

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

THE GEORGE HYMAN CONSTRUCTION CO.,)
A.J. CLARK, B.T. ROME, T/A)
1133 15TH STREET JOINT VENTURE)
)
Petitioner,)
)
v.)
)
DISTRICT OF COLUMBIA,)
)
Respondent.)

Docket No. 2178

FILED

JAN 3 1973

OPINION

Superior Court of the
District of Columbia
Tax Division

The present case was heard and argued on November 6, 1972.

The court, at the conclusion of oral argument, took the matter under advisement and requested written arguments from both parties.

As stipulated by the parties, the following facts are undisputed.¹ The petitioner is a joint venture and lessee of property located at 1133 15th Street, N.W., Washington, D. C., and the improvements thereon. Pursuant to agreement, the petitioner is obligated to pay all real property taxes that have become due with respect to the land and the improvements. On July 1, 1969 the District of Columbia assessed the land and the unfinished structure at \$1,469,790.00 and \$1,500,000.00 respectively. A reassessment of the property was made on July 1, 1970, at which time the District of Columbia increased the valuation of the structure to \$2,300,000.00 and continued to value the land at \$1,469,790.00. Subsequently, on August 2, 1971, the District of Columbia advised the petitioner's lessor that a final valuation of the property had been conducted and that they made a revaluation of the building from \$2,300,000.00 to \$3,400,000.00 (an increase of \$1,100,000.00). The District of Columbia felt that this re-evaluation was necessary since in their opinion, the structure was completed and habitable. The property taxes for the fiscal year 1971 have been paid. The problem, however, is that the real property taxes which represented the second

¹ A stipulation of facts was entered into between the parties on October 13, 1972 and is a part of the record.

half installment (\$77,916.64), which was due in March, were not paid until after the petition was filed in this case.

The parties present two issues for the court's consideration, the first being whether or not the court has jurisdiction to hear this case since the petitioner did not pre-pay all taxes in controversy prior to the filing of suit. The second issue is, assuming *arguendo*, that the court has jurisdiction, was the property in question properly assessed by the District of Columbia under Title 47, §47-710 of the D.C. Code, or was the property subject to taxation pursuant to §47-711. The court is of the opinion that if the merits of this controversy could be reached, it would be inclined to find that the petitioner was incorrectly assessed under §47-710. The court reluctantly admits, however, that it is without the jurisdiction in this matter based on the decision reached in Berenter, et.al v. D. C. (U.S. Court of Appeals No. 24,3003 decided July 25, 1972). It appears that by virtue of Berenter an onerous burden has been placed on the petitioner herein. The petitioner paid all the taxes he believed were in controversy in September, but failed to pay the second installment of these taxes prior to the time suit was filed. As a point of fact, all the taxes due the government were ultimately paid. The gravamen of the petitioner's dilemma is that the same were not paid prior to the institution of this action. The practical effect of the present situation is to allow the government to incorrectly assess the property thereby requiring taxes to become due prematurely; collect these taxes as a condition precedent to the institution of suit; retain the revenue from an incorrect assessment; and inhibit the petitioner from seeking redress of this alleged wrong, since the jurisdictional pre-payment requirement was not met. The government has all the tax revenue it feels is due and the petitioner is out of court. Therefore, the merits of the second issue are beyond the court's reach.

Based on the decision reached in Berenter v. D.C., supra., the court is without jurisdiction to hear the present case. Briefly stated, the petitioner argues that Berenter only requires him to pay all the challenged tax and not all the taxes assessed. The petitioner

contends that since the September installment of the tax was paid prior to the commencement of suit and he has subsequently paid the March installment, he has satisfied the pre-payment requirement of Berenter.

In Berenter, a petition was filed in the District of Columbia Tax Court to protest a real estate assessment made pursuant to §47-708 of the District of Columbia for the fiscal year 1969. The petitioner therein felt that the proposed valuation as well as the 1969 assessment were unfair. The District of Columbia then filed a motion to dismiss for lack of jurisdiction. The reason cited therefore was that the petitioner had failed to pay all the taxes complained of prior to the time they filed their petition on December 12, 1968. The first installment of the fiscal year was paid; however, the March installment was unpaid. Judge Weston, in his opinion for the District of Columbia Tax Court, held notwithstanding that the second installment was not paid prior to the filing of the suit, the Tax Court did have jurisdiction over the appeal in that it "may be lodged within the statutory time limit. However, the appeal will not be heard and determined until a showing is made that the March installment of tax has also been paid, together with penalties and interest due thereon [if any]."² Accordingly, the District of Columbia's motion was denied.

On appeal, the Tax Court was reversed. Judge MacKinnon, writing for the U.S. Court of Appeals, made the following observations and remarks. Section 47-702 of the Code provides for the annual assessment of real estate and after such assessment a tax is levied. Section 47-2403 provides for the pre-payment of taxes as a jurisdictional requirement (Berenter, supra. at 13). The petitioner in Berenter argued that since §47-1209 permitted tax payments to be made in equal semi-annual installments in September and March, it must be read in conjunction with the pre-payment requirement of §47-2403. Therefore, the pre-payment of taxes which were due at the time the appeal was

² Berenter et.al. v. D.C., D. C. Tax Court, D.C. No. 2072, 6/1/72 at 18.

filed satisfied the jurisdictional requirement of §47-2403. The court rejected the petitioner's argument and held,

. . .The failure of taxpayers to pay all of the challenged taxes levied for the entire fiscal year in question prior to the time their appeal was filed, deprived the Tax Court of jurisdiction over any and all of the taxes in issue. (Emphasis present at 13).

Moreover, the court noted though the payment of the taxes was divisible, the tax debt established by the levy covered the entire fiscal year. Thus, the court noted that the tax required to be paid by §47-2403 before an assessment can be protested refers to tax covered by the assessment, i.e., the tax payable for an entire fiscal year. In conclusion, the court in Berenter noted that §47-2403 required the prepayment of "the entire fiscal year's challenged tax, before an appeal involving the underlying assessment, could properly be taken." (At 15).

In the present case the petitioner is questioning the validity of the District's §47-710 assessment which, like the assessment made in Berenter is of an annual nature. The Code provides that payment of this tax can be made in two equal installments, in September and March.³ Section 47-710 provides that when one is aggrieved by a §47-710 assessment, he may appeal from the same under the provisions delineated in §47-2403. Section 47-710 states in part,

Any person aggrieved by any assessment or valuation made in pursuance of this section may. . .appeal from such assessment or valuation in the same manner and to the same extent as provided for in Section 47-2403 and 47-2404. . .

Section 47-2403 states in part,

Any person aggrieved by any assessment by the District of any. . .taxes, or penalties thereon may. . .after the payment of the tax together with penalties and interest thereon appeal from the assessment to the Superior Court of the District of Columbia.

³ Title 47, §47-1209 of the D.C. Code provides in pertinent part, "Real-estate taxes. . .shall hereafter be payable semi-annually in equal installments in the months of September and March."

In Berenter it was decided once again that §47-2403 is a jurisdictional requirement. The difference, if any, between Berenter and the case herein is that the court in Berenter felt the jurisdictional requirements of §47-2403 must be read in conjunction with §47-702 and 47-1209, while the court herein feels that §47-2403 must be read in conjunction with a challenged §47-710 assessment as well. Although the court is sympathetic to the petitioner's argument on the merits it is forced to conclude that under Berenter the jurisdictional requirement of §47-2403 must be met. The court would be constrained in saying that Berenter only limited the §47-2403 requirement to assessments challenged only under §47-702. Moreover, the court is aware that the petitioner did feel that if he was correct in his challenge, only the September tax would have been due and since the same was paid, the §47-2403 requirement would have been met; however, the clear language of the Code and the holding in Berenter inhibit the court in its present decision. The fact that the March installment of the questioned assessment was ultimately paid, unfortunately cannot save the petitioner from his jurisdictional dilemma since the same was paid subsequent to the commencement of this action.

Although the practical effect of Berenter works a hardship in this situation, the U.S. Court of Appeals felt that their interpretation of §47-2403 prevents multifarious litigation. It is this rationale which motivated the decision reached in Berenter.

Since the court feels that it is without jurisdiction to hear the present controversy, the merits of the petitioner's claim cannot be decided. It is for the above-stated reasons that the court must grant the District of Columbia's motion to dismiss the case for want of jurisdiction.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

THE GEORGE HYMAN CONSTRUCTION CO.,)
A.J. CLARK, B.T. ROME, T/A)
1133 15TH STREET JOINT VENTURE,)

Petitioner)

v.)

DISTRICT OF COLUMBIA,)

Respondent.)

Docket No. 2178

FILED

JAN 3 1973

ORDER

Superior Court of the
District of Columbia
Tax Division

This cause coming on for hearing on its merits, arguments presented, counsel were heard, and the proceedings read and considered.

It is thereupon, this 3rd day of January, 1973, by the Superior Court of the District of Columbia

ORDERED that the Respondent's Motion to Dismiss for Lack of Jurisdiction be, and the same is hereby, granted.

By the Court:

January 3, 1973

Date


Associate Judge

cc:
Richard G. Amato, Esq.
Assistant Corp. Counsel, D.C.
District Building 20004,
Attorney for Respondent

John R. Risher, Jr., Esq.
1815 H Street, N.W. 20006,
Attorney for Petitioner