

2. Administrative Law

X v. Tokyo Metropolitan Government

Supreme Court 3rd P.B., July 16, 2019

Case No. (*Gyo-Hi*) 139 of 2018

73(3) MINSHU 211; 1467 HANREI TAIMUZU 45

Summary:

The Supreme Court held that a person, who was dissatisfied with the price registered in the fixed asset tax ledger and made a request for examination to the Central Fixed Assets Evaluation Council, is permitted to argue a ground, which he/she did not argue at the time of examination by the same council, in an action to seek revocation of the same council's decision on the said request as a ground for the illegality of the decision.

Reference:

Local Tax Act, Article 434, Paragraph 2; Local Tax Act (prior to amendment by Act No.69 of 2014), Article 432, Paragraph 1.

Facts:

1. X (the appellant, the plaintiff of the first instance, the appellant of the second instance), who owns a steel-framed reinforced concrete flat-roofed nine-story office building with one basement floor (built in October 1989; hereinafter referred to as the "Building"), was dissatisfied with the price of the Building for fiscal 2012, which was decided by the governor of Tokyo and registered in the fixed asset tax ledger, and made a request for examination to the Central Fixed Assets Evaluation Council of Tokyo (hereinafter referred to as the "Council"), but received a decision to dismiss the request (hereinafter referred to as the "Decision"). Therefore, X filed this action against Tokyo Metropolitan Government (the appellee, the defendant of the first instance, the appellee of the second instance. Hereinafter referred to as "Y") to seek revocation of the Decision.

2. It is provided that the governor of Tokyo is to decide the price of fixed assets in the areas of special wards of Tokyo Prefecture in accordance with the fixed asset evaluation standards established by the Minister for Internal Affairs and Communications [Local Tax Act, Art. 734(1); Art. 403(1)]. The fixed asset evaluation standards that are applicable to the evaluation of the Building for fiscal 2012 (Ministry of Home Affairs Public Notice No. 158 of 1963; prior to amendment by the Ministry of Internal Affairs and Communications Public Notice No. 217 of 2014; hereinafter referred to as the “FY2012 Evaluation Standards”) provide that a house should be evaluated by giving the number of points for the house in accordance with the classification of wooden houses and houses other than wooden houses and calculating the value of the house by multiplying the value per point by the said number of points (Chapter 2, Section 1, 1), and the number of points for a house should be determined based on the number of points for the reconstruction costs of the house by multiplying the said number of points by the point-deduction correction ratio based on the status of wear of the house (2 of the same).

The fixed asset evaluation standards (Ministry of Home Affairs Public Notice No. 158 of 1963; prior to amendment by the Ministry of Home Affairs Public Notice No. 203 of 1990) that are applicable to the first evaluation of the Building at the time of its construction, which are applied when the number of points for the reconstruction costs of the Building is to be calculated, provide that the number of points for the reconstruction costs of the main structure part of a building for which the amounts of used steel frames, reinforcing steel, and concrete are clear, should be calculated by multiplying the standard number of points per unit for each of those materials by each of the actually used amounts.

3. The governor of Tokyo decided the price of the Building for fiscal 2012 as 688,028,700 yen and the price was registered in the fixed asset tax ledger (hereinafter this price is referred to as the “Registered Price”).

X was dissatisfied with the Registered Price, and made a request for examination under Article 432, Paragraph (1) of the Local Tax Act (prior to amendment by Act No. 69 of 2014; the same applies hereinafter) to the Council. In doing so, X did not argue that there was an error in the amounts of reinforcing steel and concrete used for the main structure part,

which were used as a basis for the calculation of the number of points for the reconstruction costs of the Building.

The Council made the Decision dismissing the above-mentioned request.

4. X filed this action to seek revocation of the part that exceeds the price of 587,115,400 yen in the Decision, but the decision of the first instance (judgment of Tokyo District Court March 17, 2017, 73(3) MINSHU 219) dismissed the claim with prejudice on the merits. Dissatisfied with the same judgment, X filed an appeal to the court of second instance and also added an argument to the effect that there was an error in the amounts of reinforcing steel and concrete used for the main structure part, which were used as a basis for the calculation of the number of points for the reconstruction costs of the Building (hereinafter referred to as the “Addition of Argument”). Along with this, X changed the object of claim (hereinafter referred to as the “Change of the Object of Claim”).

The second instance (judgment of Tokyo High Court December 14, 2017, *supra* MINSHU 230) determined as summarized below;

It is reasonable to understand that a person who was dissatisfied with the price registered in the fixed asset tax ledger and made a request for examination to the Central Fixed Assets Evaluation Council (hereinafter referred to as an “examination applicant”) is not permitted to argue a ground, which he/she did not argue at the time of examination by the same council, in an action to seek revocation of the same council’s decision on the request (hereinafter referred to as a “decision on examination”) because such an argument goes against the purpose of Article 434, paragraph 2 of the Local Tax Act and the proviso to Article 8, paragraph 1 of the Administrative Case Litigation Act as long as the same ground has not gone through examination, unless there are special circumstances where any justifiable grounds therefore are found (Article 8, paragraph 2, item 3 of the Administrative Case Litigation Act);

In this case, no justifiable grounds are found for the ground pertaining to the Addition of Argument not to go through a decision on examination by the Council. Therefore, as the part pertaining to the Change of the Object of Claim in the appellant’s action does not satisfy a requirement that should be satisfied prior to a request for examination and is thus

unlawful, this court dismissed the part pertaining to the Change of the Object of Claim in the appellant's action without prejudice;

When examining the remaining part in the appellant's action, the decision of the Registered Price cannot be considered illegal. Therefore, as the Decision dismissing the request for examination, which was made against the Registered Price, is lawful, the remaining part should be dismissed with prejudice on the merits.

Opinion:

quashed and remanded

“When a person who pays fixed asset tax is dissatisfied with the price registered in the fixed asset tax ledger in relation to a fixed asset pertaining to the fixed asset tax for the relevant year that he/she should pay (...), he/she may make a request for examination to the Central Fixed Assets Evaluation Council (Article 432, paragraph (1) of the Local Tax Act). When a person who pays fixed asset tax is dissatisfied with a matter for which a request for examination can be made to the same council, he/she may dispute the matter only by making a request for examination to the same council or filing an action to seek revocation of a decision on examination (Article 434, paragraph (2) of the same Act).”

“The [Central Fixed Assets Evaluation] council should be considered to be able to make a ground that is not argued by an examination applicant be subject to examination, taking into account that the above-mentioned examination is intended to protect the rights of taxpayers and ensure the proper operation of administration pertaining to the imposition of fixed asset tax and that the same council is authorized to conduct collection of materials necessary for examination, etc. [Article 433, paragraphs (3) and (11) of the same [Local Tax] Act and Articles 27, 29, and 30 of the Administrative Complaint Review Act (prior to amendment by Act No.68 of 2014)]. In that case, the subject matter of examination by the same council should be considered to cover matters necessary for determining the propriety of a registered price as a whole. In an action to seek revocation of a decision on examination, the propriety of finding of a price by the same council is questioned, and a specific argument that underpins the illegality of the finding of the price is nothing more than mere allegation and evidence. Therefore, it cannot be said that an examination applicant's act

of arguing a ground for illegality, which he/she did not argue at the time of examination, in the same action goes against the purport of Article 434, paragraph (2) of the Local Tax Act, etc.”

“For the reasons described above, it should be said that an examination applicant is permitted to argue a ground, which he/she did not argue at the time of examination by the Central Fixed Assets Evaluation Council, in an action to seek revocation of a decision on examination as a ground that underpins the illegality of the decision on examination.”

“[E]ven where an examination applicant seeks revocation of only the part that exceeds a certain price in a decision on examination, this has a meaning only as a procedural act that defines the upper limit of a judgment in favor of the examination applicant in the case where the court finds the price of the relevant fixed asset and revokes the decision on examination. The Change of the Object of Claim just changes the above-mentioned upper limit in association with the Addition of Argument, and there are no circumstances where this should be considered impermissible.”

Editorial Note:

1. As the Supreme Court in this case held, a person who is dissatisfied with the price registered in the fixed asset tax ledger in relation to a fixed asset pertaining to the fixed asset tax can only file an action to seek revocation of a decision on examination, not allowed to file an action to seek revocation of an original disposition. This principle is called a decision principle. The aim is to restrict the way of disputing the price registered in the fixed asset tax ledger to secure the legal stability by establishing the registered price early.

This case is the first judgment of the Supreme Court regarding, under the circumstance called the principle of petition after administrative protest, where, only after making a request for examination to the Central Fixed Assets Evaluation Council, a taxpayer, who is dissatisfied with the same decision, can file only an action to seek revocation of the same decision itself, whether or not a taxpayer who made a request for examination to the same Council is permitted to argue a ground, which he/she did not argue at the time of examination by the same council, in an action to seek revocation of the same council’s decision on said request.

2. Concerning the relationship between an action for the revocation of the original administrative disposition and a request for an administrative review, the judgment (Supreme Court 1st P.B., October 14, 1954, 8(10) MINSHU 1858), which handled the case of seeking revocation of an decision that the disputed election was to be invalid under the Petition Law and Special Act on Administrative Case Litigation, held that a ground which a litigant argued in an action could be based on the judgment regarding the validity of an election, even if the said ground had not been argued in the petition examining the validity of the said election. After the judgment, there followed judgments of lower courts which held that a litigant might argue a ground in an action to seek revocation of an administrative disposition, which he/she had not argued at the time of examination concerning a motion against the said disposition.

It is considered that the theories may have no objection to the above-mentioned judgment. In addition, it is generally approved under the Administrative Case Litigation Act as well that there is no limitation against arguments with regard to grounds which were not argued at the time of examination of a motion in an action. The underpinnings of this approval are said to be, for example, that the aim of principle of petition after administrative protest is merely to give administrative agencies the chance of reexamination concerning the questioned dispositions, and that an examiner is authorized to conduct collection of materials necessary for examination.

One of the reasons why the Central Fixed Assets Evaluation Council is authorized to conduct collection of materials necessary for examination is that an examination applicant does not necessarily have sufficient information regarding the premises of registered prices and so on. This point suggests that the premises of evaluation are not to be indicated at the stage of registering the price in the fixed asset tax ledger, ordinarily and almost exclusively kept by an evaluating agency. That may lead to an examination applicant's difficulty in arguing grounds specifically as a reason for a motion at the time of making a request for examination.

However, in recent tax suits, some lower courts held (Osaka High Court, March 31, 2011, Court HP; Hiroshima District Court, November 4, ZEIMUSOSHOSHIRYOU 265 JUNGOU 12751) that an action pertaining to the parts which were not sought revocation at the request for examination

because of the principle of petition after administrative protest (Act on General Rules for National Taxes, Article 115, Paragraph 1; Local Tax Act, Article 19-12).

3. From the perspective described above, the judgment of this case would be considered as below;

The court of prior instance held that, placing importance on the principle of petition after administrative protest, it is necessary for a litigant, who is dissatisfied with the price registered in the fixed asset tax ledger and makes a request for examination, to make it clear that what part of, what scope of, and what reason of the said price a litigant is dissatisfied, when he/she makes a request for examination. Therefore, the litigant is not permitted to argue a ground, which he/she did not argue at the time of examination by the same council, in an action to seek revocation of the same council's decision on the request because such argument goes against the purpose of Article 434, paragraph 2 of the Local Tax Act and the proviso to Article 8, paragraph 1 of the Administrative Case Litigation Act, as long as the said ground has not gone through examination, unless there are special circumstances where any justifiable grounds therefore are found (Article 8, paragraph (2), item (iii) of the Administrative Case Litigation Act). Thus the prior instance made a judgment that the part pertaining to the Change of the Object of Claim in the appellant's action does not satisfy a requirement that should be satisfied prior to a request for examination and is unlawful.

Whereas the Supreme Court held that the Council should be considered to be able to make a ground that is not argued by an examination applicant be subject to examination, taking into account that the above-mentioned examination is intended to protect the rights of taxpayers and ensure the proper operation of administration pertaining to the imposition of the fixed asset tax and that the same council is authorized to conduct collection of materials necessary for examination. In that case, the subject matter of examination by the same council should be considered to cover matters necessary for determining the propriety of a registered price as a whole. Therefore, it cannot be said that an examination applicant's act of arguing a ground for illegality, which he/she did not argue at the time of examination, in the same action goes against the

purport of Article 434, Paragraph 2 of the Local Tax Act, etc.

4. Considering the point that the means of dispute pertaining to the price of the fixed asset tax is restricted should be important, it would likely to be acceptable to think the way of the judgment of the prior instance. However, when it is construed, strictly standing on the principle of petition after administrative protest and decision doctrine, that a ground is not permitted to be argued, which was not argued at the time of examination by the Central Fixed Assets Evaluation Council, in an action to seek revocation of the same council's decision on the request, then a taxpayer who is dissatisfied with the price of the fixed asset tax ought to prepare for the arguments at the very stage of making a request for examination in anticipation of a possible action to seek revocation of the same council's decision on the request. This might not be consistent with the aim of examination by the Central Fixed Assets Evaluation Council, which is to protect the rights of taxpayers and ensure the proper operation of administration pertaining to the imposition of the fixed asset tax.

Therefore, the judgment of the Supreme Court that allowed an examination applicant to argue a ground, which he/she did not argue at the time of examination, in an action, in view of the role of the Central Fixed Assets Evaluation Council and the underpinnings of its examination, is thought to be appropriate.

5. According to this judgment, when the Central Fixed Assets Evaluation Council makes a decision, without exercising its authority properly and overlooking a ground for the illegality which an examination applicant does not argue, the said decision could be invalidated in an action to seek revocation of itself. Therefore, it may be thought to be necessary to reconsider how the examination of the Central Fixed Assets Evaluation Council should be in order to meet both of the requests that the same council ought to examine a ground not argued at the time of examination by its own authority so as to ensure the proper operation of administration pertaining to the imposition of the fixed asset tax, and that the questioned price of the fixed asset tax should be established early.