

STATE OF MICHIGAN
COURT OF APPEALS

BALANCE ENGINEERING, INC. d/b/a
DYNOTECH ENGINEERING INC.,

UNPUBLISHED
October 28, 1997

Plaintiff-Appellant,

v

No. 197938
Michigan Tax Tribunal
LC No. 161484

CITY OF TROY,

Defendant-Appellee.

Before: Saad, P.J., and O'Connell and M. J. Matuzak*, JJ.

PER CURIAM.

In this property tax dispute, plaintiff appeals of right the order of the Michigan Tax Tribunal affirming defendant's assessment of plaintiff's leasehold improvements. We affirm in part, reverse in part, and remand.

Plaintiff Balance Engineering, Inc., manufactures custom-made balancing equipment for automotive manufacturers throughout the world. In 1988, plaintiff leased a warehouse, located in the City of Troy, for the purposes of manufacturing balancing equipment. The lease term was five years, and the lease was renewed in 1993 for an additional five years. The lease specifically requires that any improvements made to the facility must be removed upon termination of the lease. In 1989 and 1990, plaintiff made a number of improvements to the facility.¹ The cost of the improvements was approximately \$948,761.

Plaintiff filed personal property tax statements with the City of Troy for each of the years in issue (1991, 1992 and 1993). Plaintiff reported the costs of improvements made to the property in 1989 and 1990 as taxable leasehold improvements.² Defendant, the City of Troy, valued the improvements as "equipment" based on the Michigan State Tax Commission Guidelines, and assessed them as such using the short life depreciation schedule. On appeal, plaintiff contends that defendant's assessment was incorrect and that the leasehold improvements add no true cash value to the property.

* Circuit judge, sitting on the Court of Appeals by assignment.

The Michigan Tax Tribunal was asked to determine whether the improvements constituted “leasehold improvements” in the first instance, and, if so, whether they were assessable under MCL 211.8(h); MSA 7.8(h) because they contributed to the value of the underlying real property.³ The Tribunal determined that the improvements constituted leasehold improvements. However, rather than independently determining “the extent the improvements or structures add to the true cash value of the real property” pursuant to MCL 211.8(h), the Tribunal merely adopted the assessment done by defendant. Plaintiff appeals the assessed value of the leasehold improvements. Defendant does not cross appeal the determination that the improvements are leasehold improvements.

Appellate review of Tax Tribunal decisions is limited to deciding if the Tribunal’s factual findings are supported by competent, material, and substantial evidence. *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). Substantial evidence “is that which a reasonable mind would accept as adequate to support a decision;” it is “more than a mere scintilla but less than a preponderance of the evidence.” *McBride v Pontiac School Dist (On Remand)*, 218 Mich App 113, 123; 553 NW2d 646 (1996). In the absence of fraud, this Court reviews whether the Tribunal made an error of law or adopted an incorrect legal principle. *Meadowlanes Limited Dividend Housing Ass’n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991); *Golf Concepts v Rochester Hills*, 217 Mich App 21, 24-25; 550 NW2d 803 (1996).

After reviewing the record, we conclude that the Tribunal’s determination that the property in question constitutes “leasehold improvements” is supported by competent, material, and substantial evidence. *Jones & Laughlin Steel Corp, supra* at 352. Defendant argues on appeal that the Tribunal committed an error of law by ruling that the improvements at issue are part of the real estate, and that the improvements should have been categorized as tangible personal property. However, we note that defendant failed to properly and timely invoke this Court’s jurisdiction to review the issue by filing a cross appeal pursuant to MCR 7.207. Accordingly, defendant has waived this issue for review. We also note that the Tribunal did not hold that the leasehold improvements constitute “real property.” To the contrary, plaintiff and the Tribunal agree that the property is personal property and that it must be assessed under Section 211.8(h).

The first issue for this Court’s determination is whether the Tribunal erred in affirming defendant’s assessment of the property rather than making an independent determination regarding the extent to which the improvements add to the true cash value of the real property. After reviewing the record, we conclude that the Tribunal erred in finding that the assessable value of the improvements is the same value calculated by defendant under the short life depreciation schedule.

The Tax Tribunal has a duty to make a finding of true cash value in arriving at its determination of a lawful property assessment. *Alhi Development Corp v Orion Twp*, 110 Mich App 764; 314 NW2d 479 (1981). While the burden of proof is on the taxpayer to establish the true cash value of the property, MCL 205.737(3); MSA 7.650(37), the Tribunal must make its own findings of value and may not merely affirm the calculations of the assessing agency. *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2d 603 (1979); *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229, 233; 276 NW2d 566 (1979). The taxpayer must prove, by the greater weight of evidence, that the assessment was too high. *Alhi Development, supra* at 768. The weight given to

evidence is a matter within the Tribunal's discretion. *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 191; 413 NW2d 700 (1987). It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances. *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

In this case, we find that the Tribunal failed to make an independent finding regarding the true cash value of the property before upholding the City's assessment, as is required by MCL 205.737; MSA 7.650(37).⁴ See *Kern, supra*; *Consolidated Aluminum, supra*. While we recognize the difficulty inherent in this determination, given that plaintiff came to the hearing with an appraisal of its equipment exclusive of the leasehold improvements, we note that the Tribunal specifically assured the parties that the question before it was not one of valuation. The Tribunal noted that the classification question (equipment versus leasehold improvements) was a "legal issue" and that there was no "valuation issue" to be decided. According to the Tribunal, if the legal issue was resolved in favor of defendant, the improvements would be valued according to defendant's calculations. Since the legal issue was resolved in favor of plaintiff, we find that the Tribunal erred in resolving the valuation issue in favor of defendant – especially since the Tribunal was obligated by law to make an independent determination of value.

Second, the Tribunal mistakenly relied upon an appraisal that was done for equipment under the Tax Commission recommended guidelines. Unlike equipment, the value of leasehold improvements and structures may not be determined based solely on cost. MCL 211.8(h); MSA 7.8(h). Instead, the Tribunal must determine "the extent the improvements or structures add to the true cash value of the real property." *Id.* Because the proofs received at the hearing indicate that the precondition to assessment set forth in MCL 211.8(h) was not met, it was erroneous for the Tribunal to achieve a determination by adopting those values as reliable and accurate. Thus, we find that the Tribunal's use of the cost-less-depreciation method was not supported by the record.⁵ On remand, the Tribunal may consider cost, but must determine the true cash value of the improvements as per § 211.8(h).

In light of our decision to remand for an evidentiary hearing regarding the valuation of plaintiff's leasehold improvements, we do not address the other issues raised by plaintiff on appeal.

We affirm the Tribunal's determination that the property in question constitutes "leasehold improvements," reverse that portion of the Tribunal's opinion which affirms defendant's assessment of the leasehold improvements, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

¹ The record indicates that plaintiff made modifications to the walls, floors and ceilings and that plaintiff installed engine test cells, ventilation systems for the cells, water tanks, fuel tanks, and hazardous waste tanks, pumps, wells, pipeways, electrical and air conditioning systems.

² Before the Tribunal, plaintiff asserted that it did not properly represent the nature of the assets acquired and that the property reported on the originally filed personal property statements should have been listed as leasehold improvements that add no true cash value to the property.

³ Section (h) of this provision specifically includes the following within the category of taxable personal property:

During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the true cash value of the real property notwithstanding that the real property is encumbered by a lease agreement, and the value added by the improvements or structures is not otherwise assessable under subdivision (j). The cost of leasehold improvements and structures on real property shall not be the sole indicator of value. Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee.

⁴ Section 727(1) provides that the Tribunal “shall determine the amount [of assessment] by multiplying its finding of true cash value by a percentage equal to the ratio of the average level of assessment in relation to true cash values in the assessment district.”

⁵ This Court recognizes that the Tribunal has the discretion to select the most appropriate valuation approach. However, we also note that the Michigan State Tax Commission Assessor’s Manual (which, under MCL 211.721; MSA 7.40, all assessors are required to use) recommends, in most cases, a market approach. The Manual provides that, of all appraisal methods, “the market data approach is the most direct, the best understood, and the only one directly reflecting the balance of supply and demand for a whole property in actual market place trading.” 1 State Tax Comm Assessor’s Manual, Ch VI, pp 1-2.