

STATE OF MICHIGAN
COURT OF APPEALS

UNIVERSAL WHOLESALE/ANITA, L.L.C.,
Petitioner-Appellant,

UNPUBLISHED
January 31, 2013

v

TOWNSHIP OF ROYAL OAK,
Respondent-Appellee.

No. 305807
Tax Tribunal
LC No. 00-352130

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Petitioner appeals as of right an order denying its motion for summary disposition and granting summary disposition in favor of respondent. We reverse and remand.

Petitioner contends that the Michigan Tax Tribunal (MTT) erred in finding that it did not have jurisdiction to adjust the taxable values for the 2008 and 2009 tax years. We agree.

Review of decisions by the Tax Tribunal is limited. “In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.” The Tax Tribunal’s factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. [*Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012) (citations omitted).]

The MTT found that the property at issue was incorrectly uncapped in the 2007 tax year. However, it concluded that it did not have jurisdiction over the 2007 tax year because petitioner did not file an appeal of the 2007 taxable value within 35 days of receipt of the December 2007 tax bill, there was no evidence that petitioner protested to the July or December board of review regarding the uncapping claim, and there was no evidence that respondent’s assessor took the issue to the July or December board of review. Therefore, it concluded that it could not recalculate the taxable values for the 2008 and 2009 tax years. Petitioner argues that this ruling was erroneous based on the Michigan Supreme Court’s decision in *Mich Props, LLC*.

In *Mich Props, LLC*, 491 Mich at 523-525, the Michigan Supreme Court decided two cases, *Mich Props, LLC v Meridian Twp* and *Toll Northville Ltd Partnership v Northville Twp*. In *Mich Props, LLC*, Meridian Township's assessor failed to uncap the taxable values of the properties at issue for the 2005 tax year after a transfer of ownership in 2004. *Id.* at 525. In October 2006, Meridian Township sent Michigan Properties, L.L.C. a letter indicating that the taxable values for the 2005 and 2006 tax years would be revised. *Id.* at 525-526. The parties entered a consent judgment for the 2005 and 2006 tax years and Meridian Township petitioned the March board of review to adjust the taxable values for the 2007 tax year. *Id.* at 526. The March board of review uncapped the taxable values for the 2007 tax year. *Id.* The MTT granted summary disposition in favor of Meridian Township. *Id.* at 527. The Court of Appeals reversed the MTT and held that the March board of review could not uncap the taxable values. *Id.* The Michigan Supreme Court granted leave to consider "whether the failure of the taxing authority's assessor to adjust the taxable value of real property in the year immediately after a transfer of the property in accordance with MCL 211.27a(3) precludes the board of review from adjusting the taxable value in a later year." *Mich Props, LLC*, 491 Mich at 527 (citation and internal quotation marks omitted).

The Michigan Supreme Court found that the taxable values for the 2005 tax year were erroneous. *Mich Props, LLC*, 491 Mich at 532. The Court held:

[T]he erroneous previous year's values can be corrected for purposes of adjusting the timely challenged 2007 taxable values . . . because a March board of review is authorized and required, pursuant to MCL 211.29 and MCL 211.30, to correct errors in valuation to bring taxable values into compliance with the [General Property Tax Act (GPTA), MCL 211.1 *et seq.*]. To hold otherwise would allow errors in taxable value to run with the property until the next transfer of ownership occurs. [*Mich Props, LLC*, 491 Mich at 532-533.]

The Court further stated:

While MCL 211.29 and MCL 211.30 do not grant a March board of review the authority to alter a previous year's tax rolls, and thus alter previous tax obligations, a March board of review *does* have the power to correct previous errors *for the purpose of* updating the current year's tax rolls. [*Mich Props, LLC*, 491 Mich at 536 (emphasis in original).]

The Court held "that the March board of review correctly brought the 2007 taxable values into compliance with the GPTA by adjusting the current values because of the uncapping of the 2005 taxable values." *Id.* at 537.

In *Toll Northville Ltd Partnership*, Toll Northville Limited Partnership did not challenge the increase in taxable value of the parent property for the 2000 tax year. *Mich Props, LLC*, 491 Mich at 538. Toll Northville Limited Partnership appealed the taxable values of the child parcels for the 2001 tax year in the MTT. *Id.* The MTT found that it lacked jurisdiction to amend the taxable value of the parent parcel for the 2000 tax year because that value was not timely appealed, but prospectively amended the taxable values for the 2001 tax year and subsequent years. *Id.* at 539. The Court of Appeals reversed and held that the MTT did not have jurisdiction

to review a previous year's taxable value in order to determine a timely appealed current year's taxable value. *Id.* The Michigan Supreme Court granted leave to consider "whether the Court of Appeals correctly held that the Michigan Tax Tribunal had no jurisdiction to reduce an unconstitutional increase in the taxable value of property if the improperly increased taxable value was not challenged in the year of the increase." *Id.* at 540 (citation and internal quotation marks omitted).

The Michigan Supreme Court found that the initial taxable value was erroneous and was not challenged in the year it was placed in the tax rolls. *Mich Props, LLC*, 491 Mich at 541. The Court held that under the plain language of the Tax Tribunal Act, MCL 205.701 *et seq.*, the MTT possesses the same powers of correction as a March board of review. *Mich Props, LLC*, 491 Mich at 541. The Court found that the MTT "has the authority to carry out a March board of review's duty to correct a previous erroneous taxable value in order to adjust the current taxable value, thereby bringing the taxable value back into compliance with the GPTA and Proposal A." *Id.* at 544. The Court held that the MTT "has the ability to prospectively adjust the timely challenged taxable values of Toll's parcels for tax year 2001 and subsequent years because the tax year 2000 taxable value of the parent parcel was erroneous as a result of the inclusion of unconstitutional additions." *Id.* at 544-545. The Court also stated that "[a]lthough the Tax Tribunal cannot adjust the tax year 2000 taxable value because of Toll's failure to timely appeal that value, the tribunal can consider data from that year when adjusting the timely challenged 2001 taxable values." *Id.* at 544 n 49.

The MTT found that the taxable value of the property for the 2007 tax year was erroneous because it should not have been uncapped.¹ Respondent does not appear to dispute this determination. Under *Mich Props, LLC*, 491 Mich at 543, the MTT has the authority to correct a previous taxable value in order to adjust the current taxable value. This authority arises once the jurisdiction of the MTT is properly invoked. *Id.* at 524-525. Thus, the MTT had the authority to correct the taxable value of the property for the 2007 tax year in order to adjust the taxable values for the 2008 and 2009 tax years if the MTT had jurisdiction over the 2008 and 2009 tax years.

Petitioner contends that it properly invoked jurisdiction of the MTT over the 2008 tax year when it filed its petition on May 28, 2008. Respondent does not dispute that the MTT had jurisdiction to resolve disputes for the 2008 tax year and subsequent years. Under *Mich Props, LLC*, 491 Mich at 524-525, "[o]nce its jurisdiction is properly invoked, the Tax Tribunal possesses the same powers and duties as those assigned to a March board of review under the GPTA, including the duty to adjust erroneous taxable values to bring the current tax rolls into compliance with the GPTA." Although the MTT could not adjust the 2007 taxable value, as petitioner did not timely appeal that value, it can adjust the 2008 and 2009 taxable values. See *id.* at 544 n 49. The MTT committed an error of law and adopted a wrong principle when it

¹ This determination was based on a finding that the 2006 conveyance was between entities owned by the same individual.

found that it did not have jurisdiction to adjust the taxable values for the 2008 and 2009 tax years. See *id.* at 527-528.

Respondent contends that petitioner's failure to address the issue before the board of review precludes review of the uncapping issue. In the MTT, the parties stipulated that petitioner appeared before the board of review in 2008 to correct the improper uncapping. However, the MTT found no evidence that petitioner protested the uncapping claim to the July or December board of review. According to petitioner, the board of review failed to adjust the erroneous taxable value. According to respondent, the issue was not raised before the board of review at all. In *Mich Props, LLC*, 491 Mich at 538, 541, Toll Northville Limited Partnership did not go before the board of review, yet the Court found that the MTT had the same powers of correction as the board of review. Therefore, petitioner was not required to address the issue before the board of review. The MTT had jurisdiction over the 2008 and 2009 tax years and could adjust the taxable values for those years, even if petitioner did not address the issue before the board of review.

Respondent also claims that "[t]he taxable value is not the issue in the uncapping, rather, it is the assessed value that is 'uncapped' upon a transfer to equal the taxable value," and the Michigan Supreme Court did not determine whether the MTT has the authority to review and change an assessment. However, the Michigan Supreme Court explained that it is the taxable value that is uncapped when property is transferred and held that the MTT has the authority to adjust the taxable values. *Mich Props, LLC*, 491 Mich at 529, 543.

Finally, respondent contends that petitioner's failure to submit a valuation disclosure precluded the MTT from adopting its values and the MTT properly made findings based on the evidence submitted by respondent. However, the MTT was required to correct the taxable value for the 2007 tax year in order to adjust the taxable values for the 2008 and 2009 tax years. See *Mich Props, LLC*, 491 Mich at 524-525. Accordingly, its reliance on respondent's contention of the values for the 2008 and 2009 tax years was erroneous.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Michael J. Kelly