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Republic of the Philippines
COURT OF TAX APPEALS
Manila

February 28, 1964

BEATRICE M. STEVENSON,
BETTINA S. FISHER and
DOUGLAS FISHER,
Petitioners,

- versus - C.T.A. CASE NO. 371

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - x

DECISION

The respondent assessed against the petitioners donor's and donees' gift taxes, plus surcharges, interest and "compromise" penalties, in the aggregate amount of ₱8,603.93. The said amount was paid under protest, and petitioners' claim for refund thereof having been denied, they have appealed to this Court.

The facts of the case have been correctly stated in the memorandum of counsel for the Government, from which we quote:

> Petitioner Beatrice M. Stevenson is the widow of the late Walter G. Stevenson who willed all his estate to her. Petitioners Douglas Fisher and Bettina S. Fisher are her son-in-law and daughter, respectively. Petitioners are non-resident American citizens.
>
> On December 1, 1952, in California, U.S.A., Beatrice M. Stevenson executed a Deed of Assignment (Exh. "B") whereby she assigned in favor of Douglas Fisher and Bettina S. Fisher 177 shares in Cañacao Estate, Inc.; accounts receivable on the balance of the selling price of certain real property situated in Baguio City in the sum of ₱54,000.00; and a contingent recovery of estate and inheritance taxes in the sum of ₱14,178.30 sought to be refunded in Civil Case No. 23029 (G. R. Nos. L-11622 and

L-11668, January 28, 1961). For ready reference, the aforesaid Deed of Assignment is hereunder quoted:

"DEED OF ASSIGNMENT

"KNOW ALL MEN BY THESE PRESENTS:

"For value received, I, BEATRICE MAURICIA STEVENSON, widow, of legal age, and with residence at Carmel, California, U.S.A., hereby assign unto the spouses Douglas and Bettina Fisher, with residence at Carmel, California, all my rights, interests and participation in, whether belonging to me as my personal share or any inheritance from the Estate of Walter G. Stevenson (Special Proceedings No. 13838, Court of First Instance of Manila, Philippines), the properties more particularly described as follows:

a) 177 shares of Cañacao Estate, Inc.;

b) Accounts receivable on account of balance of selling price of real properties situated at Baguio City, Philippines in the sum of ₱54,000.00; and

c) Contingent recovery from the Collector of Internal Revenue of the Philippines - ₱14,178.30.

"It is hereby understood that this Deed of Assignment shall take immediate effect as of the date hereof, and is subject to the approval of the Central Bank of the Philippines insofar as remittances on account thereof to my assignees in U.S. dollars is concerned.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my signature this 1st day of November, 1952.

s/ Beatrice Mauricia Stevenson
t/ BEATRICE MAURICIA STEVENSON"

The recovery of the above-mentioned contingent amount of ₱14,178.30, subject matter of the above-mentioned Civil Case No. 23209, was remanded to the Court of Tax Appeals, pursuant to Section 22 of Republic Act No. 1125, where the court ruled in favor of the petitioners. On appeal to the Supreme Court, the decision of the Court of Tax Appeals was reversed in part (G. R. Nos. L-11622 and L-11668, promulgated January 28, 1961) in that while the Supreme Court sustained the claim of the petitioners therein with respect to certain allowable deductions and valuation of the shares of stock, the question of reciprocity between our Section 122 of the Tax Code and the law of California on inheritance tax was reversed, thereby resulting in the disallowance of the refund relative thereto. As a result of the aforestated decision of the Supreme Court the original amount of ₱14,178.30 sought to be refunded was reduced to ₱12,163.77, as per computation made by the Office of the respondent (Exh. BB).

On the basis of the above-mentioned Deed of Assignment executed on December 1, 1952 (Exh. B), respondent assessed the gift taxes, under authority of Section 111 of the Tax Code, in the total amount of ₱8,089.81, which petitioners paid on December 18, 1956 (paragraph 11 of Petition and paragraph 2 of Answer).

The assessments in question were based on a gross gift of ₱55,770.00. Of the said amount, ₱54,000.00 represents the balance of the selling price of the real properties in Baguio City and the balance of ₱1,770.00 represents the fair market value of the shares of stock of the Cañacao Estate, Inc. at ₱10.00. The sum of ₱14,178.30 was excluded because the same was the subject matter of a litigation. The fair market value of the properties of the estate received by Beatrice M. Stevenson by way of inheritance as determined by the respondent amounted to ₱140,000.-00 (Exh. "M").

The claim for refund of the above-stated amount having been denied by the respondent in a letter dated March 28, 1957 in which was also demanded the total sum of ₱620.94 as deficiency donor's and donee's gift taxes, (Exh. 5, pp. 83-85, BIR Rec.) petitioners filed a petition for review on March 7, 1957. (See pp. 1-3, Memorandum for Respondent, Dec. 12, 1963.)

By deed of assignment of November 1, 1952, Mrs. Stevenson transferred to her daughter, Bettina S. Fisher, and son-in-law, Douglas Fisher, 177 shares of Cañacao Estate, Inc. valued at ₱1,770.00; accounts receivable on account of the balance of the selling price of real property situated at Baguio City in the sum of ₱54,000.00; and the sum of ₱14,178.30, representing a claim for refund of overpaid estate and inheritance taxes which was then still pending settlement. In the original assessment for donor's and donees' gift taxes against petitioners, the contingent claim of ₱14,178.30 was not included. The case involving the claim for refund was finally decided in Collector v. Fisher, G. R. Nos. L-11622 and L-11668, Jan. 28, 1961, which reduced the amount refundable from ₱14,178.30 to ₱12,163.77. Accordingly, respondent is now claiming an additional deficiency donor's and donees' gift taxes in the total amount of ₱3,563.58 on the basis of the total value of the property transferred in the sum of ₱67,933.77 without any deduction. (See pages 14-15, Memorandum for Respondent.)

Petitioners contend that the transfer of the property described above by deed of assignment from Mrs. Stevenson to her daughter and son-in-law is not a gift subject to gift taxes on the following grounds:

> 1. The transaction between Mrs. Stevenson and the Fisher spouses as contained in the deed of assignment is not a donation in legal contemplation; consequently, no gift tax is assessable;
>
> 2. Assuming that the assignment is taxable, still no gift tax is payable since the deed of assignment is supported by adequate and full consideration;
>
> 3. This Court has no jurisdiction over the subject matter of the case; and
>
> 4. There is no reason to impose a gift tax.

On the other hand, respondent contends that the transfer of the property in question by Mrs. Stevenson to her daughter and son-in-law is a gift and is subject to donor's and donees' gift taxes under Section 111 of the National Internal Revenue Code.

The evidence shows that at the time of the execution of the deed of assignment, Mr. and Mrs. Fisher had already advanced to or for the account of Mrs. Stevenson the sum of $23,468.26 (Exhs. D and 1, p. 15, B.I.R. records; Exhs. S, S-1 to S-3 presented in Manila Civil Case No. 23029 (G. R. Nos. L-11622 & L-11668, Fisher v. Coll. of Int. Rev.), pp. 118-124, C.T.A. records), and that in addition to the said amount Mr. and Mrs. Fisher agreed to support Mrs. Stevenson for the rest of her life (Exhs. Z and 9, pp. 130-140, C.T.A. records). While these facts are not disputed, respondent insists that the deed of assignment was not made for adequate and full consideration in money or money's worth, and therefore taxable as a gift under Section 111 of the Revenue Code.

For convenience, Section 111 of the Revenue Code is quoted below:

> "SEC. 111. Transfer for less than adequate and full consideration.- Where property is transferred for less than an adequ ate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

Section 111 of the Revenue Code, quoted above, provides that where property is sold or transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration shall be deemed a gift which is subject to the gift taxes. The rule has been correctly stated by counsel for the Government in their memorandum, to wit:

> The aforesaid provision of law simply states that where in the case of transfer, the consideration fails to balance, the excess of the value over the consideration of the property transferred is deemed a gift. "x x x. The requirement of donative intent is thus rendered superfluous. The statute itself states that where the consideration fails to balance, the excess is 'deemed a gift'." (Paul's Federal Estate and Gift Taxation, Vol. II, p. 1511.)
>
> > "A donative intention in making transfer of property possessing value in excess of value of consideration given therefor is unnecessary to render transfer subject to federal gift tax." (Comm. vs. Greene, 27 AFTR 383).
>
> Thus, contrary to the assertion of petitioner, the essential requirements of bona fide gift <u>inter vivos</u> could not be applied to transfers under Section 111 of the Tax Code. (Page 5, Memorandum for Respondent.)

But while the rule has been correctly stated, it has unfortunately been misapplied to the instant case. It is admitted that there is a consideration for the transfer, and it is claimed that such consideration is inadequate, but the gift taxes were assessed against petitioners on the basis of the full value of the property transferred without taking into account the consideration actually paid or agreed to be paid. It is insisted that the consideration for the transfer of said property was inadequate and therefore Section 111 of the Revenue Code applies, but they seek to justify the assessment of the gift taxes on the transfer in its entirety. Obviously, the assessment is erroneous from the beginning.

Setting aside the error in the application of the law, we deem it proper to consider the question whether or not the transfer of said property is a gift in its entirety, that is, whether there is no consideration at all for the transfer so as to render it taxable as a gift under Sections 108-110 of the Revenue Code.

It is argued that the amounts advanced to Mrs. Stevenson by Mr. and Mrs. Fisher and the agreement of the latter to support the former for life cannot be treated as a valid consideration for the transfer because the alleged donees were under legal obligation to support the transferor. Again, to quote from the memorandum of counsel for the Government:

> Here in the Philippines it is a moral obligation of children to support their parents who have no means of livelihood. In California, U.S.A. it is not only a moral but legal obligation of children to support their parents if the parent (mother) is a California resident with no funds of her own. (Pls. see answer to question No. 19 of the direct interrogation of Douglas Fisher; see also p. 6 petitioners' memorandum).
>
> In the case at bar, at the time of the assignment of the properties, the assignor Beatrice M. Stevenson had no funds of her own and at that time she was a California resident. In accordance with the law of California, U.S.A., as stated by Douglas Fisher, a practicing attorney in California whose qualification as an expert in law was duly established in the direct interrogatories, it is an enforceable obligation of a daughter to give support to her mother if the latter has no funds of her own. Therefore, the assignor Beatrice M. Stevenson who was without funds in the United States at the time of the execution of the deed of assignment was

> legally entitled to support from her daughter who was also a resident of California. Evidently, the affidavit which was executed many months after the date of the deed of assignment purporting to show consideration was, as heretofore pointed out, intended merely to hide a taxable gift. In short, the aforesaid affidavit (Exh. Y) is a self-serving piece of evidence. (Page 8, Memorandum for Respondent.)

Conceding for the present the correctness of the proposition that Mrs. Fisher, daughter of the transferor, is morally and legally bound to support her mother, and that Mr. Fisher, the son-in-law, is equally bound to support his mother-in-law, the obligation to support, as admitted by counsel for the Government, exists only if and when the one claiming support is without means of support. It is not so in the present case. Mrs. Stevenson had property in the Philippines which was available to her for her own support; in fact, it was that property which she assigned to her daughter and son-in-law in consideration for her then existing obligations and her support for life. There is nothing legally objectionable on the part of the mother to transfer her property to her children in consideration for her support, provided the consideration is adequate, to preserve her self-respect. On the contrary, it would not seem proper for a parent to expect support from her children if she is capable of supporting herself. The question is, was the consideration adequate?

The total value of the property transferred by Mrs. Stevenson to Mr. and Mrs. Fisher is ₱67,933.77. At the time the deed of assignment was executed, Mr. and Mrs.

Fisher had already advanced for the account of Mrs. Stevenson the sum of $23,468.26. The said amount, together with the promise on the part of Mr. and Mrs. Fisher to support Mrs. Stevenson for life, appears to us adequate consideration for the property assigned by the latter to the former. In fact, we think that the consideration is more than the value of the property assigned considering that Mrs. Stevenson was old; that the property was situated in the Philippines and she was residing in California; that part of the property was a contingent claim against the Philippine Government; and that the disposition of said property for cash would involve, as it did involve, considerable trouble and expense. And added to these is the fact that there were at the time stringent regulations concerning remittances abroad. We doubt if any person other than Mr. and Mrs. Fisher would have agreed to assume the same obligations that they did in consideration for the acquisition of the said property in question. Therefore, we are of the opinion that the transfer by Mrs. Stevenson of said property to her daughter and son-in-law is a sale or transfer for an adequate and full consideration and not a taxable gift within the meaning of Sections 108-110 of the Revenue Code. Accordingly, we find it unnecessary to consider the other questions raised.

Petitioners have asked that respondent be ordered to pay interest on the amount to be refunded to them. In Collector v. Prieto, G. R. No. L-11976 (res. on motion for reconsideration dated Sept. 26, 1961); Com.

v. Asturias Sugar Central, G. R. No. L-15013 (res. on motion for reconsideration dated Dec. 28, 1961); and Gibbs v. Coll., G. R. Nos. L-14166 and L-14320, April 28, 1962, it was held that interest on refunds of internal revenue taxes may be awarded to taxpayers if the collection of such taxes is attended with arbitrariness. We find no arbitrariness in the collection of the gift taxes here involved. While it is true that respondent committed an error of judgment in the assessment and collection of said taxes, we believe that the error was committed in good faith.

WHEREFORE, the decision appealed from is reversed, and respondent is ordered to refund to petitioners the sum of ₱8,603.93 within thirty days from the date this decision becomes final, without pronouncement as to costs.

SO ORDERED.

Manila, February 28, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge