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ROQUEZA NGUJO AND Y AH AK,
Petitioners,

- versus - C.T.A. CASE NO. 177

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - x Feb. 28/58

DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue holding petitioner, Y Ah Ak, liable for the sum of ₱1,584.26 as donor's gift tax, surcharge and interest from May 15, 1952 to December 31, 1954 and petitioner, Roqueza Ngujo, liable for the amount of ₱15,830.13 as donee's gift tax, surcharge, and interest thereon from May 15, 1952 to December 31, 1954, and the sum of ₱3,861.00 as deficiency income tax for 1951, with 50% surcharge.

Petitioners, Y Ah Ak and Roqueza Ngujo, are common-law husband and wife, respectively, having been living continuously as such since 1932. Roqueza Ngujo (also known as Roqueza Yee) is the sole proprietress of the business bearing the trade name Victoria Bakery, located at I. Padilla Street, Cebu City. Y Ah Ak appears to be only an employee of Roqueza Ngujo in the bakery.

Pursuant to an instruction from the Revenue Agent of Cebu City dated September 21, 1953, (Exhibit "8", p. 13, BIR rec.), Revenue Examiners Atilano Gozum and

Minerva Gimeno conducted a joint investigation of the income tax liability of Roqueza Ngujo. Examination of the latter's books disclosed the following facts:

1. That Roqueza Ngujo received from Y Ah Ak from January 1, 1951 to March 27, 1951, the total amount of ₱47,508.00 (Exhibit 2-D-5) which is itemized as follows:

DATE	AMOUNT	
Jan. 1, 1951	₱20,000.00	(Exhibit 2-D-4)
Feb. 27, 1951	10,000.00	(Exhibit 2-D-1)
Mar. 15, 1951	10,000.00	(Exhibit 2-D-2)
Mar. 27, 1951	7,508.00	(Exhibit 2-D-3)
TOTAL ---	₱47,508.00	

2. That said amount of ₱47,508.00 was debited to Y Ah Ak, Personal Account, and credited to "Roqueza Ngujo (Roqueza Yee), Capital" (Exhibit "2-D"); and,

3. That the balance sheet of Victoria Bakery shows that as of December 31, 1951, Roqueza Ngujo, had no outstanding liability to Y Ah Ak (Exhibit "3", p. 7, BIR rec.).

The discovery of the foregoing facts without other explanations led the revenue examiners to conclude that the amount of ₱47,508.00 was donated by Y Ah Ak to Roqueza Ngujo. Consequently, the examiners, on November 24, 1953, filed for petitioners the corresponding donor's and donees gift tax return covering the aforesaid sums. (See Exhibits "15" and "16" pp. 30-33, BIR rec.).

During the same investigation, the revenue examiners allegedly found that Roqueza Ngujo placed into the business an additional investment of ₱25,000.00 (Exhibits "2-A", "2-A-1", "2-A-2", p. 138, of Exhibit "2", General Ledger). As reflected in her income tax return for 1951, (Exhibit "7", pp. 10-10A, BIR rec.) among others she claimed as deductions from her gross income (a) salaries, wages, commissions, etc., amounting to ₱25,122.20; (b) percentage tax for 1947 to 1950, amounting to ₱2,367.49 which was paid only in 1951; and (c) income tax paid in 1951 for the year 1950 in the sum of ₱63.00.

The said examiners gave Roqueza Ngujo ample opportunity to explain the source of the ₱25,000.00 appearing in the General Ledger (Exhibit "2-A", under the caption "ROQUEZA YEE, PERSONAL 1951" (Exhibits "2-A-2", "2-A-1", and "2-A"), as a liability of her business to herself (Exhibit "3", p. 7, BIR rec.). She was also asked to produce the supporting papers and documents of the alleged salaries wages and subsistence of ₱25,122.20 (Exhibits "4" and "4-A", p. 9, BIR rec.) claimed as deduction. However, petitioner Roqueza Ngujo, not only failed to produce the required supporting papers or give a satisfactory explanation, but displayed an antagonistic and uncooperative attitude (Exhibit "13", pp. 23-25, BIR rec.). The examiners found that of the salaries claimed as deduction, the sum of ₱9,081.81 was not supported by vouchers of payment thereof and should thereby be disallowed. In addition the taxes mentioned were also recommended to be disallowed. Based upon the report and recommendation of the examiners, respondent accordingly assessed petitioners, Y Ah Ak and Roqueza Ngujo, as follows:

(1) Y Ah Ak for Donor's Gift Tax (Assessment Notice No. GA-2690-53, Exh. "19", p. 44, BIR rec., Annex B, petition) .... ₱ 1,411.60

(2) Roqueza Nguje, for Donee's Gift Tax (Assessment Notice No. GA-2699-53, Annex "A", petition; Exh. "18", p. 43, BIR rec.) .... ₱14,200.98

(3) Roqueza Ngujo, for income tax (Assessment Notice No. 17-E-5815-51, Annex "C", petition; Exh. "10", p. 16, BIR rec., see also pp. 28-29, BIR rec.) 3,861.00

From these assessments, petitioners filed a request for reconsideration with respondent. Upon denial thereof, petitioners filed their petition for review with this Court. At the time of appeal, respondent had computed petitioners' liability for donor's and donee's gift taxes inthhe sums of ₱1,584.26 and ₱15,830.13, respectively, including the increment thereto. These assessments including the deficiency income tax are detailed as follows:

I Donor - Ah Ak

Donor's gift tax	₱ 925.24
25% ad valorem penalty	231.31
5% surcharge for late payment	46.26
1% monthly interest from 5/15/52 to 12/31/54	291.45
Compromise for no notice of donation..	10.00
Compromise for late payment	20.00
Compromise for late filing	60.00
Total	₱ 1,584.26

II Donee - Roqueza Nguje

Donee's gift tax	₱ 9,752.40
25% ad valorem penalty	2,438.10
5% surcharge for late payment	487.62
1% monthly interest from 5/15/52 to 12/31/54	3,072.01
Compromise for late filing	60.00
Compromise for late payment	20.00
Total	₱15,830.13

III Deficiency Income Tax - Roqueza Ngujo

Net loss per return and C.P.A. Audit Report		₱14,871.10
Add:		
Additional investment (source unexplained)...	₱25,000.00	
Salaries and wages out of ₱25,122.20	9,080.81	
Percentage tax for 1947-1950	2,367.49	
Income tax for 1950	63.00	36,511.30
Net income per verification		₱21,640.20
Less:		
Total amount of personal exemption		6,000.00
Amount of income subject to tax ...		15,640.20
Amount of tax due per Republic Act No. 590		₱ 2,574.00
Add:		
50% surcharge for fraudulent return		1,287.00
Total amount due		₱ 3,861.00

This case was submitted for decision on the basis in part of testimonial evidence and of documentary exhibits and depositions. The issues raised respectively refer to the taxes as numbered above.

The first question turns upon the determination of whether the sum of ₱47,508.00 was a gift or a loan by Y Ah Ak to Roqueza Ngujo. Petitioners contend that it is a loan evidenced by two promissory notes, Exhibits "C" and "D", remaining unpaid up to the present. This pretension is not justified by the evidence. The original entries appearing on pages 9 and 47 of the Columnar Cash Book (Exhibit "1"), and the final entries on pages

137 and 139 of the Ledger (Exhibit "2"), do not support this contention. For ready reference, the final entries in the Ledger are reproduced as follows:

Ledger, page 137 - "Y AH AK, PERSONAL"

(entries on the right hand side)

Jan. 31/51	- Brought forward	- ₱20,000	(Exh. 2-D-4)
Feb. 27/51	- Cash Borrowed	- 10,000	(Exh. 2-D-1)
Mar. 15/51	- " "	- 10,000	(Exh. 2-D-2)
Mar. 21/51	- Purchase paid by Y Ah Ak in cash	- 7,508	(Exh. 2-D-3)
	Total	₱47,508	(Exh. 2-D-5)

(entries on the left hand side)

Mar. 20/51	(J-9)	₱25,351.28	(Exh. 2-D-6)
Dec. 31/51	(J-47)	22,156.72	(Exh. 2-D-7)
	Total	₱47,508.00	(Exh. 2-D-8)

Ledger page 139, "ROQUEZA YEE, CAPITAL"

Jan. 1/51	- Balance Forward	- ₱19,648.72	(Exh. 2-E-3)
Mar. 20/51	- (J-9)	- 25,351.28	(Exh. 2-E-1)
Dec. 31/51	- (J-47)	- 22,156.72	(Exh. 2-E-2)

From the foregoing entries of the Ledger, which are corroborated by the corresponding entries in the columnar cash book, Exhibit "1", it can be readily seen that if the sum of ₱47,508.00 was a loan covered by the promissory notes Exhibits "C" and "D", dated March 3, 1951, and December 31, 1951, respectively, as claimed by Roqueza Ngujo, the proper book entry of the liability arising out of the said notes, would be a transfer from the accounts payable to notes payable account of Roqueza Ngujo. In the case at bar, however, the closing of the "personal account" of Y Ah Ak in the amount of ₱47,508.00 to the capital account of Roqueza Yee (Ngujo) could only be interpreted as a gratuitous cancellation of the liability to Y Ah Ak in favor of petitioner Roqueza

Yee (Ngujo). The alleged promissory notes, Exhibits "C" and "D", must be viewed with caution and skepticism, for the reason that the alleged creditor Y Ah Ak, is the common-law husband of Roqueza Ngujo since 1932. With this very intimate relationship, the concoction of said promissory notes in order to evade taxes is neither surprising nor improbable. As a matter of evidence, the probative value of said notes is practically nil for the reason that although the bakery business is apparently in the name of Roqueza Ngujo as her exclusive enterprise, the truth is that it is a joint business venture of petitioners, who admittedly are common-law husband and wife. The urge to pretend that the amount of ₱47,508.00 was advanced by way of loan, thereby obviating the payment of tax thereon, is irresistible.

We note that, despite the relatively big amount involved, the promissory notes were written in a small piece of paper, charging no interest, and fixing no date of maturity. These circumstances belie the claim of loan.

Considering that the transfer of the amount of ₱47,508.00 by Y Ah Ak to Roqueza Ngujo, is without any consideration, and that donative intent is evident from the relationship of common-law husband and wife existing between the petitioners and from the circumstances appearing on the purported promissory notes, the conclusion is logical that the transfer of ₱47,508.00 was a gift and not a loan.

In this case, the presence of the two factors regarding discharge of indebtedness as a taxable gift are found, namely: (a) an intent to benefit the debtor or donative intent, and (b) the absence of consideration (see Paul, Federal Estate and Gift Taxation, sec. 16.07, p. 1092). The fact that the motives leading to the cancellation of the loan, assuming for the sake of argument that it is thus, were those of business or even selfish, is not significant. The transfer, cancellation, or forgiveness being gratuitous, for lack of satisfactory and convincing evidence to the contrary, it is a release of something to the debtor for nothing. The consequence must be that it is a gift and not a loan (Helvering v. American Dental Co. 318 U.S. 322, 87 L. Ed. 785, 791). While it may be stated in passing that the donation may, under the circumstances, be of doubtful validity under civil law, the law goes into the realities and substance of the transaction disregarding for this purpose, the validity and form thereof.

With regard to the second question — the deficiency income tax — petitioners challenge the legality of the respondent's decision (a) holding that the additional investment of ₱25,000.00 represent undeclared income for 1951, and (b) disallowing the following deductions:

Salaries and Wages	₱9,081.81
Percentage tax for 1947 to 1950..	2,367.49
Income tax for 1950 paid in 1951.	63.00

On page 138 (Exhibit "2-A") of the General Ledger (Exhibit "2"), appears the following entry:

ROQUEZA YEE, PERSONAL, 1951

Jan. 1 - Balance Forward - ₱10,000 (Exh. 2-A-2)
Dec. 16 - Cash - 15,000 (Exh. 2-A-1)

In connection with the above, petitioner Roqueza Ngujo claims that the ₱25,000.00 came from earnings made in her sari-sari business before the war, and, therefore, the same cannot be taxed as undeclared income in 1951. Respondent maintains that the petitioners failed to present evidence or offer explanations regarding the source of said ₱25,000.00 during the investigation of their income tax liability. Consequently, on the basis of the financial statements filed by her with her income tax for 1951, respondent assessed the sum of ₱25,000.00 as undeclared income for 1951.

We are satisfied with petitioner Roqueza Ngujo's evidence, documentary and testimonials, that the sum of ₱10,000.00 appearing in on page 138 (Exhibit "2-A") of the General Ledger (Exhibit "A") as balance forwarded as of January 1, 1951 cannot constitute undeclared income for 1951. At the most, although we are not necessarily so deciding, it could probably have been earned prior to 1951. The fact that it was a balance carried forward to 1951 presupposes that it was existing prior to 1951 and not income in 1951. It cannot, therefore, be subject to income tax in 1951. However, with respect to the amount of ₱15,000.00 appearing as cash invested on December 16, 1951, we find the evidence of petitioners not satisfactory nor adequate to substantiate the claim that the amount represented income derived prior to 1951. On the other hand, considering that it was a realized asset or investment only in 1951 it necessarily follows that it was earned only in that year. Hence, respondent's decision in this respect must accordingly be sustained.

Regarding the amount of ₱9,081.81 for alleged salaries and wages, which was disallowed by respondent as deduction, petitioner likewise failed to present satisfactory evidence that it was in fact incurred. The explanation that such supporting papers were destroyed by typhoon Amy is belied by petitioner Roqueza Ngujo's own admission in a sworn affidavit before Notary Public Mr. Daniel Tumulak on January 10, 1952, that only records for the year 1947, 1948 and 1949 were destroyed.

Tax assessments are presumptively correct, and he who assails their correctness has the burden or duty of proving that they are erroneous (Eugenio Perez v. Court of Tax Appeals, G. R. No. L-9193, May 29, 1957; Interprovincial Autobus Co., Inc. v. Collector, G. R. No. L-6741, January 31, 1956; Bohol Land Transportation Co. v. Collector, C.T.A. No. 261, Sept. 25, 1957).

Relative to the sum of ₱2,367.49 representing percentage tax from 1947 to 1950, the deduction of which as aforestated, was denied by respondent, petitioner Roqueza Ngujo argues that it could not have accrued before the tax year 1951 because she did not know her liability therefor until its discovery by respondent and payment by her on October 9, 1951. We agree with petitioner that said amount of ₱2,367.49 did not accrue before 1951 for the reason that she did not know her liability therefor. It was only when such liability was discovered and recognized on October 9, 1951 by payment thereon that it accrued. Even granting that she could have known such liability before 1951, the fact that in the returns filed by petitioner Roqueza Ngujo for the years 1947 to 1950 this amount was excluded, such circumstance is tantamount to a denial by petitioner of her liability therefor or equivalent to contesting any liability for taxes beyond that which she has declared as her obligation for the years 1947 to 1951. In fact, a compromise agreement form had to be signed by her in 1951 for the purpose of terminating a projected litigation of taxes (see 2028, Civil Code). Since she denied liability for and failed to pay the said percentage tax during the years 1947 to 1950, petitioner, therefore, was not in a position to treat the ₱2,367.49 as an accrued obligation or claim until its payment in 1951 (see Security F. M. Co. v. Commissioner of Internal Revenue, 321 U.S. 281, 284, 88 L. Ed. 725, 728).

We now come to the question involving the sum of ₱63.00 representing income tax for 1950, which was paid in 1951, and claimed as deduction during this latter year. (Exhibit "E", p. 139, C.T.A. rec.). Apparently, the petitioner has abandoned her objection to this disallowance as no argument has been adduced in her memorandum in this regard. However, it must be stated that the disallowance is justified under Section 30-c of the Revenue Code which provides that in the computation of net income there shall be allowed as deduction taxes paid or accrued within the taxable year, except among others, income tax provided for under Title II (Income Tax Law) of the National Internal Revenue Code.

The penultimate issue refers to the imposition of the 50% fraud penalty on the income tax of petitioner Roqueza Ngujo for the tax year 1951. The imposition is well taken. The taxpayer has intentionally suppressed in her income tax return for 1951 (Exhibit "7") her income of ₱15,000.00 in that year and which constituted an additional investment in her business. To mislead the government from properly assessing her tax liability, she caused said amount to appear as a current liability of her business to herself as of December 31, 1951 (Exhibit "3"). To further camouflage her true income tax liability she inflated her operating expenses particularly those referring to salaries and wages. Upon the examination of her records and accounts then conducted by the revenue examiners, she refused to produce the payrolls, vouchers, and other records of her business for the year 1950, by pretending that they were lost because of typhoon Amy, the inveracity of which pretension is borne out by her own sworn statement before Notary Public Mr. Daniel Tumulak on January 10,1952. All these circumstances prove her intent to defraud the government by making a false return and thus justify the imposition of the 50% fraud penalty.

However, with respect to the last question as to whether or not petitioner may be compelled by this Court to pay the compromise penalty, we have repeatedly held that a compromise essentially contemplates an agreement. It follows that, as we have uniformly held, this Court is without jurisdiction to compel a taxpayer to pay the compromise penalty (Soledad R. Sriñas v. Collector of Internal Revenue, C.T.A. No. 16, September 14, 1955; see also Bohol Land Transportation Co. v. Collector of Internal Revenue, C.T.A. No. 261, September 25, 1957 and all the cases cited in Ellen Wood McGrath v. Collector of Internal Revenue, C.T.A. No. 289, July 5, 1957).

In sum, petitioners' liabilities for donor's and donee's gift as well as the deficiency tax is computed as follows:

DONOR - AN AK

Donor's gift tax	₱ 925.24
25% ad valorem penalty	231.31
5% surcharge for late payment ..	46.26
1% monthly interest from 5/15/52 to 12/31/54	291.45
TOTAL	₱1,494.26

DONEE - ROQUEZA NGUJO

Donee's gift tax	₱ 9,752.40
25% ad valorem penalty	2,438.10
5% surcharge for late payment ..	487.62
1% monthly interest from 5/15/52 to 12/31/54	3,072.01
TOTAL	₱15,780.13

DEFICIENCY INCOME TAX - ROQUEZA NGUJO

Net Loss per return		₱14,871.10
Add:		
Additional investment	₱15,000.00	
Salaries and Wages	9,080.81	
Income Tax for 1950	63.00	24,143.81
Net income per verification		₱ 9,272.71
Less: Total amount of Personal Exemption		6,000.00
Amount of income subject to tax		₱ 3,272.71
Amount of income tax due (₱201.82)		₱ 202.00

WHEREFORE, the decision appealed from is hereby modified. Petitioner Roqueza Ngujo is hereby ordered to pay respondent the sums of ₱15,780.13 as donee's tax, plus interest from January 1, 1955 up to the date of payment and ₱202.00 as deficiency income tax for 1951, plus 50% fraud penalty. Petitioner Y Ah Ak is also hereby ordered to pay respondent the sum of ₱1,494.26 as donor's tax, plus interest from January 1, 1955 up to the date of payment. With costs to petitioners.

SO ORDERED.

Manila, February 28, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Not appealed.