back taxes shall be computed on the basis of the applicable schedule of values in force during the corresponding period.

If said taxes are paid before the expiration of the tax collection period next ensuing, no penalty for delinquency shall be imposed, otherwise the taxes shall be subject to all the penalties to which they would have been liable had they originally become delinquent after assessment of the property in the usual course."

Opposing the application of Section 25 of PD 464, petitioner posits that Respondent CBAA "misread or misinterpreted" the same, specifically the phrases therein referring to "property declared for the first time" and "prior to the year of initial

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assessment."[24] Without expressly stating so, petitioner purports to argue that Section 25 is inapplicable because the property in question has been declared for assessment as early as 1980 (and even before that, by the prior owner), and not "for the first time" in 1989.

Petitioner's argument is not novel. In *Lopez vs. Crow*[25] which involved the interpretation of Section 122[26] of Act 2238, a provision similar to Section 25 of PD 464, the Court rejected a parallel argument that the said provision "refers solely to real estate declared for the first time and does not apply to the area which, upon revision, has been shown to be in excess of that which was formerly declared."[27] The Court held that the area in excess of that declared by the taxpayer was deemed declared for the first time upon its discovery. It ratiocinated thus:[28]

"x x x *it is neither just that another landowner should be permitted by an involuntary mistake or through other causes, not to say bad faith, to state an area far less than that actually contained in his land and pay to the State a tax far below that which he should really pay.* This was one of the objects of the Legislature in ordering the revision, so that all real estate should pay the taxes that legally must accrue to the State. Wherefore, even taking the Spanish text of the phrase in (S)ection 12 of Act No. 2238 that 'real property declared for the first time shall have taxes assessed against it, etc.,' *it should not be understood to apply only to real estate that have (sic) never been declared; as within the meaning of such phrase,*

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[24] Petitioner's memorandum, p. 7; *Rollo*, p. 282.

[25] 40 Phil. 997 (1919).

[26] Section 12. Real property declared for the first time shall have taxes assessed against it from and including the year in which, under the provisions of then existing law, the same would have been subject to taxation: *Provided*, That such taxes shall not be collected for more than the four preceding years, and such property shall be exempt from any penalty for delinquency if said taxes are paid within the tax collection period for the year next following the assessments hereunder, but if not paid within that time it shall be subject to all the penalties for delinquency to which it would have been subject. (Amended by Act No. 2653).

[27] 40 Phil. at p. 1003.

[28] *Id.*, pp. 1003-1004.

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the excess areas resulting from the revision must be understood as never having been declared before; because only that area must be deemed as declared which is stated in the declaration sheet, and the area over and above that cannot be considered as ever having been declared." (Italics supplied)

Section 24 merely lays down the general rule that assessments under PD 464 are to be given prospective application. It cannot be construed in such a manner as to eliminate the imposition of back taxes. If Section 24, instead of Section 25, were made to apply as suggested by petitioner, he would in effect be excused from the payment of back taxes on the undeclared excess area of his property. The Court, clearly, cannot allow a taxpayer to evade his obligation to the government by letting him pay taxes on a property based on its gross undervaluation at P60,000.00, when the same had then a current market value of P449,860.00.

Accepting the petitioner's position will necessarily prejudice the public interest, for the government is thereby deprived of back taxes which ought to have been paid in the first place. This will certainly subvert the *raison d'etre* of the law which is to raise taxes, the lifeblood of the government. This cannot be allowed, for[29]

"x x x it is another well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words. (25 R. C. L., pp. 1025-1027)."

Furthermore, if Section 24 is the only applicable provision in cases where a taxpayer has eluded the payment of the correct amount of taxes for more than nine (9) years, as in this case, Section 25 of PD 464 which requires the payment of back taxes will be rendered superfluous and nugatory. Such interpretation could not have been intended by the law. It is a familiar rule in statutory construction that "(t)he legal provision being therefore susceptible of two interpretations, we adopt the one

[29] *Co Kim Chan vs. Valdez Tan Keh and Dizon*, 75 Phil. 113, 134 (1945).

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in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective and harmonious with other provisions of law."[30]

Third Issue: Applicability of Par. N, Section 3, PD 464

Petitioner insists that Respondent CBAA should have computed the assessed value of the property based on its market value as defined in paragraph n, Section 3 of PD 464, to wit:

"n) *Market Value* — is defined as "the highest price estimated in terms of money which the property will buy if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all uses to which it is adapted and for which it is capable of being used." It is also referred to as "the price at which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressure."

We cannot sustain petitioner's contention. The cited provision merely defines "market value." It does not in any way direct that the market value as defined therein should be used as basis in determining the value of a property for purposes of real property taxation. On the other hand, Section 5 of PD 464 provides unequivocally that "(a)ll real property, whether taxable or exempt, shall be appraised at the *current and fair market value* prevailing in the locality where the property is situated."[31]

Contrary to petitioner's contention, acquisition cost cannot be and is not the sole basis of the current and fair market value of a property. The current value of like properties and their actual or potential uses, among others, are also considered. Thus, it has been held:

"x x x (A)ssessors, in fixing the value of property, have to consider *all* the circumstances and elements of value, and must exercise a prudent discretion in reaching conclusions. Courts, therefore, will not presume to interfere with the intelligent exercise of the judgment of men specially trained in appraising property. Where, as the Supreme

[30] *Javellana vs. Tayo*, 6 SCRA 1042, 1050, December 29, 1962.

[31] Italics supplied.

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Court of Louisiana says, (when) the judicial mind is left in doubt, it is a sound rule to leave the assessment undisturbed. (Viuda e Hijos de Pedro P. Roxas *vs.* Rafferty [1918], 37 Phil. 957; New Orleans Cotton Exchange *vs.* Board of Assessors, *supra.*)"[32]

Other circumstances militate against the acceptance of petitioner's argument. Unscrupulous sellers of real estate often understate the selling price in the deed of sale to minimize their tax liability. Moreover, the value of real property does not remain stagnant; it is unrealistic to expect that the current market value of a property is the same as its cost of acquisition ten years ago. In this light, a general revision of real property assessment is required by law every five (5) years[33] to ensure that real properties are assessed at their current and fair market values.

Petitioner also argues that "the number of stories that a building has or its floor area are irrelevant, immaterial or impertinent in the determination of market value as basis for computing the assessed value."

This deserves scant consideration. It is a matter of plain common sense that a building with more floors has a higher market value than one with fewer floors, provided that both are of the same materials. Hence, the tax declaration of the building in question should have accurately reflected its actual area and number of floors, these being necessary for the accurate valuation thereof.

Petitioner's Fourth Issue: Application of Section 23 of PD 464

Petitioner argues that the CBAA erred in refusing to apply Section 23 of PD 464 which provides:

Section 23. *Certification of Revised Values to the Secretary of Finance.* — When the provincial or city assessor shall have finished a general revision of property assessments for any province, municipality or city, he shall so certify to the Secretary of Finance and the assessments shall become effective and taxes shall accrue

[32] *Army & Navy Club vs. Trinidad*, 44 Phil. 383, 387 (1923).

[33] Three (3) years under the new Local Government Code.

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and be payable thereunder in accordance with the provisions of this Code.

Petitioner claims that Respondent City Assessor of Cebu City has not yet completed the general revision of property assessments for years 1981-1984 and has not yet submitted the certification required by Section 23 of PD 464 to the Secretary of Finance; hence, he may not yet be held liable to pay any assessment.[34]

This claim lacks merit. As found by Respondent CBAA,[35] the questioned assessment had not been imposed pursuant to a *general* revision of property assessments that had not yet taken effect. Respondent CBAA held:

"(F)or purposes of determining the back taxes due for the years 1981 to June 30, 1987, the excess area of subject building should be assessed on the basis of the Schedule of Base Unit Construction Costs for Buildings applicable for the 1978-1979 General Revision. The tax declaration covering the said assessment became effective in 1981. To determine the back taxes due for the years July 1, 1987 to 1989, the same excess area should be assessed using the 1981-1984 Schedule of Base Unit Construction Costs of Buildings. The 1981-1984 Schedule of Values were approved by the Secretary (Minister) of Finance on May 22, 1984 (Exh. "17") and became finally effective on July 1, 1987 (See Memorandum Circular No. 77 dated March 1, 1987). The tax declaration covering the aforesaid assessment became effective on July 1, 1987."[36]

Petitioner, for his part, has failed to prove that this finding constitutes a grave abuse of discretion tantamount to lack or excess of jurisdiction.

Sub-Issue: Is CBAA's Assessment Unconstitutional?

Equally unmeritorious is petitioner's contention that the imposition of back taxes on his property is unconstitutional

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[34] *Rollo*, pp. 286-287.

[35] *Ibid.*, pp. 127-128.

[36] CBAA Decision, p. 9; *Rollo*, p. 115.

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for being violative of Section 22,[37] Article III of the 1987 Constitution.

When both Public Respondents CBAA and City Assessor imposed back taxes on petitioner's property, they did not violate the rule that laws shall have only prospective applicability. Respondents were only applying PD 464 which had been in effect since 1974. Besides, Section 25 of PD 464 is not penal in character; hence, it may not be considered as an *ex post facto* law.[38]

Sub-Issue: Application of Reyes vs. Almanzor

Petitioner also claims that the assessed building is covered by PD 20;[39] thus the assessor should have used the "income approach," as enunciated in *Reyes vs. Almanzor*,[40] in fixing the valuation of the property, instead of the "comparable sales approach." To prove that his property was covered by PD 20, petitioner submitted as annexes to his instant petition several documents consisting of official receipts of lease rentals.[41]

The submission of these documents before us cannot establish that his property is covered by PD No. 20. The documents were never presented as documentary exhibits before the City Assessor of Cebu City, Local Board of Assessment Appeal or CBAA. This Court, not being a trier of facts, cannot consider these alleged evidence submitted for the first time in this special civil action.

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[37] "No *ex post facto* law or bill of attainder shall be enacted."

[38] *In re: Kay Villegas Kami, Inc.*, 35 SCRA 429, October 22, 1970; *Tan vs. Barrios*, 190 SCRA 686, October 18, 1990.

[39] This amended certain provisions of Republic Act No. 6539, entitled "An Act To Regulate Rentals For The Years Of Dwelling Units Or Of Land On Which Another's Dwelling Is Located And Penalizing Violations Thereof, And For Other Purposes." (PD 20 is repealed by B.P. 25 which was in turn repealed by B.P. 877. The latest extension of B.P. 877 is by R.A. 7644 effective January 1, 1993.)

[40] *Supra*.

[41] *Rollo*, pp. 54-63.

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WHEREFORE, premises considered, the petition is *DISMISSED* and the assailed Resolution is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.,* concur.

EN BANC

[A.M. No. RTJ-89-318. March 25, 1997]

LUCIANA Vda. DE ARAGO, *complainant, vs.* **JUDGE PATERNO T. ALVAREZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF A WITNESS; CREDIBLE WHEN MADE IN CATEGORICAL AND STRAIGHTFORWARD MANNER.**— "A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness. The testimony of a witness, mentioning minutiae of an incident and which could not easily be concocted, deserves credence for it indicates sincerity and truthfulness in the narration of events."

2. **ID.; ID.; ID.; AFFIRMATIVE PREVAILS OVER NEGATIVE; CASE AT BAR.**— Respondent's defense that the filing of the complaint is politically motivated is weak and shallow. Complainant categorically testified that the Arago family, after a family meeting, decided to put a stop to the "unabated" demands for money of respondent, starting in August 1988 up to January 1989. In stark contrast, respondent and his witnesses could only offer denials that the allegations in the complaint did not occur. It is well-settled that affirmative testimonies prevail over negative testimonies.