Opinion No. 1220

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION
MAR 30 1984
FILED

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Tax Division

WASHINGTON SHERATON CORPORATION, Petitioner,	:	
v.	:	Tax Docket No. 3236-83
DISTRICT OF COLUMBIA, Respondent.	:	

O R D E R

This matter comes before the Court upon Petitioner's Motion for Award of Interest on Refund at the Prevailing Market Rate, and upon Respondent's Motion to Dismiss Petition as Moot or Barred by Res Judicata. Each motion is opposed by the non-moving party. The Court heard oral argument on the motions February 9, 1984.

BACKGROUND

The petitioner challenged its tax year 1982 assessment in Washington Sheraton Corp. v. District of Columbia, Tax Docket No. 3123-82. While that matter was pending, the petitioner filed the instant action seeking a ruling for the succeeding tax year, 1983. The petitioner on several occasions sought to have the tax year 1983 valuation specifically announced by the Court in Tax Docket No. 3236. Both a motion to add tax year 1983 to the petition in that case, and a later effort to consolidate these two actions, were denied.

At the time of these rulings and in its opinion in Tax Docket No. 3123-82, the Court expressly indicated that the valuation established in that case would remain for succeeding tax years until a lawful revaluation. See Washington Sheraton Corp. v. District of Columbia, 111 D.W.L.R. 1053, 1061 (Super. Ct., April 29, 1983). The Court relied on District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052 (D.C. 1977).

This Burlington principle was applied in the refund order submitted by respondent, which the Court signed and issued without change. The order established the same valuation for tax years 1982 and 1983 and provided refunds for both years with interest at the statutory rate of 6 percent. In both petitions for refunds, tax year 1982 and 1983, petitioner had requested an award of interest at the market rate, rather than the statutory level. Yet the petitioner noted no objections to the order as proposed, and in fact consented in writing to the "form" of the suggested order. Furthermore, petitioner did not appeal the refund order.

Notwithstanding these facts, petitioner now claims that the interest claim alone for tax year 1983 survived that order, and remains for determination in the instant case. The petitioner further argues that the "taking" clause is violated by provision of interest at the statutory rate, and further that the prepayment requirement poses a significant obstacle to judicial relief, thereby violating Due Process.

The respondent argues that the events and outcome of Tax Docket No. 3123-82 establish the petitioner's interest claim as either moot or barred by res judicata.

DISCUSSION

I. Motion to Dismiss

In urging dismissal, the District relies upon petitioner's attempts to resolve the tax year 1983 claim in the prior proceeding, the Court's repeated reference to the Burlington principle, and the actual order including refunds and interest for both tax years 1982 and 1983. Based upon these events, the respondent argues that either the mootness doctrine or the principle of res judicata precludes consideration of any claim with respect to the petition in the instant case.

Mootness may be found if "there is no longer any controversy remaining between the parties," or if the Court is being asked to make declarations of "principles or rules of law which cannot affect the matter in issue in the case before it." Atkins v. United States, 283 A.2d 204, 205 (D.C. 1971) (Case was moot and dismissal required where tenants vacated premises prior to trial in landlord's suit for possession.) The Court should refuse to decide issues "if [its] judgment thereon would be wholly ineffectual," Spingarn v. Landow & Co., 342 A.2d 41, 42 (D.C. 1975) (Landlord-tenant action was moot where rental property had been sold during pendency of appeal.), or if a decision would "'merely record its views concerning a controversy which no longer exists and'" rule on a question which has become . . . purely academic,'" Banks v. Ferrell, 411 A.2d 54, 56 (D.C. 1979) (Prisoner's Due Process complaint about first of two parole hearings declared moot, because defendant was imprisoned on basis of second hearing which he did not challenge.).

The matter of the interest award does appear controverted, and the Court observes that a declaration that interest should be paid above the statutory rate would bring about a concrete result.

Preclusion of the interest claim through res judicata requires only that the same parties previously have litigated the same claim, or more broadly, that they had the opportunity to do so in an earlier action. See, e.g., Durrell v. United States, 252 A.2d 897, 900 (D.C. 1969), Taylor v. England, 213 A.2d 821, 823 (D.C. 1965). Res judicata is intended to be applied when "the essence of the claim and the evidence necessary to establish it are the

same." Henderson v. Snider Brothers, Inc., 439 A.2d 481, 484 (D.C. 1981) (interpreting Maryland law), cited with approval in, e.g., Dankman v. District of Columbia Board of Elections and Ethics, 443 A.2d 507, 524 n.15 (D.C. 1981) ("[T]raditionally res judicata is applicable only if an issue has been -- or could have been -- presented.")

The relevant facts include the following. The petition for tax year 1982 specifically requested a refund "with interest thereon accrued at the prevailing market rate." Petition at 3, Tax Docket No. 3123-82. The same language is found in the instant petition, which respondent sought to have consolidated with the prior matter. Although the Court did not choose to consolidate or to allow amendment of the tax year 1982 petition to add tax year 1983, there was express reference to the Burlington principle as in effect providing the result sought.

The opinion in Tax Docket No. 3123-82 referred to Burlington just prior to instructing the District to submit a proposed refund order. The order submitted, which included refunds for both tax years with statutory interest, was served on petitioner in order to permit the noting of objections. None were noted, and the order was issued. Nor did petitioner appeal the order with respect to tax year 1983.

These facts sufficiently indicate that the claim for a tax year 1983 refund, including interest, was in essence the same claim as that litigated and decided in Tax Docket No. 3123-82. The Court's rulings with regard to Burlington during the course of trial, and in its opinion, and the notice provided by service of the proposed refund order are sufficient to preclude a later proceeding to contest the interest award.

II. Motion for Interest Award

In light of the conclusion that dismissal is warranted, the Court does not reach the constitutional issues advanced by petitioner, except to note that this Court does not view taxation as a governmental "taking" within the meaning of the Fifth Amendment.

CONCLUSION OF LAW

The interest claim made by petitioner in the instant action is barred by res judicata.

Wherefore, it is this _____ 1984,

ORDERED that the Petitioner's Motion for Award of Interest on Refund at the Prevailing Market Rate be, and hereby is, denied; and it is

FURTHER ORDERED that the Respondent's Motion to Dismiss Petition be, and hereby is, granted, and this action is dismissed with prejudice.

JUDGE IRALINE G. BARNES

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