Opinion No. 1192

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

RAYMAR CORPORATION,
Petitioner
v.
DISTRICT OF COLUMBIA,
Respondent

Docket No. 2784

MEMORANDUM ORDER

This matter comes before the Court on respondent's motion to dismiss the petition on the grounds that the court lacks the requisite jurisdiction over the subject matter to hear the case. A hearing was held on the motion on September 5, 1979, and this order is the result.

I

The petition is an appeal from a real property tax assessment for Fiscal Year 1979. It was filed with the Deputy Clerk of the Tax Division on April 3, 1979; however, the issue arises from the fact that the petitioner filed the petition by first-class mail rather than in person. The envelope that contained the petition bears a postmark, dated March 30, 1979, from Lewes, Delaware.

Raymar Corporation is the owner of Lot 64 Square 2704, located at 4618 14th Street, N.W. in the District of Columbia. It is the contention of the petitioner corporation, by its president, Richard J. Anselmo, that the property was erroneously valued at $350,000 by the District of Columbia for the 1979 tax year.

The petitioner asserts that the proper assessment for his property is $195,000. He bases his argument on the following factors: 1) rent for the property has not changed in ten (10) years; 2) the 1976 appraised value of the property was $175,000; and 3) the maximum obtainable loan on the property in 1976 was $90,000.

The Board of Equalization and Review denied petitioner's appeal of its 1979 real property tax assessment on June 13, 1978 (#79-1612).

A similar appeal was filed by the petitioner concerning the real property tax assessment for its property for Fiscal Year 19. . The 1980 assessment was identical to the Fiscal Year 1979 assessment, assigning the property with an assessed value for tax purposes of $350,000.

The petitioner requests relief from the court in the form of a reduction in the real estate assessment of the subject property from $350,000 to $195,000, as well as a refund of the overpayment of taxes already paid by the petitioner for the 1979 tax year amounting to "approximately $2000."

Continuances in the time to file a response to the petition and appropriate motions were granted in favor of the government due to its "extraordinarily heavy volume of petitions which have been filed appealing the real estate tax assessments for tax year 1979."

The fact that the 1979 tax assessment of the petitioner's property was in error is not challenged by the respondent. The sole issue confronting the Court concerns the government's contention that this court lacks jurisdiction to determine the subject matter of this petition because the petition was not filed in a timely manner as dictated by the appropriate statutory provisions.

In fact, the respondent admits that its error was the cause of the erroneous valuation of the petitioner's property in the Fiscal Year 1979 tax assessment; thus, its error was also the cause of the petitioner's overpayment of taxes in 1979. A copy of the Board of Equalization and Review's 1980 tax assessment of the petitioner's property is included in the record as Petitioner's Exhibit #1. According to the Board's report, dated April 30, 1979, after the filing of the instant appeal, the subject real estate was revalued in Fiscal Year 1980 from the erroneous 1979 assessed value of $350,000 to the corrected valuation of $194,000. The stated reason for the change in the assessment is explained in the assessor's summary report, which was part of the record furnished the Board in its review of the assessment.

> The subject property's present assessment as shown for FY '80 is $350,000 is [sic] an error (administrative). The proposed value [of] $194,000 for '80, as shown on the assessment record card, was not carried into the system.

The respondent argues that the petitioner had until April 1, 1979 [1] in which to seek redress from the assessment by filing an appeal with the Tax Division of the Superior Court.[2] The respondent notes that the timely filing of the petition is jurisdictional, and that this court may not consider the merits of the petition since it was filed one day after the time period required by statute.

The petitioner, in its opposition to the Motion to Dismiss, relies on the following arguments to support its position: 1) all notices, commencing with the Board of Equalization and Review, were transmitted by mail; therefore, the petition was timely filed when it was postmarked on March 30, 1979; and 2) the cases raised in the respondent's Motion to Dismiss are inapplicable because the issue is not raised, as it is in the instant case, of the District of Columbia seeking to bar the recovery of taxes admittedly "collected in error" due to a mistake by the respondent in the valuation of the petitioner's property.

II

The controlling statutory provision in this case, D.C. Code 1973, §47-646(1) (Supp. V, 1978), reads, in pertinent part, as follows:

> ...any person aggrieved by an assessment, equalization, or valuation made, may, within nine months after October 1 of the calendar year in which such assessment, equalization or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404, if such person shall have first made his complaint to the Board respecting such assessment...(emphasis supplied).

Section 47-646(1), coupled with the provisions of Section 47-2403,[3] contains three (3) conditions that must first be met by a petitioning taxpayer prior to the proper entry of an appeal in the Superior Court of

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[1] In this particular case and tax year, the required filing deadline was April 2, 1979, rather than April 1, 1979, since the latter date was a Sunday. Superior Court Tax Rule 3 applies Civil Rule 6 in this instance.
[2] The respondent cites the Memorandum Order of Judge Penn in Schmidt v. District of Columbia, Tax Division Docket No. 2628 (filed January 2, 1979).
[3] Section 47-2403 provides:

the District Columbia. The taxpayer must 1) file a complaint concerning the assessment with the Board of Equalization and Review; 2) pay the full amount of the disputed tax based upon the assessed value of the property;[4] 3) appeal within six months after October 1 of the calendar year in which the assessment was made.

It is without question that the petitioner complied with the first two (2) conditions of this appeal. The sole issue presented by respondent's motion concerns the timeliness with which the petitioner complied with the third prerequisite. The totality of the question centers on this court's power to exercise jurisdiction in this case in which the petition was not actually filed with the court's clerk until after the statutory period had elapsed, but where the petitioner made a documented effort to comply with the statute's provisions. Should this Court grant the respondent's motion and dismiss the petition, it appears that the petitioner will be left without a remedy at the trial court level.

The District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-385, 84 Stat. 473 (1970), gave the Tax Division of the Superior Court exclusive jurisdiction over all tax appeals,[5] and all common law remedies were abolished.[6] Several sections of the Code were amended, including Section 47-2403.

3(cont.) [A]ny person aggrieved by any assessment by the District...or penalties thereon, may within six months after payment of the tax together with penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes.

[4]The District of Columbia Court of Appeals has held that the Superior Court of the District of Columbia may not review an income tax assessment until the disputed tax, together with applicable interest and penalties thereon, has been paid by the petitioning taxpayer(s) pursuant to Section 47-2403. Perry v. District of Columbia, D.C.App., 314 A.2d 766 (1974). It has further been held by the appellate court that the court lacks subject-matter jurisdiction to take judicial review of a petition where the taxpayer paid the first of two installments prior to filing an appeal and paid the second installment prior to the entry of dismissal. The opinion noted that since the taxpayer had chosen the statutory remedy, he was bound to comply with its terms by paying the full amount of the disputed tax before appealing the assessment to the Superior Court, and this was required even though the taxpayer alleged that the tax was void, not merely excessive. George Hyman Construction Co. v. District of Columbia, D.C.App., 315 A.2d 175 (1974).

[5]D. C. Code 1973, §11-1201.

[6]D. C. Code 1973, §11-1202.

The amendment of Section 47-2403 lengthened the time limit in which most tax assessments may be appealed by a taxpayer from ninety days to six months. The reasoning behind the amendment is indicated in the House Committee Report, which explains:

> Section 161 amends various tax statutes of the District to reflect the exclusive jurisdiction of the Tax Division of the new Superior Court to repeal provisions made obsolete by the transfer, and to allow six months, rather than ninety days, for filing tax cases because of the abolition of the alternate common law remedies in the U.S. District Court. There are no other substantive changes. H.R. Rep. No. 90-901, 91st Cong. 2d Sess. 165 (1970).

In addition to the jurisdiction of the Superior Court over all tax appeals, as provided by Section 11-1201, Section 11-921 also provides Superior Court with civil jurisdiction, as follows:

> (a)...the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jurisdiction shall vest in the court as follows:
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> (1)Beginning the effective date of the District of Columbia Court Reorganization Act of 1970, the court has jurisdiction of any civil action or other matter begun before such effective date in the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court.
> (2)Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity... (emphasis supplied).

As previously addressed, the 1970 amendments abolished common law remedies, requiring that the taxpayer seek relief under the statute. The District of Columbia Court of Appeals has held that the timely filing of a petition seeking relief in this court from a disputed tax assessment is a jurisdictional requirement, and that late filing will deprive Superior Court of subject matter jurisdiction. Donahue v. District of Columbia, D.C.App., 368 A.2d 1147 (1977); Trustees of the 19th Street Baptist Church v. District of Columbia, D.C.App., 378 A.2d 661 (1977); National Graduate University v. District of Columbia, D.C.App., 346 A.2d 740 (1975); see, e.g., Carter-Lanhardt, Inc. v. District of Columbia, Tax Docket No. 2610 (1979)(Memorandum Order, Judge Penn); see generally, American Security & Trust Co. v. District of Columbia, 98 U.S.App.D.C. 260, 235 F.2d 35 (1956); Jewish War Veterans v. District of Columbia, 100 U.S.App.D.C. 223, 243 F.2d 646 (1957).

This petitioner met the jurisdictional requirement that he first file a complaint with the Board of Equalization and Review disputing the tax assessment of the subject property. See generally, District of Columbia v. Keyes, D.C.App., 362 A.2d 729 (1976); but see, District of Columbia v. Burlington Apt., D.C.App., 375 A.2d 1052 (1977); District of Columbia v. Green, D.C.App., 310 A.2d 848 (1973). It also met the further requirement that it pay the full amount of the disputed tax. George Hyman Construction Company v. District of Columbia, D.C.App., 315 A.2d 175 (1974); see also, District of Columbia v. Berenter, 151 U.S.App.D.C. 196, 466 F.2d 367 (1972); Industrial Bank of Washington v. District of Columbia, 88 U.S.App.D.C. 233, 188 F.2d 46 (1951); District of Columbia v. McFall, 88 U.S.App.D.C. 217, 188 F.2d 991 (1951).

In Superior Court, it has long been held that a civil action is commenced by filing a complaint with the clerk of the trial court and seeing to it that process is issued and served. Maier v. Independent Taxi Owner's Association, 68 App.D.C. 307, 96 F.2d 579 (1938), citing Hyman v. Newspaper Company, 12 App.D.C. 586 (1898); see also, Criterion Insurance Co. v. Lyles, D.C.App., 244 A.2d 913 (1968); see, e.g., Hall v. Cafritz, D.C.App., 402 A.2d 828 (1979).[7]

Raymar Corporation mailed the petition to the clerk of the court on March 30, 1979. Its contention for so doing was the fact that all previous communication between its president and the District of Columbia government was by mail. Pursuant to the statutory mandate, however, it was incumbent upon the corporation to file its petition on or before April 2, 1979; instead, in this case, the petitioner filed its petition with the court on April 3, 1979. The petition was not sent by certified or registered, so there is no method to determine when the envelope reached the courthouse. The certified mail receipts would have constituted prima facie evidence of the delivery. D.C. Code 1973, §14-506.

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[7]The Congress could have made the language of Section 47-646(1) much clearer for the taxpayer. The language of the statute would have been clear on its face if Congress had chosen to use the words filed with the clerk of the court rather than "may, within six months after October 1...appeal." By so doing, the legislative intent would have been expressed by the statutory provision itself.

Circumstanc similar to those in the instant case arose in Sherwood Brothers, Inc. v. District of Columbia, 72 App.D.C. [illegible], 113 F.2d 162 (1940). In that case, the last day for filing the petition was a Sunday, as here. The petitioner mailed the petition on Saturday, the penultimate day for filing, at 2:30 p.m., and it was received by the Board of Tax Appeals on Monday. The appellate court reversed the Board's dismissal of the complaint, stating that the petitioner is granted the extra day under Rule 6 of the Rules of Civil Procedure for District Courts.

Had the instant petition been filed on Monday, April 2, 1979, rather than on April 3, 1979, there would not be a jurisdictional issue. It is this Court's position, however, that it is unnecessary to reach the question of whether it has jurisdiction at law to entertain the petition; rather, the Court finds that this is an appropriate situation for the Court to allow the petition under its General equity powers.

The Court notes the following as reasons for exercising its powers in equity to allow this appeal: 1) the petitioner mailed his petition to the clerk of the court on Friday, March 30, 1979, three (3) days prior to the expiration of the statutory period for filing an appeal; 2) one could feel reasonably certain that a letter, postmarked on March 30, 1979 and sent via the U.S. Postal Service, would arrive at its destination three (3) days later (especially since the place of mailing, Lewes, Delaware, is a mere three (3) hours away by automobile); 3) the respondent has admitted, and the evidence has shown, that the taxes collected from the taxpayer were based upon an erroneous tax assessment of the petitioner's property of almost 100%; 4) the statutory language of Section 47-646(1), as pointed out in footnote 7, is somewhat ambiguous and is subject to misinterpretation; and 5) no showing has been made by the respondent of any prejudice due to the fact that the petition was filed one day late, service having been made at that time.

The Court believes that equitable jurisdiction is warranted in this case based upon the petitioner's colorable compliance with the mandates of the controlling statutory provisions, as well as the balancing of the interests and the prejudicial effects on each party from this Court's ruling on the motion. The error, from which the instant petition is

derived, was t respondent's, and the District of lumbia should bear that responsibility.

In District of Columbia v. Burlington Apt. supra, Judge Harris, writing for the majority of the Court (en banc), stated:

> [S]hould additional justification for our holding be necessary, we believe it is found in the traditional and inherent powers of a court...the court's power to fashion effective relief from the computation procedure. While our reading of the District's tax statutes does not contravene the court's power to exercise its full authority, any conflict between the literal language of the Code and the trial court's duty to ensure the lawful and fair imposition of taxes should be resolved in favor of permitting broad trial court action, citing Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1928).

Id. at 1057.

The Court notes that the exercise of its discretion to grant equitable relief represents an extraordinary remedy that should only be used in exceptional and stringent circumstances. In District of Columbia v. Keyes, supra, the appellate court reversed the trial court's ruling that granted injuctive relief in favor of the taxpayer. The Court held that the equitable remedy was not justified where the taxpayer had not pursued his statutory administrative remedies. The opinion noted that the relaxation of statutory requirements in regard to tax litigation and the "superimposing of equity jurisprudence" should be done only in the rare case.

In District of Columbia v. Owen, supra, the court held that the trial court's exercise of equitable relief was appropriate. There, several single-dwelling taxpayers sued to enjoin the District from using unequal levels of assessment in the taxation of single-family residential properties in 1974, and the trial court held that the assessment policy used, the so-called "stair-step" approach, was unconstitutional.

In the instant case, the Court believes that the relaxing of the literal interpretation of the statute, where the taxpayer has made a showing of colorable compliance with its terms, is appropriate, and the circumstances are sufficiently exceptional. The Court believes that the superimposing of equity jurisprudence in this case is just; therefore, the Court rules that the petition in this case was timely filed.

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Finally, the Court notes that the general rule prohibits the exercise of jurisdiction by the court over the subject matter where the jurisdiction has been restricted by statute. 27 Am.Jur.2d §53 (1966). The factors that have been considered herein, however, make this case one where the Court must exercise its discretion and allow the petition to be considered on its merits. Based upon the facts in this case, the Court concludes that Congress did not intend by its enactment of Section 47-646(i) to preclude the instant petition.

WHEREFORE, it is this 5th day of November, 1979

ORDERED that the respondent's Motion to Dismiss Petition be and is hereby DENIED.

SO ORDERED.

Alfred Burka

ALFRED BURKA, JUDGE

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