DISTRICT OF COLUMBIA TAX COURT

FILED

JAN 13 1970

District of Columbia
Tax Court

ALLEN BERENTER ALLEN MORRIS MAX LEDER DAVID HORNSTEIN, General Partners of Towne Towers Associates, a Limited Partnership, Petitioners,	)	
v.	)	DOCKET NO. 2072
DISTRICT OF COLUMBIA, Respondent.	)	

DECISION

On December 30, 1968, petitioners filed their petition for review of two real estate tax assessments determined by the Board of Equalization and Review on May 6, 1968, for the fiscal year 1969 (i.e., July 1, 1968 to June 30, 1969).

On September 30, 1968, petitioners had timely paid the first half of the taxes resulting from such assessments, totalling $34,707.92, in accordance with respondent's long and firmly established rule that the "first half" of such taxes is due by September 30 and the "second half" by March 31 of the given fiscal year.

On February 13, 1969, respondent filed its motion to dismiss the petition for review on the basis that the total taxes due as a consequence of the assessments had not been paid in full prior to the filing of the petition, and contending that this court therefore lacks jurisdiction to hear and determine the proceeding. On February 24, 1969, petitioners filed their opposition to this motion to dismiss.

On June 19, 1969, the court issued its Ruling and Order on Motion to Dismiss Petition, denying the dismissal of the petition and ruling that the appeal would be heard and determined on the merits upon showing that the second half of the taxes resulting from the said assessments had been paid. 97 W.L.R. 1197; CCH D.C. State Tax Reporter, par. 200-136.

On August 1, 1969, petitioners and respondent filed their stipulation "that the March installment of tax has been paid in full on the 26th day of March, 1969"; i.e., had been timely paid in full. The attachments to the stipulation show payments totalling $34,657.92 on account of this, the "second half" of the taxes due for the fiscal year 1969.

On October 10, 1969, petitioners filed their motion for leave to amend their petition to incorporate therein the review on the merits of the assessments made by the Board of Equalization and Review for the fiscal year 1970 (i.e., July 1, 1969 to June 30, 1970) and "all subsequent years thereafter" for the properties in question. It appears from said motion that such assessments for 1970 were identical with the assessments for 1969, and that relief is sought in order to avoid multiplicity of actions.

On October 14, 1969, respondent filed its opposition to this motion for leave to amend. It appears from said opposition that respondent contends that assessments are, as a matter of law, annual rather than occasional or sporadic, no matter what the actual facts may be, and that complaint to the Board of Equalization and Review must accordingly be reiterated each year.

On October 14, 1969, respondent also filed its answer to the petition herein, generally denying most of the allegations made therein, and putting petitioners to their proof.

On October 15, 1969, the court issued its order deferring until after the hearing on the merits its ruling on petitioners' motion of October 10, 1969 for leave to amend.

On October 20, 1969, the proceeding came on for hearing on the merits, resulting in the stipulations, findings and conclusions detailed below.

On October 22, 1969, petitioners filed their reply to respondent's opposition to motion for leave to amend. It appears from said reply that petitioners contend that absent "affirmative action", there has in fact been no annual reassessment of the properties in question for the fiscal year 1970 or other years subsequent to the assessments for 1969 now in question, and that the determination for 1969 will as a matter of fact bind subsequent years in the absence of actual reassessments.

The motion for leave to amend. The motion is denied, on the authority of Congregational Home v. District of Columbia, 92 App. D.C. 73, 202 F.2d 808. The Court there accepted at face value the statutory procedure for annual assessments, assumed that the various steps in the listing of property subject to taxation had been taken, including consideration of taxpayer's claim to exemption from taxation, and denied taxpayer's right to make claims for exemption in futuro. Equally, in the case at bar, the assessment of petitioners' real estate is, as a matter of law, "made annually", Code 47-702, on the basis of "the value of each separate tract or lot of real property in the District of Columbia in lawful money", Code 47-705, subject to revision by the Board of Equalization and Review, Code 47-708. Since petitioners have not reiterated their complaint concerning the assessments on the properties in question for the fiscal year 1970 to the Board of Equalization and Review, they may not be heard thereon in this court. Code 47-709.

The hearing on the merits. (a) On stipulation of counsel, a mathematical error in the computations set out in paragraph 4(b) of the petition, resulting in the reduction of petitioners' claim for refund from $8,798.25 to $7,598.25, was accepted.

(b) On stipulation of counsel, petitioners are accepted as the real parties in interest, with personal capacity to maintain this proceeding.

(c) On stipulation of counsel, it is accepted that Mr. F. E. Diamond, a qualified fee appraiser in the District of Columbia, personally present at the hearing, would testify that in his expert opinion the appraised value of the Towne Towers Apartments for purposes of D. C. real estate tax for fiscal 1969 is $1,173,250 and of the Aristocrat Apartments is $884,000, rather than, respectively, $1,280,581 and $1,029,944 at which figures said properties were assessed. It is equally accepted that the real estate taxes resulting from the assessments thus determined to be excessive are, in turn, excessive in the amount of $3,219.93 for the Towne Towers property and $4,378.32 for the Aristocrat Apartments property, or a total of $7,598.25.

(d) Respondent presents no evidence controverting the facts so accepted by stipulation, but stands on and reaffirms its position that the D. C. Tax Court lacks jurisdiction to hear the proceeding on the merits.

Wherefore, it is ordered and adjudged, that

1. Petitioners' motion for leave to amend be, and hereby is, denied.

2. Respondent's motion to dismiss, re-presented at the hearing herein, be and hereby is denied. The Ruling and Order on Motion to Dismiss issued June 19, 1969 is hereby incorporated herein by reference.

3. Petitione shall have and recover from ıe District of Columbia the sum of $7,598.25 plus statutory interest, on account of excess taxes paid on the properties more fully described in the petition herein, for the fiscal year 1969.

Robert M. Weston
Judge

Served as follows:

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