

Opinion
No. 1178

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

APR 30 1979

FILED

CATHCONN ASSOCIATES LIMITED)
PARTNERSHIP,)

Petitioner)

v.)

Docket No. 2424

DISTRICT OF COLUMBIA,)

Respondent)

MEMORANDUM ORDER

This comes before the Court on a motion for summary judgment filed by the petitioners. ^{1/} The motion is opposed by the respondent.

I

There are no genuine issues of material fact relating to the question presented in the motion. Briefly, the facts are as follows: Petitioner is a limited partnership with its principal office located at 3100 Connecticut Avenue, N.W. in the District of Columbia. It filed this appeal from a real property tax assessment made for Fiscal Year 1977 in the amount of \$1,311,153 on the land and improvements located at 2301 Cathedral Avenue, N.W. in the District of Columbia, that property being legally described as Lot 0001 in Square 2210. The notice of assessment was dated July 9, 1976, the

^{1/} Petitioner characterizes the motion as one for partial summary judgment in its Memorandum of Law.

petitioner filed an appeal with the Board of Equalization and Review (hereinafter simply referred to as the Board) on September 23, 1976, and that appeal was denied on October 14, 1976. The taxes have been paid in full.

The building was constructed in 1923 and was utilized as an apartment house from 1923 until 1974. It was purchased by Park Cleveland, Inc. to be converted into a condominium, however, Park Cleveland, Inc. defaulted on a loan and sold the property to the petitioner in August 1975 for \$3,757,000, the purchase price being advanced by Mellon Bank. Mellon Bank also loaned petitioner money for the purpose of repairing and rehabilitating the building. Construction on the improvements began in August 1975 and were substantially completed on March 18, 1976, the date of the petitioner's application for an occupancy permit. A Certificate of Occupancy was issued on June 29, 1976.^{2/} The cost of the additions and improvements on the subject property was \$245,900.

The regular annual assessment made on the property for Fiscal Year 1977, pursuant to D. C. Code 1973, §§47-641 et seq. (Supp V, 1978), was in the amount of \$425,473, the same as

^{2/} These facts are set forth in petitioner's Memorandum of Law but unsupported by an affidavit or other documentation. See Super. Ct. Civ. R. 56 which is incorporated into the rules of this Division by Super. Ct. Tax R. 3. However, the respondent does not dispute these facts, therefore, for the purposes of the pending motion, they are treated as the statement of material fact by the petitioner and deemed admitted by the respondent. See Super. Ct. Civ. R. 12-I(k).

the assessment for Fiscal Year 1976. The petitioner received notice of that assessment on or about February 1, 1976. On July 9, 1976, the petitioner received a second notice of assessment which reflected that the property had been reassessed at \$1,311,153 pursuant to D. C. Code 1973, § 47-710.

Petitioner appeals and contends that the assessment for Fiscal Year 1977 should have been no greater than the total of the original assessment for Fiscal Year 1977 in the amount of \$425,473 plus the \$245,900 expended for additions and improvements for a final total assessment of \$671,373.

The respondent counters with an argument that the assessment made pursuant to Section 47-710 should reflect the total value, that is the fair market value, of the property after the additions and improvements and not merely an increase over the original assessment based upon costs of the improvements alone. This Court agrees.

II

The issue presented here has not been addressed in any reported decisions and apparently presents a case of first impression. As noted above, the petitioner contends that the actual assessment under Section 47-710 is equal to the cost of the addition and/or improvement.

Before addressing the ultimate question presented here, it is helpful and informative to review the types of assessments which can be made against real property in the District of Columbia.

The statute provides that all real property shall be assessed annually.^{3/} D. C. Code 1973, §47-641 et seq. (Supp. V, 1978). The value for the purpose of the annual assessment is determined on "January 1, of the year preceding the tax year"; thus under the facts of this case, the value is determined as of January 1, 1976, and is the value for Fiscal Year 1977. See id., Section 47-641(a). Each taxpayer is to receive notice of the proposed assessment against his property between January 1 but not later than March 1, under the facts of this case between January 1 and March 1, 1976. See id. Section 47-645. Each taxpayer then has the right to appeal the assessment to the Board of Equalization and Review on or before April 15, here April 15, 1976, and may thereafter appeal to this court within six months of October 1, here October 1, 1976. See id., Section 47-646(e)(i).

Congress in providing for the assessment of real property in the District of Columbia, took into consideration that a change in the status of the property between the date of the annual assessment might require, in fairness and to

^{3/} D. C. Code 1973, §47-702 provided that real property assessments should be made annually, however, the District was unable to make annual assessments due to a lack of resources and manpower and after Fiscal Year 1974 was required to assess real property once every two years as the result of this Court's decision in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2081 (D.C. Super. Ct. 1974) (Kelly I). Congress thereafter amended the statute to provide that all real property be assessed at least once every two years and that beginning Fiscal Year 1978 all real property be assessed annually. D. C. Code 1973, §47-641(b)(Supp. V, 1978). Annual reassessments however, could not begin until Fiscal Year 1979 as a result of the decision in Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct. 1977) (Kelly II).

reflect the true market value of the property to the extent possible, an increase in the assessment in those cases where property becomes taxable, or where there is new construction or additions or improvements to the property, or a decrease in the assessment where the property is damaged or destroyed.

Section 47-710 provides that a reassessment may be made where property not on the list at the time of the annual assessment has become subject to taxation, or where new structures have been erected or roofed, or where additions or improvements to old structures have been made, or finally where the property has been destroyed or damaged. That assessment is made after the annual assessment but on or prior to July 1, here July 1, 1976.

D. C. Code 1973, §47-711 contains similar language and refers to changes in the property occurring between July 1 but prior to January 1, for the purposes of this case, between July 1, 1976 but prior to January 1, 1977. The assessment under Section 47-711 is commonly referred to as the "second half assessment" and any assessment made under that section applies only for the second half of the taxable year. Had this case involved such an assessment, the increase in valuation would have been effective for only the second half of Fiscal Year 1977.

Congress also provided for an omitted or escaped property assessment in D. C. Code 1973, §47-712. See also, District of Columbia Redevelopment Land Agency v. District of Columbia,

106 Wash. L. Rptr. 793 (D.C. Super. Ct. 1978). The escaped or omitted property assessment is not relevant in this case.

Taking into consideration the statutory scheme outlined above, this Court concludes that the legislature, by providing for reassessments after the making of the annual assessment, was attempting to have the assessments reflect the true market value of the property at all times. This is also reflected in the fact that a taxpayer is entitled to appeal to the Board of Equalization and Review from an annual assessment or assessments made pursuant to Sections 47-710 or 47-711 and the Board is required to raise or lower the market value which it finds to be more than five percentum above or below the market value contained on the preliminary assessment roll. See Section 47-646(g). The assessed value "shall be the estimated market value" (emphasis this Court's). See Section 47-641(a). "Market Value" is defined elsewhere in language reflecting that it constitutes what is commonly referred to as the fair market value, i.e., "the most probable price at which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other". D. C. Code 1973, Section 47-622(4)(Supp. V, 1978).

The argument made by the petitioner would not fall within the statutory scheme in that it would not result in a determination of the fair market value of the property. For example, an addition or improvement on a building, especially commercial property, might very well increase the overall value of the property well above the actual cost of making the improvements. To perhaps over simplify, the addition of an indoor swimming pool in an apartment house, hotel or motel, where there is a significant demand for such a benefit, may likely enhance the value of the property over and above the actual cost of the construction of the pool. Likewise, the destruction of such an asset might well result in a decrease in the total value of the property far greater than the cost of replacing the pool. An addition to an apartment house or other commercial property might thereafter make available to the market additional apartments or commercial facilities in the building which result in increased income thereby increasing the total value of the property well beyond the cost of the improvement.

The fact in this case is that the addition and improvement was made after January 1, 1976, the valuation date for purposes of Fiscal Year 1977, but prior to July 1, 1976. Under those facts it is clear that an assessment under Section 47-710 was proper. The Court concludes that there was a proper 47-710 assessment in this case and that a new assessment made under that section must be based upon the fair market value just as in the case of an annual assessment.

III

The specific language of Section 47-710 is consistent with the holding of this Court. It provides in part:

Annually, on or prior to July 1 of each year, the Board of Assistant Assessors, shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which shall not have theretofore been assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage. . . . (Emphasis this Court's.)

It is clear that in the case of property being added to the tax rolls and which becomes taxable after the date of the annual assessment, Section 47-710 requires that the assessment be based upon valuation of the total property since it provides that the assessor shall "affix a value thereon according to the rules prescribed by law for assessing real estate". Certainly Congress did not contemplate an assessment based upon costs alone by such language. Since Congress provided for an assessment based upon fair market value in one part of Section 47-710, it is reasonable to conclude that all assessments made under the section should be made in the same manner.

IV

This Court holds that an assessment under Section 47-710 requires a determination of market value taking into consideration the addition or improvement or destruction or damage to the property. The assessment is not based upon the cost of the addition or improvement, or the cost of repair or replacement in the event of damage or destruction but is based upon the total value of the property, arrived at in the same manner as an assessment made in the case of an annual assessment, taking into consideration the improvement, addition or the damage of the property.

This being the case it follows that the petitioners motion for summary judgment must be denied. Although the respondent merely filed an opposition to the motion and did not file a cross motion for summary judgment, it is clear that the respondent is entitled to summary judgment on this issue and summary judgment will be entered by the Court, for the respondent, sua sponte.

O R D E R

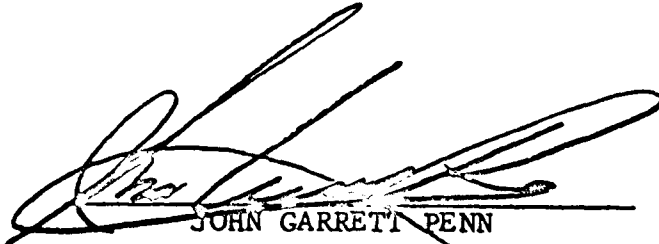
It is hereby

ORDERED that the petitioner's motion for summary judgment is denied, and it is further

ORDERED that summary judgment is entered in favor of the respondent, and it is further

ORDERED that the respondent shall submit a proposed order within five days of the date of this order consistent with this order, and shall simultaneously submit a copy of the proposed order to counsel for the petitioner who shall have five days to consent or file objections thereto. After that time period the Court will enter the order. ^{4/}

Dated: April 27, 1979


JOHN GARRETT PENN
Judge

David R. Kuney, Esq.
Attorney for Petitioner

Richard L. Aguglia, Esq.
Assistant Corporation Counsel
Attorney for Respondent

Copies of this order were
to parties and counsel on
4-27, 1979.
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^{4/} It appears that the decision on the motion for summary judgment is dispositive of all issues in the case and that any order would be a final appealable order. The Court invites counsel's comments on this point when they submit their respective proposed orders.