STATE OF MICHIGAN

COURT OF APPEALS

CHATHAM CAPITAL CORPORATION, Petitioner-Appellant,	UNPUBLISHED December 23, 2014
v	No. 318502 Tax Tribunal
CITY OF YPSILANTI, Respondent-Appellee.	LC No. 00-411654

Before: M. J. KELLY, P.J., and CAVANAGH and METER, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's dismissal of its petition seeking a refund of excess taxes paid to respondent as a result of mutual mistake of fact between petitioner and the assessing officer as provided by MCL 211.53a. We reverse and remand for entry of judgment in petitioner's favor.

In October 2010, petitioner filed its petition alleging that it owned property in the City of Ypsilanti and mistakenly reported on its personal property statements that $4,980,991.26 worth of artwork was located in Ypsilanti for tax years 2006 and 2007.[1] Petitioner alleged that only $389,583.20 worth of artwork was located in Ypsilanti; the other artwork was located in other Michigan cities and in California. Because the assessing officer relied on petitioner's erroneous personal property statements, petitioner was assessed and paid excessive taxes. Accordingly, petitioner sought a refund of the excess taxes paid as a consequence of a mutual mistake of fact pursuant to MCL 211.53a and *Ford Motor Co v City of Woodhaven*, 475 Mich 425; 716 NW2d 247 (2006).

[1] After this reporting error was discovered in 2008, petitioner successfully protested its 2008 assessment to the City's Board of Review which concluded that a mutual mistake of fact occurred and declared petitioner's taxable value to be $262,800. Petitioner subsequently determined that it had erroneously overstated its personal property by $136,017 in tax years 2008, 2009, and 2010, because it again included artwork that was not actually located in Ypsilanti.

A hearing was eventually held on the petition. Petitioner's majority owner, Randall Pittman, testified that the personal property statements incorrectly stated that all of the artwork was located in Ypsilanti. In fact, most of the artwork at issue was not located in Ypsilanti on the relevant tax days; instead, the artwork was located at his home in Holland, Michigan, at three different homes in California, and at petitioner's California office. Further, most of the artwork had never been in Ypsilanti at all. Pittman explained that staff accountants erroneously relied on a list of all of petitioner's artwork that had been complied for insurance coverage under a single policy to complete the personal property statements at issue.

Respondent's witness, Diane Mathews, a certified assessing officer and personal property examiner who investigated this matter, testified that she reviewed petitioner's personal property statements and supporting documents. She concluded that petitioner could not establish where the artwork was during the relevant tax periods and could only state that the artwork might have been in one of several locations. Mathews also determined that the artwork was not reported in another taxing jurisdiction during the relevant tax periods. Further, she received no shipping documents which would have shown that artwork was moved from petitioner's Ypsilanti's office. Douglas Shaw, respondent's certifying assessor for the 2012 and 2013 assessment rolls, agreed with Mathews' testimony.

Petitioner's attorney argued that a mutual mistake of fact was made, respondent had no authority to tax the artwork, and petitioner was entitled to a refund of the taxes erroneously paid. Respondent's attorney argued that petitioner did not meet its burden of establishing that the personal property statements were actually incorrect. The tribunal agreed with respondent and dismissed this matter. The tribunal concluded that petitioner failed to carry its burden of establishing that the personal property statements were erroneous and, thus, that a mutual mistake of fact existed. That is, the tribunal held, petitioner failed to establish that the artwork listed on its personal property statements in the 2006-2010 tax years was located outside of respondent's taxing jurisdiction. Accordingly, the case was dismissed.

Petitioner filed a motion for reconsideration, arguing that it established the subject artwork was not located in respondent's taxing jurisdiction on the relevant tax dates and its evidence was uncontradicted by respondent. The tribunal disagreed, affirming its holding that petitioner "did not meet its burden of proof that any part of the $4,980,991 in artwork (listed on the asset list) was conclusively located outside of Ypsilanti during the 2006-2010 tax years." Accordingly, the tribunal concluded, it had "correctly determined that no mutual mistake of fact occurred in which the Ypsilanti assessor and Petitioner relied on improperly prepared personal property statements, which would allow correction under MCL 211.53a." Therefore, petitioner's motion for reconsideration was denied. This appeal followed.

Petitioner argues that the tax tribunal's decision is unsupported by the record evidence and must be reversed because its personal property statements overstated the amount of artwork located in respondent's taxing jurisdiction on the relevant tax dates, which gave rise to a mutual mistake of fact under MCL 211.53a, entitling petitioner to recover excess taxes paid. We agree.

In the absence of fraud, our review of a decision by the tribunal is limited to determining whether the tribunal erred in applying the law or adopting a wrong legal principle. *Ford Motor Co*, 475 Mich at 438. The tribunal's factual findings are conclusive if they are supported by

competent, material, and substantial evidence on the whole record. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). "Substantial evidence is any evidence that reasonable minds would accept as sufficient to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *In re Grant*, 250 Mich App 13, 18-19; 645 NW2d 79 (2002).

> MCL 211.53a provides:
> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

As our Supreme Court explained in *Ford Motor Co*, 475 Mich at 442, the phrase "mutual mistake of fact" in MCL 211.53a means "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Id*. Here, similar to the facts in the *Ford Motor Co* case, petitioner alleged that it had erroneously reported that certain personal property—artwork—was located in Ypsilanti and sought a refund under MCL 211.53a on the ground that a mutual mistake of fact occurred. Respondent contended, however, that petitioner could not prove its personal property statements were, in fact, erroneous. The tribunal agreed with respondent, holding that petitioner did not establish that its personal property statements were erroneous.

In an appeal before the tribunal a petitioner must prove its case. In that regard, it is well-established that:

> [t]he burden of proof encompasses two concepts: "(1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." [*President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011), quoting *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).]

Petitioner's evidentiary proof included the testimony of its majority owner, Pittman, who purchased and displays most of the artwork at issue in his numerous offices and homes in Michigan and California. Pittman testified in great detail about many of the pieces of artwork at issue, including where and how they were displayed. Pittman also testified that, because petitioner is a holding company for about 30 subsidiary companies, various staff accountants for one of the subsidiary's located in Ypsilanti prepared petitioner's personal property statements, but these staff accountants were unfamiliar with the artwork. In particular, most of the artwork at issue was located in petitioner's executive office in California, which had underwent a $5 million renovation that included the installation of special paneling and lighting to display many of the pieces of art. Further, some of the artwork at issue was displayed in Pittman's three homes located in California. And Pittman unequivocally testified that most of the artwork at issue had never been located in Ypsilanti. Pittman explained that the schedule, or inventory, of the artwork erroneously relied upon by the staff accountants when the personal property statements were prepared had been compiled for purposes of securing a single insurance policy covering all of the

artwork—no matter each piece's actual location. Pittman provided extensive testimony as to the location of most of the subject artwork during the relevant time period, but his testimony was halted when the tribunal interrupted, stating that it was unnecessary to go through each piece of art because it appeared that most of the artwork was located at petitioner's executive office in California. Pittman further testified that, after the reporting mistakes were discovered on petitioner's personal property statements, a protest was filed with the City's Board of Review. The Board of Review accepted that a mistake had been made and reduced petitioner's taxable value for the 2008 tax year to $262,800—one-half of the $525,583 value of its artwork. Pittman further testified that the value of petitioner's artwork located in Ypsilanti in the tax years 2008, 2009, and 2010 totaled $389,583; thus, its taxable value was $194,791.

We conclude that Pittman's testimony was sufficient to shift to respondent the burden of going forward with evidence to refute the claim that mutual mistake of fact between petitioner and the assessing officer occurred as provided by MCL 211.53a. See *Jones & Laughlin Steel Corp*, 193 Mich App at 354-355; *Holy Spirit Ass'n For Unification of World Christianity v Dep't of Treasury*, 131 Mich App 743, 752, 756-757; 347 NW2d 707 (1984). In that regard we note, as our Supreme Court explained in *Ford Motor Co*, 475 Mich at 446, the General Property Tax Act (GPTA) "requires the assessor to ascertain what personal property is in his jurisdiction and assess it accordingly." While it is common for assessors to rely on information provided by taxpayers in personal property statements, "this common practice does not relieve the assessor of the responsibility to ascertain the taxable property in his jurisdiction and to exercise his best judgment when making an assessment." *Id*. at 445.

Here, respondent presented witness testimony from an assessor who reviewed petitioner's case and from respondent's assessor for the 2012 and 2013 tax years. Neither witness testified that the subject artwork was, in fact, located in Ypsilanti during the relevant tax period. And respondent offered no evidence to support such a conclusion. Again, it is the responsibility of the taxing jurisdiction's assessor to ascertain what personal property is located in its jurisdiction and subject to assessment. See *Ford Motor Co*, 475 Mich at 445-446. And, here, it is clear from the record evidence that respondent's assessor relied solely on petitioner's erroneous personal property statements to ascertain petitioner's taxable personal property in the relevant tax period.

Considering the record evidence, we conclude that petitioner met its burden of persuasion. Petitioner's evidence was sufficient to establish that a mutual mistake of fact between petitioner and the assessing officer occurred as provided by MCL 211.53a. Therefore, petitioner is entitled to recover excess personal property taxes paid during the relevant tax period. See *Ford Motor Co*, 475 Mich at 446-447. The tribunal's decision to the contrary is not supported by competent, material, and substantial evidence on the whole record and must be reversed. See *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998) ("a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an 'error of law' within the meaning of Const 1963, art 6, § 28.") Accordingly, we reverse and remand this matter to the tribunal for entry of a judgment in petitioner's favor.

Reversed and remanded for entry of a judgment in petitioner's favor. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter