ESTATE OF WILLIAM J.
SHAW and WACK WACK GOLF &
COUNTRY CLUB, INC.,
Petitioners,

versus

CTA CASE NO. 779

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Internal Revenue demanding from petitioners, Estate of William J. Shaw and Wack Wack Golf & Country Club, Inc., payment of deficiency donor's and donee's gift taxes of ₱200,998.44 and ₱1,364,767.61, respectively, inclusive of the 50% surcharge and interests incident to delinquency, as well as the compromise penalty for the failure to file a notice of donation and the late filing of the gift tax returns.

The facts of the case are not disputed.

Petitioner, Estate of William J. Shaw (hereinafter referred to as the "Estate") is a trust created by, established and administered pursuant to the last will and testament of the late William J. Shaw, which was duly admitted to probate on April 15, 1939 by the Court of First Instance of Manila in Civil Case No. R-54622, entitled "Testate Estate of William J. Shaw, deceased"; while petitioner Wack Wack Golf & Country Club, Inc. (hereinafter referred to as the "Club") is a duly registered domestic corporation organized and operated as an athletic and social club with office and clubhouse at Mandaluyong, Rizal. On April 22, 1949 the Estate, through its administrators and trustees, executed a deed of donation in favor of the Club whereby it transferred and conveyed to the latter 36 parcels of land located in the Municipality of San Felipe Neri, Rizal (now Mandaluyong and Quezon City) particularly described and subject to the conditions and restrictions specified in the said deed of donation which read as follows:

> PROVIDED, NEVERTHELESS, that this gift is made upon the following conditions and stipulations, the due observance of which is essential to the validity and continuance of this grant.
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> The said Wack Wack Golf and Country Club, Inc., in taking under this instrument and in accepting this donation, agrees:
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> 1. That thirty-three (33) of the thirty-six (36) parcels of land above-described, to wit: those covered by Transfer Certificates of Title Nos. 244, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872,

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873, 874, 875, 876, 877, 888, 889, 890 and 891 shall be used as part of the golf course of the Club; and the remaining three (3) parcels of land, to wit: those covered by Transfer Certificates of Title Nos. 38107, 38826 and 40935 shall be used for the purpose of completing the "SHAW MEMORIAL PARK" as now contemplated by the Club. To that end, said Club shall never use said property and premises for any other purpose than as herein stated, and any other use thereof shall work as a forfeiture of this gift.

2. That said property, nor any part thereof, shall never be commercialized, sold, exchanged, mortgaged, or otherwise encumbered by the said Club, without the consent of the Trustees of William J. Shaw or their successors in interest, such consent to be evidenced by a public document.

3. That the said Club shall provide annually a sufficient fund for the maintenance and care of the "SHAW MEMORIAL PARK" by which name it shall ever be known to perpetuate the memory of the late William J. Shaw, and keep the same in a trim and tidy condition with such ornament of trees, shrubs, and flowers as will make it attractive to the eye and conducive to the health, happiness and good morals of the community.

4. That such said "SHAW MEMORIAL PARK" will be policed as to shield it from depredation and vandalism or so as to prevent disorder and misbehavior therein and thereabout, and thereby make it a safe and proper place for the resort of the general public including women and children.

5. That the late William J. Shaw, having expressed during his lifetime an aversion to gambling in the Club premises, the Club shall prohibit and shall not tolerate gambling in its present premises or any premises that hereafter it may acquire.

6. That the Club and the ESTATE OF WILLIAM J. SHAW shall bear their respective shares of the gift taxes that may be assessed and collected by the Government on this donation.

7. That, if the Club shall cease to exist as a corporation or, upon the expiration of its corporate existence, shall not be re-incorporated for substantially the same purposes as those specified in its constitution and by-laws, or shall distribute its assets among its members, the land hereby given and conveyed shall revert and be re-conveyed forthwith to the Trustees of the ESTATE OF WILLIAM J. SHAW, or their successors in interest, free of all liens and encumbrances of every nature and description.

Failure on the part of the said Club, the Donee herein, to keep and observe any one of the terms or conditions attached to this gift shall entitle the Trustees of the ESTATE OF WILLIAM J. SHAW, or their successors in interest, at any time after such omission or breach, to declare the gift forfeited, and then and thereupon said premises and property and all right, title and interest therein shall revert to the ESTATE OF WILLIAM J. SHAW, the Donor of this gift. It is distinctly understood and agreed that no lapse of time shall be considered a waiver of such terms and conditions.

By a separate instrument also dated April 22, 1949, the Club, through its then president and secretary, Messrs. Eulogio Rodriguez, Jr. and A. P. Reyes, accepted the above-mentioned donation subject to all the terms, conditions and stipulations imposed therein.

Sometime after March 1, 1950 but before April

13, 1950, the Estate and the Club, through their respective representative, filed with the Bureau of Internal Revenue the corresponding donor's and donee's gift tax returns. The aggregate book value of the 36 parcels of land donated was declared therein at ₱61,810.25 of which ₱50,651.00 represented the purchase price in 1946 of the 33 parcels of land with a total area of 265,918 square meters and transferred to the Club for use as part of its golf course, and ₱11,159.25 represented the purchase price of the remaining 3 parcels of land with a total area of 5,015 square meters and given to the Club for conversion into the "Shaw Memorial Park." On the basis of the said gift tax returns, respondent issued on July 27, 1950 provisional gift tax assessment notices numbered GA-1062-49 requiring petitioners to pay ₱1,064.66 and ₱9,865.73 as partial settlement of the donor's and donee's gift taxes, respectively, inclusive of the 25% surcharge, interests and compromise penalties, pending examination and investigation of the said returns. The gift taxes in the provisional assessment notices were computed on the basis of ₱61,810.25 representing the book value of the properties donated.

Believing that they were not liable to the surcharge, interests and penalties incident to delinquency declared in the said provisional assessment notices, petitioners paid on August 31, 1950 only ₱805.19 and ₱7,662.05 corresponding to the basic donor's and donee's gift taxes, respectively. Subsequently, in two separate letters, petitioner requested the condonation of the surcharge, interests and compromise penalties. Respondent, however, denied the said request and the subsequent request for reconsideration thereof. In the meantime, respondent ordered an investigation of the gift tax case.

On February 23, 1959, after the lapse of about nine years, Revenue Examiner Arturo Miranda submitted a report to the Provincial Revenue Officer, Quezon City, wherein he stated that the 36 parcels of land donated to petitioner Wack Wack Golf & Country Club, Inc., were classified as residential lots and assessed at ₱150,600.00 in accordance with the 1949 tax rolls of the Office of the Provincial Assessor, Pasig, Rizal. For gift tax purposes, however, the said revenue examiner appraised the fair market value of the said properties at ₱1,752,904.00, computed on the basis of ₱6.47 per square meter, alleging that it was the average selling price per square meter of land as shown by a number of coeval sales within the six-month period from April 22, 1949 (when the deed of donation was executed), as gathered from the records of the Register of Deeds, Pasig, Rizal.

On the basis of his appraisal, Revenue Examiner Miranda recommended that the aggregate amount of ₱1,376,889.73 be assessed against petitioners as deficiency donor's and donee's gift taxes, inclusive of the 25% surcharge, interests and compromise penalties. Accordingly, the Provincial Revenue Officer of Quezon City notified petitioners of the proposed assessment for deficiency donor's and donee's gift taxes amounting to ₱1,376,889.73, after crediting the payments already made. The said official also advised petitioners to appear at his office for an informal conference and present their objections, if any, to the proposed assessment.

At the conference held on March 31, 1959, petitioners manifested their objections to the proposed deficiency gift tax assessments. On June 4, 1959, they filed a memorandum contesting the appraised value of the land in question at ₱1,752,904.00 and alleged, among others, that the right of the Government to assess the deficiency gift taxes had already prescribed. After receipt of petitioners' memorandum, respondent transmitted the same and the records of the case to the Chief, Income Tax Division, with the observation that there appeared in the records of the case sufficient proof to warrant the application of the statutory period of ten years within which to assess the deficiency gift taxes. Consequently, he directed the recomputation of the proposed deficiency gift tax assessments by including the 50% surcharge as fraud penalty, instead of the 25% surcharge as originally assessed. Thereafter, on August 25, 1959, respondent demanded from petitioners payment of ₱200,998.44 and ₱1,364,-767.61 as deficiency donor's and donee's gift taxes, respectively, inclusive of the 50% surcharge, 1% and ½% monthly interests, and compromise penalties. Assessment notices were enclosed in the letters of demand mentioned above.

On October 2, 1959, petitioners received respondent's letter of August 25, 1959. On October 14, 1959 petitioners requested that the deficiency gift tax assessments be reconsidered and cancelled on the ground that (1)the fair market value of the 36 parcels of land as reported by respondent's examiner was incorrect and excessive; (2) the declaration in the gift tax returns of the purchase price of ₱61,810.25 as the value of the properties donated was proper and justified in the light of the conditions and circumstances of the case and, therefore, the said returns are not fraudulent; and (3) the right of the Government to assess and collect the deficiency gift taxes in question had already prescribed. In the said letter, petitioners also requested, and were granted, a period of fifteen (15) days within which to submit a memorandum in support of their contentions. On October 30, 1959, petitioners' memorandum was filed with respondent.

In a letter dated March 8, 1960, which was received by petitioners on March 30, 1960, respondent denied petitioners' request for reconsideration of the assessment and reiterated his demand for payment of the deficiency donor's and donee's gift taxes of ₱200,998.44 and ₱1,364,767.61 respectively, plus penalties incident to delinquency. On April 11, 1960, Mr. Gregorio S. Licaros, then president of Wack Wack Golf & Country Club, Inc., in representation of petitioners, requested a period of thirty (30) days within which to submit a new memorandum in support of petitioners' request for reconsideration. The said request was granted by respondent, but before the submission of the supplemental memorandum on May 5, 1960, petitioners filed with this Court on April 22, 1960 a petition for review.

The issues presented by the parties to this Court for resolution are the following:

1. Whether or not the right of respondent to assess petitioners for deficiency donor's and donee's gift taxes has prescribed under Section 331 of the National Internal Revenue Code, in relation to Section 332(a) of the same Code; and

2. Whether or not the deficiency donor's and donee's gift tax assessments of ₱200,992.44 and ₱1,364,-767.61, respectively, inclusive of the 50% surcharge, interests and penalties incident to delinquency, are justified and legal.

Respondent admitted in his Answer that the donor's and donee's gift tax returns must have been filed by petitioners with the Bureau of Internal Revenue after March 1, 1950 but prior to April 13, 1950. Since the deficiency gift tax assessments were issued by respondent only on August 25, 1959 (BIR rec. pp. 154-155), petitioners now contend that the said tax assessments have already prescribed under Section 331 of the National Internal Revenue Code which provides as follows:

> SEC. 331. Period of limitation upon assessment and collection.— Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply

> to cases already investigated prior to the approval of this Code.

Respondent counters by alleging that the donor's and donee's gift tax returns filed by petitioners were fraudulent and, therefore, he has ten (10) years from the discovery of the fraud within which to assess the gift taxes under Section 332(a) of the Revenue Code. Since fraud was allegedly discovered by respondent's examiner on February 23, 1959, respondent claims he has a period of ten (10) years up to February 23, 1969 within which to assess the deficiency donor's and donee's gift taxes.

In sustaining the existence of fraud, respondent alleges and argues as follows:

> . . . It may be noted that the valuation declared in the returns were even smaller than the assessed value of the land donated which was ₱150,600.00. (Exh. 3) The failure of the petitioners to declare in the returns at least the assessed value of the land indicates a deliberate intent to evade the payment of the correct donor's and donee's gift taxes. Petitioners, knew fully well that the valuation of ₱61,810.25 is not the assessed value but the value of the land way back in 1939. Moreover, the under-declaration of the value of the donated property at ₱61,810.25 as against its fair market at the time of the donation of ₱1,752,904.00 is so glaring as to compel a finding of existing intent to defraud. Considering the intelligence of the taxpayers and their counsels, the discrepancy of more than 100% between the fair market value and

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> the reported value of the property strongly indicated fraud. The under-declaration cannot be attributed to an honest mistake or more difference in opinion. The intent to evade the payment of legitimate taxes is apparent. (Respondent's Memo., p. 14, CTA rec. p. 257.)

In short, respondent considered that the donor's and donee's gift tax returns filed by petitioners were fraudulent because they failed to declare therein at least the assessed value of the land. He also considered that the declared value of the donated property at ₱61,810.25, as against the reported fair market value of ₱1,752,-904.00 at the time of the donation indicates that petitioners' intended to defraud the Government of its revenue. Inferentially, this argument is based on petitioners' failure to declare in the return the assessed value of the land in question. Oddly, however, respondent also considered that the staggering and huge discrepancy between the fair market value and the reported value of the said land constitutes fraud because petitioners failed to declare in the gift tax returns the alleged fair market value of the land at ₱1,752,-904.00. Respondent concluded, therefore, that the under-declaration cannot be attributed to honest mistakes or mere differences of opinion inasmuch as the omission of petitioners represents a wilfull intent to evade the payment of gift taxes.

Respondent's conclusion that fraud was committed by the petitioners in filing the donor's and donee's gift tax returns is predicated on Section 113 of the National Internal Revenue Code which provides as follows:

> SEC. 113. Valuation of gifts made in property.—If the gift is made in property, the fair market value thereof at the time of the gift shall be considered the amount of the gift: Provided, That in case of real property, the assessed value in the year of the gift as shown in the tax rolls shall be considered as the fair market value, unless the contrary is shown.

Under the foregoing provisions of the Tax Code, the assessed value of the land in the year the gift was made shall be considered as the fair market value, unless the contrary is shown. The declaration of the assessed value of the donated real property in the gift tax returns is not a mandatory requirement of the law because the taxpayers (petitioners herein) can declare in the said returns a valuation other than the assessed value of the land if they considered that the fair market value thereof is either higher or lower than its assessed value. A valuation of real property lower than its assessed value must, however, be based on reasonable grounds and not arbitrarily. In the case at bar, petitioners have declared in the gift tax returns the book value or purchase price of the donated real property which is lower than the assessed value thereof. Said declarations are not per se fraudulent simply because respondent Commissioner of Internal Revenue and his examiners considered and adopted a very much higher valuation. After all, the term "market value" is not an absolute term; it involves human equation. Valuation of real property is an inexact science and the determination thereof by whatever method must remain an approximation. A valuation of absolute accuracy is impossible. This impossibility of precise valuation is generally recognized; the law is not so exact as to require mathematical certainty (City of Manila v. Estrada, 25 Phil. 208; Manila Railroad Co. v. Velasquez, 32 Phil. 286; Manila Railroad Co. v. Alano, 36 Phil. 506; see Comm. of Corporations & Taxation v. Worcester County Trust Co., 305 Mass. 460, 26 N.E. 2d 305).

The staggering difference between the fair market value arrived at by the respondent and the value adopted by the petitioners is inconsequential in the determination of fraud for gift tax purposes. The alleged huge underdeclaration of value represents a mere conflict of opinion between the party litigants but the said irreconcilable disagreement in valuation does not amount to fraud in the absence of satisfactory proof. In the instant case, while respondent claims that the gift tax returns filed by petitioners were fraudulent, the said returns or any signed or simple copy thereof cannot be found in the Bureau of Internal Revenue records submitted to this Court. It is true that the law provides that the assessed value of real property is its minimum value for gift tax purposes but, in the absence of fraudulent intent to evade the gift taxes, no legal and valid justification warrants the imposition of the 50% surcharge as fraud penalty.

It is a cardinal rule in taxation that fraud is a question of fact and the circumstances constituting it must be alleged and proved (Commissioner of Internal Revenue v. Gonzales, et al., G.R. No. L-19495, November 24, 1966). Fraud is never presumed because it is a serious charge (Yutivo Sons Hardware Co. v. Court of Tax Appeals, et al., G.R. No. L-13203, Jan. 28, 1961); it must be alleged and proved, at least satisfactorily if not conclusively by one who alleges its existence (De Roda v. Balk, 48 Phil. 104; De Santos v. Bank of the P. I., 66 Phil. 38; Menzi & Co. v. Bastida, 63 Phil. 16; Arroyo v. Granada and Gentero, 18 Phil. 484; Gomez v.

Domingo, CTA Case No. 1168, Feb. 15, 1964). Moreover, the burden of proof in tax cases involving fraud will not be sustained where respondent introduces no affirmative evidence but rests only on inferences to be drawn from collateral facts (Balter, Fraud under Federal Tax Law, par. 112, 1953 ed.; Ayala Securities Corporation v. Commissioner of Internal Revenue, CTA No. 1346, June 20, 1968). And since a "false or fraudulent return with intent to evade tax" involves a state of mind, there must be an actual evil motive or intent to evade taxes or wilfully acted contrary to the truth and with the taxpayer's knowledge of the falsity of the declaration. To be considered are all of the facts and circumstances incident to the preparation of the alleged fraudulent return (Balter, Fraud under Federal Tax Law, par. 113, 1953 ed.). Accordingly, we cannot subscribe to the theory of respondent that petitioners committed fraud.

We find that respondent has failed to prove that petitioners wilfully filed false and fraudulent gift tax returns with the intent to evade gift taxes. We will apply, therefore, the prescriptive period of five (5) years embodied in Section 331 of the Tax Code, <u>supra</u>. As the donor's and donee's gift tax returns have admittedly been filed with the Bureau of Internal Revenue after March 1, 1950 but prior to April 13, 1950 (par. 5, Respondent's Answer, CTA rec. pp. 50-51), respondent has the right to assess the deficiency gift taxes not later than April 13, 1955. The disputed assessments in question having been issued by respondent on August 25, 1959, or more than five (5) years from the date the gift tax returns were filed, the right of the government to assess the deficiency gift taxes had already prescribed. Consequently, it is purposeless to resolve the second question at issue by going into the merits of the case.

As regards the compromise penalties for failure to file a notice of donation and late filing of the gift tax returns, it is already well-settled jurisprudence that the Commissioner of Internal Revenue does not have the authority to impose such penalties without the consent of the taxpayer (Coll. v. U.S.T., G.R. Nos. L-11274 & L-11280, Nov. 28, 1958; Coll. v. Bautista, G.R. No. L-12250, May 27, 1959; Phil. Int. Fair v. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962).

WHEREFORE, the decision of respondent Commissioner of Internal Revenue, assessing and demanding from petitioners, Estate of William J. Shaw and Wack Wack Golf & Country Club, Inc., payment of ₱1,565,776.05 consisting of deficiency donor's and donee's gift taxes in the sums of ₱200,998.44 and ₱1,364,767.61, respectively, inclusive of 50% surcharge and interests, is reversed. Accordingly, said assessments of respondent are hereby cancelled and declared of no force and effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 23, 1968.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

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