REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ESTATE OF FIDEL F. REYES AND ESTATE OF TERESITA R. REYES,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6747

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JAN 16 2006

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DECISION

BAUTISTA, L., J.:

Before Us is a Petition for Review under Section 9 of Republic Act No. 9282, seeking to nullify respondent's Assessment Notices in the aggregate amount of Eight Million Eight Hundred Fourteen Thousand One Hundred Seventy Nine Pesos and 17/100 (P8,814,179.17) representing deficiency/delinquency estate taxes on the respective estates of Spouses Fidel and Teresita Reyes, delinquency donor's taxes on some of the heirs of the spouses and compromise penalty covering the taxable years 1997 & 1998.

Petitioners are the estates of the late spouses Fidel F. Reyes and Teresita R. Reyes.

On January 23, 1997 and August 24, 1998, Spouses Fidel F. and Teresita R. Reyes died respectively, leaving various conjugal and paraphernal, personal and real properties to their legal heirs.

On December 29, 1997 and February 24, 1999, estate tax returns were filed for the estates of Fidel F. Reyes and Teresita R. Reyes ("petitioners") respectively, pursuant to the Voluntary Assessment Program ("VAP") of the Bureau of Internal Revenue ("BIR").[1] On June 29, 1998, an amended estate tax return was filed for the estate of Fidel F. Reyes.[2] On October 17, 2001, the estate of Teresita Reyes paid additional estate tax in the amount of P53,675.52.[3]

By virtue of a Letter of Authority, Regional Director Oscar L. Sevilla directed BIR Regional Officer Romualdo I. Plocios and Group Supervisor Consuelo C. Sy to examine the books of accounts and other accounting records in ascertaining the tax liability of the estate of Teresita R. Reyes.[4]

On the basis of the said investigation, respondent issued a Preliminary Assessment Notice ("PAN") finding petitioners accountable in the aggregate amount of P7,837,512.01 representing deficiency estate taxes and donor's tax.[5]

Dissatisfied with petitioners' counsel explanation in reply to the PAN, the respondent sent a Formal Letter of Demand dated November 29, 2002[6] together with the Details of Discrepancies[7] with the corresponding Final Assessment Notices ("FANs")[8] demanding payment of petitioners' tax obligations in the amount of P8,776,279.00, computed as follows:

I. DELINQUENCY ESTATE TAX (FIDEL F. REYES)

Basic Estate Tax		P2,260,044.69
Less: Amount paid on June 23, 1997		0.00
Delinquency Estate tax		2,260,044.69
Add: 50% Surcharge (For filing false return	P1,130,022.34	
20% Interest p.a.	424,210.39	

[1] Exhibits A & C, respectively
[2] Par. 3, Joint Stipulation of Facts and Issues
[3] Exhibit D-2
[4] BIR Records, p. 310
[5] Exhibit E
[6] Exhibits G & G-1
[7] Exhibits G-2 to G-4
[8] Exhibits H, I & J

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(07-24-97 to 07-01-98)		
Compromise Penalty for no Notice of Death	1,000.00	
Late Filing	20,000.00	
Late Payment	25,000.00	1,600,232.73
Total amount due		P3,860,277.42
Less: Amount paid per return on 07-01-98		297,582.00
Balance		P3,562,695.42
Add: 20% Interest p.a. (07-02-98 to 12-30-02)		3,203,497.63
Total Amount Due		**P6,766,193.05**

II. DEFICIENCY ESTATE TAX (TERESITA R. REYES)

Basic Estate Tax	P 1,219,017.39
Less: Amount paid on Feb. 24, 1999	268,377.60
Deficiency Estate Tax	950,639.79
Add: 20% Interest p.a. (07-25-99 to 12-30-02)	842,813,79
Total Amount Due	**P 1,793,453.58**

III. DELINQUENCY DONOR'S TAX

Basic Donors Tax	P101,359.93
Less: Amount paid on Oct. 22, 1999	0.00
Delinquency Donors Tax	P101,359.93
Add: 50% Surcharge	50,679.96
20% Interest p.a. (10-23-99 to 12-30-02)	64,592.65
Total Amount Due	**P216,632.54**

Respondent ratiocinated that deficiency estate tax in the amount of P6,766,193.05 for the estate of Fidel F. Reyes was assessed on the basis of the failure to declare actual exclusive/capital and conjugal properties of the decedent. The delinquency estate tax assessment in the amount of P1,793,453.58 for the estate of Teresita R. Reyes was attributed to the inclusion of some conjugal properties which actually belong to her spouse Fidel Reyes and an overstatement of vanishing deductions claimed. The delinquency donor's tax was assessed as a result of the partition of the estates per extra-judicial settlement concurred by all the legal heirs of the decedents.

A demand to pay compromise penalty for late filing/payment of estate tax and donor's in the sum of P37,900.00 was likewise made by the respondent.[9]

On February 4, 2003, petitioners protested the assessments.[10] According to petitioners, the FANs are void for having been issued by the respondent beyond the three (3)-year period to assess and collect taxes. Respondent belatedly issued the FANs more than three (3) years from the time of the filing of the tax returns of the estates of Fidel and Teresita Reyes on June 29, 1998 and February 24, 1999, respectively. The ten (10)-year period to assess estate tax returns does not apply because the returns are devoid of any falsity or fraudulent intention to evade taxes. At the very least, petitioners committed a mistake in using the market values in the tax declaration, instead of the zonal values as a basis for valuation of the properties of the late Fidel Reyes. Also, there was an erroneous classification of the properties as conjugal and/or capital/ paraphernal. Finally, the computation of vanishing deductions was miscalculated in the estate return of Teresita R. Reyes. The other errors have proven to be beneficial to the government because the properties subject of the assessment are no longer owned by the estates or they have no more market value. The estate tax return of the estate of Teresita R. Reyes shows that the accountant even failed to deduct the standard deduction of P1,000,000.00 and family home, also in the amount of P1,000,000.00 from the gross estate. The additional payment of taxes under the VAP was not even credited to the estate of the decedents.

On the other hand, the assessment of donor's tax against the heirs of the decedents is bereft of any legal and factual bases. The conveyance of the properties takes place after a clearance is issued by the respondent. Thus, the nature of the transfers is one of *mortis causa* and not *inter vivos* because the disposition of the properties occurs after the death of the transferors. The heirs could not have donated the decedents' properties which they did not own in the first place. A repudiation of their share in the inheritance by the mere act of

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[9] Exhibits K & L
[10] Exhibit N

relinquishing their aliquot part in any of the properties of the estate in favor of the co-heir is tantamount to a waiver on their part of their ownership thereto. Moreover, the assessment is defective in form because respondent failed to identify the donees, the properties donated and how the assessment of delinquency donor's tax was computed.

Subsequently, respondent forwarded petitioners' request for reconsideration and/or reinvestigation to the Revenue District Office, Cubao City.[11] On August 12, 2003, petitioners filed a Petition for Review before this Court without waiting for respondent's decision on their protest.

In his Answer filed on October 21, 2003, respondent raised Special and Affirmative Defenses, to wit:

> ***"1. That the investigation of petitioners' estate tax liabilities revealed a tax obligation of P8,814,179.17 as deficiency/delinquency Estate Tax, Donor's Tax and Compromise Penalty.***
>
> ***2. That the subject deficiency /delinquency tax assessments were issued in accordance with the law and pertinent regulations and has substantially complied with the provisions of Section 228 of the National Internal Revenue Code relative to the taxpayer being informed in writing the facts and law in which the assessment is based.***
>
> ***3. That the deficiency/delinquency tax assessments were based on the following:***
>
> ***A) Deficiency /delinquency Estate Tax in the amount of P6,766,193.05 for the Estate of Fidel F. Reyes was assessed on the basis of the failure to declare exclusive/capital and conjugal properties left by the late Fidel F. Reyes, but the same without any legal justification, was neither recorded nor declared in the estate tax return resulting to the understatement of the reported taxable estate.***
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> ***B) Deficiency/delinquency Estate tax in the amount of P1,793,453.58 for the Estate of Teresita R. Reyes was assessed on the basis of the existence of some discrepancy in the estate tax return of the late Teresita R. Reyes. Verification disclosed that some conjugal properties reported to the estate tax return belong to her***

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[11] Par. 9, Joint Stipulation of Facts and Issues

late husband Fidel F. Reyes and there was also an overstatement of vanishing deductions claimed.

C) That in view of the foregoing, such failure and omission renders the estate tax returns filed False Returns which can be assessed within 10 years from the discovery of falsity, fraud or omission.

D) Deficiency/delinquency donor's tax in the amount of P216,632.54 was assessed as a result of the partition of the estate per extrajudicial settlement concurred by all the parties pursuant to the Provisions of Section 98 to 104 of the NIRC of 1997.

E) Compromise Penalty in the amount of P37,900.00 for violation of Section 255 in relation to Section 275 of the NIRC relative to late filing/payment of Estate and Donor's tax.

F) The 50% surcharge was imposed pursuant to the provisions of Section 248 (B) of the NIRC in relation to Section 332 (now 222(a)) of the NIRC.

G) The 20% interest per annum has been imposed pursuant to the provisions of Section 249(b), now Section 249(B) of the NIRC.

4. That all presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner."[12]

After trial, petitioners proffered their memorandum and the case was submitted for decision on July 11, 2005 sans the memorandum of respondent.

The parties interpose the following issues for the consideration of the Court:

"1. Whether or not there exists a failure to declare exclusive/capital and conjugal properties in the Estate Tax Return of the late Fidel F. Reyes resulting in the understatement of the reported taxable estate.

2. Whether or not there were properties included in the estate of the late Fidel F. Reyes which should not have been included therein.

3. Whether or not there are discrepancies in the Estate Tax Return of the late Teresita R. Reyes resulting to the deficiency/delinquency Estate Tax.

4. Whether or not there exists an overstatement of vanishing deductions in the Estate of the late Teresita Reyes.

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[12] Rollo, pp. 97-98

5. Whether or not, in view of the foregoing failure or omission, the Estate Tax Returns filed were false or fraudulent justifying the 10 year period to assess from the discovery of the falsity, fraud or omission.

6. Whether or not the deficiency/delinquency donor's tax was properly assessed under the circumstances pursuant to the provisions of the NIRC."[13]

Before the issue of what is the applicable prescriptive period to assess in this case, whether three years or ten years, can be properly resolved, it is vital to determine first the existence or non-existence of falsity in the filing of the subject estate tax returns.

The first three issues basically delve on whether or not the estate tax returns duly declared all the properties of the late spouses Fidel and Teresita Reyes. Being interrelated, they shall be jointly discussed.

DELINQUENCY ESTATE TAX ON THE ESTATE OF FIDEL F. REYES

Respondent's basis for the assessment of delinquency estate tax on the estate of Fidel F. Reyes is premised on the following:[14]

Particulars	Per Investigation CAR Issued	Per Review	Discrepancy
Real Properties – Conjugal	P7,950,513.33	P13,160,494.00	P 5,209,980.67
Real Properties – Exclusive	-	5,813,532.33	5,813,532.33
Personal Properties – Conjugal	1,401,017.50	10,000.00	(1,391,017.50)
Personal Properties - Exclusive	-	1,353,041.69	1,353,041.69
Gross Estate	P9,351,530.83	P 20,337,068.02	P 10,985,537.19

Gross Estate per review	P20,337,068.02	
Less: Capital/Exclusive properties	7,166,574.02	
Gross Conjugal Estate		P13,170,494.00
Less: Conjugal Deduction		
a. Funeral expenses w/ receipts claimed per returns	P 59,260.00	
b. Claimed vs. the estate including unpaid taxes	1,358,412.36	1,417,672.36
Net Conjugal Estate		P11,752,821.64
Less: 1/2 share of surviving spouse in conj. property		5,876,410.82
Net Estate		P 5,876,410.82
Add: Capital/Exclusive Properties		7,166,574.02
Total Net Estate		P13,042,984.84
Less: Family Home		1,000,000.00
Net Taxable Estate		P12,042,984.84

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[13] Rollo, pp. 119-120
[14] Exhibit G-2

Estate Tax due per review		P 2,260,044.69
Less: Amount paid on July 23,1997		0.00
Deficiency Estate Tax		P 2,260,044.69
Add: 50% Surcharge	P1,130,022.34	
20% Interest p.a. (07-24-97 to 07-01-98)	424,210.39	
Compromise Penalty for no Notice of Death	1,000.00	
Late Filing	20,000.00	
Late Payment	25,000.00	1,600,232.73
Total Amount Due		P 3,860,277.42
Less: Amount paid on July 01, 1998		297,582.00
Balance		P 3,562,695.42
Add: 20% Interest p.a. (07-02-98 to 12-30-02)		3,203,497.63
Total Amount Due		**P6,766,193.05**

In determining the value of the gross estate, the Commissioner of Internal Revenue used whichever is higher between the zonal value or the fair market value per tax declaration of the property, pursuant to Section 88 (B) of the 1997 NIRC, which provides:

> "***Determination of the Value of the Estate.*** –
>
> xxx xxx xxx
>
> ***(B) Properties. - The estate shall be appraised at its fair market value as of the time of death. However, the appraised value of real property as of the time of death shall be whichever is the higher of -***
>
> ***(1) The fair market value as determined by the Commissioner, or***
>
> ***(2) The fair market value as shown in the schedule of valued fixed by the Provincial and City Assessors."***

Notably, some of the figures used by respondent in his assessment were still in the market value per tax declarations instead of the zonal values which were higher. Equity dictates that the valuation as determined by respondent in his assessment shall be applied as the tax base.

A. Real Properties - Conjugal - P13,160,494.00[15]

Respondent classified the following properties as conjugal real properties of Fidel F. Reyes for the purpose of computing the estate tax of the same:[16]

Table 1.

[15] Should be P13,168,494.00 [BIR Records, p. 393 (thick folder)]. Thus the Gross Estate should have been P20,345,068.02.
[16] BIR Records, p. 392 (thick folder)

Location	TCT No.	Market Value per Tax Dec.	Zonal Value	Per CAR Issued to F.F. Reyes	FMV per Review
1. Int. Torres St. Brgy.Addition Hills, Mandaluyong City	T-77510	P 1,275,000.00 (94)	P 3,400,000.00	P 1,275,000.00	P 3,400,000.00
2. -do-	-do-	1,278,000.00	3,408,000.00	1,278,000.00	3,408,000.00
3. -do-	-do-	358,500.00	358,500.00	36,630.00	358,500.00
4. Brgy. San Agustin, Malolos, Bulacan	RT-6982 (T-17062)	147,000.00 (97)	218,400.00	147,000.00	168,000.00
5. -do-	RT-6981 (T-17059)	62,300.00	92,560.00	62,300.00	71,200.00
6. -do-	RT-6980 (T-17060)	15,400.00	22,880.00	12,700.00	22,880.00
7. Bo. Palumbing, Calumpit, Bulacan	RT-56542 (T-237477)	19,352.00 (97)	193,920.00	13,381.00	145,440.00
8. -do-	-do-	158,800.00	444,640.00	158,800.00	158,800.00
9. Bo. Iba o Este, San Marcos, Calumpit, Bulacan	RT-56543 (T-17055)	13,400.00 (97)	251,250.00	231,150.00	231,150.00
10. -do-	-do-	80,200.00	224,560.00	60,150.00	80,200.00
11. -do-	-do-	87,800.00	245,840.00	65,850.00	87,800.00
12. -do-	-do-	32,480.00	609,000.00	22,411.00	32,480.00
13. -do-	-do-	1,984.00	37,200.00	1,400.00	1,984.00
14. -do-	T-250907	482,480.00	9,046,500.00	482,480.00	4,221,700.00
15. -do-	T-214387	73,184.00	1,372,200.00	73,184.00	640,360.00
16. -do-	T-6826	140,000.00	392,000.00	3,951.00	140,000.00
TOTAL		**P4,225,880.00**	**P20,317,450.00**	**P 3,924,387.00**	**P 13,168,494.00**

Petitioners aver that there were two properties included in the estate of Fidel F. Reyes which should not have been included therein as they were already transferred to tenants pursuant to the Comprehensive Agrarian Reform Program (CARP) of the government. The said properties consist of 9,148 square meters and 60,310 sq. m. of land in Iba Este, Calumpit, Bulacan, covered by TCT No. 214387 with Fair Market Value (FMV) of P640,360.00 and TCT No. 250907 with FMV of P4,221,700.00, respectively.[17]

The Court sustains petitioners' allegation with regard to the 9,148-sq. m. property, covered by TCT No. T-214387, formerly T-178694, and Fair Market Value of P640,360.00, as

[17] Nos. 14 & 15 of the above table

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determined by the respondent. The certification from Land Bank[18] and the Order from the Department of Agrarian Reform regarding land transfer claim,[19] which petitioners submitted as evidence, sufficiently show that the property with TCT No. 178694 was acquired by the government under Presidential Decree No. 27 and Executive Order No. 228.

As to the 60,310 sq. m. property with TCT No. T-250907 and FMV of P4,221,700.00, as determined by respondent, only 29,982 sq. m. should be considered as transferred to tenants. The Tax Declarations of Pedro Pagdanganan and Gaspar Pagdanganan[20] reveal that 22,182 sq. m. and 7,800 sq. m., respectively, of the 60,310-sq. m. property of Fidel Reyes were transferred to the Pagdanganans. Thus, the remaining 30,328 sq. m. of land should form part of the estate of Fidel Reyes and subject to estate tax.

Considering the above findings, the value of the conjugal real property of Fidel Reyes is P12,679,187.00, detailed as follows:

Conjugal Real Properties:		P13,168,494.00
Add/(Deduct) Adjustments per Court's evaluation:		
a) Property w/ TCT No. T-214387 subjected to CARP	(P 640,360.00)	
b) Property transferred to Pagdanganans (29,982 sq. m. x 70/sq. m.)	(2,098,740.00)	
c) Property in Hagonoy, Bulacan classified as exclusive by respondent	2,249,793.00	489,307.00
Total Conjugal Real Property		**P 12,679,187.00**

B. Real Properties – Exclusive –P5,813,542.33

Respondent classified the following properties as exclusive real properties of Fidel F. Reyes for the purpose of computing the estate tax: [21]

Table 2.

Location	TCT No.	Market Value per Tax Dec.	Zonal Value	Per CAR Issued to F.F. Reyes	FMV per Review
1.Brgy. Suclaban, Mexico,	T-182349-R	P 385,320.00	P 770,640.00	P 385,320.00	P 385,320.00

[18] Exhibit R
[19] Exhibit S
[20] Exhibits AA & CC
[21] BIR Records, p. 32 (thin folder); p. 406 (thick folder)

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Location	TCT No.	Market Value per Tax Dec.	Zonal Value	Per CAR Issued to F.F. Reyes	FMV per Review
Pampanga					
2. -do-	-do-	761,800.00	1,904,500.00	761,800.00	761,800.00
3. –do-	T-182350-R	26,900.00	53,800.00	26,900.00	26,900.00
4. –do-	-do-	250,000.00	625,000.00	250,000.00	250,000.00
5. Bo, Tibaguin,[22] Hagonoy, Bulacan		270,000.00	270,000.00	270,000.00	270,000.00
6. –do-		1,979,793.00	1,979,793.00	1,979,793.00	1,979,793.00
7. 1249-51 Quesada, Tondo, Manila	148118	1,697,673.33	1,697,832.66	221,906.67	1,697,832.66
8. –do-	-do-	441,886.67	441,886.67	130,406.67	441,886.67
TOTAL		**P5,813,373.00**	**P7,743,452.33**	**P 4,026,126.34**	**P 5,813,532.33**

However, petitioners categorized all of the above real properties as conjugal properties of the late spouses Fidel and Teresita Reyes.

The Court partly agrees with respondent.

The parcels of land located at Mexico, Pampanga and Quesada, Tondo, Manila [23] are exclusive properties of Fidel F. Reyes while the rest are conjugal properties.

The marriage between the late Fidel and Teresita Reyes transpired prior to the effectivity of the Family Code on August 3, 1988. Thus, the provisions of the New Civil Code apply.

The exclusive properties of a spouse are enumerated in Art. 148 of the New Civil Code which decrees that:

> ***"Art. 148. The following shall be the exclusive property of each spouse:***
>
> ***(1)That which is brought to the marriage as his or her own;***
> ***(2)That which each acquires during marriage, by lucrative title;***
> ***(3)That which is acquired by right of redemption or by exchange with other property belonging to only one of the spouses;***
> ***(4)That which is purchased with exclusive money of the wife or the husband."***

The law mandates that the properties inherited during the marriage are considered acquired by lucrative title and should be classified as exclusive properties of the spouse.[24]

[22] Tibagan in Tax Declaration of Real Property - (Exhibit HH).
[23] Nos. 1, 2, 3, 4, 7, and 8 of the table

These properties located in Mexico, Pampanga and Quesada Tondo, Manila were inherited by Fidel F. Reyes from Anatolia Reyes who died on February 11, 1982, thus, were his exclusive properties.

The property in Tibagan, Hagonoy, Bulacan (with total FMV per review) of P2,249,793.00 [25] is a conjugal asset of Spouses Fidel and Teresita Reyes pursuant to Article 160 of the New Civil Code which provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proven that it pertains exclusively to the husband or to the wife.[26] This presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses. Thus, for lack of substantial proof, the presumption that the property is conjugal holds.

Petitioners nevertheless argue that the property in Tibagan, Hagonoy, Bulacan, was only a claim. Thus, it should not be included in the property listed in Fidel Reyes estate for estate tax purposes. To support their stance, petitioners offered as evidence the letter dated February 20, 1980 addressed to the Director of the Bureau of Forest Development written by Fidel Reyes requesting for a certification that the two parcels of land were really alienable and disposable.[27]

The Court is not persuaded. Such document is insufficient to show that Fidel Reyes merely had a claim on the property. On the contrary, the Tax Declarations show that Fidel Reyes had beneficial ownership over the same.[28] Beneficial ownership has been defined as ownership recognized by law and capable of being enforced in the courts at the suit of the beneficial owner. Hence, petitioners' argument that Fidel Reyes merely had a claim on the property cannot be sustained.

Based on the foregoing discussion, the value of the exclusive real property of Fidel

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[24] Villanueva vs. The Intermediate Appellate Court 192 SCRA 21 (1990)
[25] Nos. 5 and 6 of the table
[26] Acabal vs. Acabal, 454 SCRA 555 (2005)
[27] Exhibit JJ
[28] Exhibits HH & II

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Reyes is P3,563,739.33, computed as follows:

Exclusive Real Properties		P 5,813,532.33
Add/(Deduct) Adjustments per Court's evaluation:		
Property in Hagonoy, Bulacan which should be classified as conjugal property	(P2,249,793.00)	(2,249,793.00)
Total Exclusive Real Property		**P 3,563,739.33**

C. Personal Properties - Conjugal - P10,000.00

Respondent reclassified and revalued Fidel Reyes' conjugal personal property from its original gross amount of P1,401,017.50 to exclusive personal properties at P1,353,041.69 and conjugal personal property at P10,000.00. In effect, only the P10,000.00 cash was considered as conjugal property. This Court shall no longer dwell on this item as it was not disputed by petitioners.

D. Personal Properties - Exclusive - P1,353,041.69

This item of controversy stemmed from the reclassification and revaluation made by the respondent as earlier discussed. Respondent maintains that the amount of P1,353,041.69 constituting shares of stocks of different corporations are exclusive personal property of Fidel F. Reyes. Petitioners allege that the same are conjugal personal properties.

This Court disagrees with respondent's contention.

The records failed to support respondent's finding that Fidel F. Reyes exclusively owned the shares of stocks of different corporations. The fact that the certificates of stocks[29] are named under Fidel F. Reyes is not conclusive proof that they are exclusive properties of the late Fidel F. Reyes. Having failed to rebut the presumption that all property of the marriage belong to the conjugal partnership, the personal property in the amount of P1,353,041.69 is conjugal property.

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[29] BIR Records, pp. 111-160

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In sum, the deficiency estate tax of Fidel F. Reyes is P497,789.12, excluding interest and surcharges, computed as follows:

	Per Respondent's Review	Add/(Deduct) Adjustments	Per Court's Finding
Real Properties - Conjugal	P13,160,494.00	(P 481,307.00)	P12,679,187.00
Real Properties - Exclusive	5,813,532.33	(2,249,793.00)	3,563,739.33
Personal Properties - Conjugal	10,000.00	1,353,041.69	1,363,041.69
Personal Properties - Exclusive	1,353,041.69	(1,353,041.69)	0.00
Gross Estate	P20,337,068.02	(P2,731,100.00)	P17,605,968.02
Less: Exclusive Properties			3,563,739.33
Gross Conjugal Estate			P14,042,228.69
Less: Conjugal Deductions			
a. Funeral Expenses			(P 59,260.00)
b. Claims against the Estate			(1,358,412.36)
Net Conjugal Estate			P12,624,556.33
Less: ½ share of surviving spouse (P12,624,556.33/2)			6,312,278.16
Net Estate			P 6,312,278.17
Add: Exclusive Properties			3,563,739.33
Total Net Estate			P 9,876,017.50
Less: Family Home			(1,000,000.00)
Net Taxable Estate			P 8,876,017.50
Estate Tax Due			**P 1,046,402.63**
Less: Payment on 12/29/1997			251,031.51
Payment on 7/29/1998			297,582.00
Deficiency Estate Tax			**P 497,789.12**

DELINQUENCY ESTATE TAX ON THE ESTATE OF TERESITA R. REYES

Respondent assessed the estate of Teresita R. Reyes of delinquency estate tax on the basis of the following:[30]

Gross Estate (Share from exclusive and conjugal properties)		
a) Conjugal Share (Real and Personal Properties)	P 10,163,725.00	
b) Exclusive/Paraphernal Properties (Personal Properties)	1,931,662.05	
c) Inheritance Share (Real and Personal Properties)	1,605,018.25	P13,700,405.30
Less: Deductions		
a. Funeral Expense	P 200,000.00	
b. Accrued/Unpaid taxes	422,486.05	
c. Claim against the Estate	100,000.00	
d. Medical Expenses	95,801.47	
Subtotal	P 818,287.52	
e. Vanishing Deductions	862,030.83	1,680,318.35
Net Estate		P12,020,086.95
Less: Family Home	P 1,000,000.00	

[30] BIR Records, p. 398 (thick folder)

Standard Deductions	1,000,000.00	2,000,000.00
Net Taxable Estate		P10,020,086.95
Estate Tax Due Thereon		P 1,219,017.39
Less: Estate Tax Paid (02-24-99)		268,377.60
Estate Tax		P 950,639.79
Add: 50% Surcharge		0.00
20% Interest (02-25-99 to 12-30-02)		842,813.79
Total Amount Due		**P 1,793,453.58**

The Court will tackle the items included in the above assessment, which materially affect the estate tax liability of Teresita R. Reyes, and those that were disputed by the parties.

A. Conjugal Shares (Real & Personal Property) - P10,163,725.00

Respondent computed the ½ conjugal share - real and personal property of Teresita R. Reyes based on the zonal valuation of the conjugal properties enumerated in Table 1, as follows:

Total Zonal Value of Conjugal Real Property (Table 1)	P20,317,450.00
Total Conjugal Personal Property per review of respondent	10,000.00
Total Conjugal Estate	P20,327,450.00
½ Share of Teresita R. Reyes (P20,327,450.00/2)	**P10,163,725.00**

Due to the earlier adjustments in the computation of the estate of Fidel F. Reyes, there is a concomitant adjustment to the estate of his spouse, Teresita R. Reyes, to wit:

Table 3.

	Zonal Value	Add/(Deduct) Adjustments	Per Court's Finding
Table 1:			
1. Int. Torres St. Brgy. Addition Hills, Mandaluyong City	P 3,400,000.00		P 3,400,000.00
2. -do-	3,408,000.00		3,408,000.00
3. -do-	358,500.00		358,500.00
4. Brgy. San Agustin, Malolos, Bulacan	218,400.00		218,400.00
5. -do-	92,560.00		92,560.00
6. -do-	22,880.00		22,880.00
7. Bo. Palumbing, Calumpit, Bulacan	193,920.00		193,920.00
8. -do-	444,640.00		444,640.00
9. Bo. Iba o Este, San Marcos, Calumpit, Bulacan	251,250.00		251,250.00

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	Zonal Value	Add/(Deduct) Adjustments	Per Court's Finding
10. -do-	224,560.00		224,560.00
11. -do-	245,840.00		245,840.00
12. -do-	609,000.00		609,000.00
13. -do-	37,200.00		37,200.00
14. -do-	9,046,500.00	(P4,497,300.00)	4,549,200.00
15. -do-	1,372,200.00	(1,372,200.00)	-
16. -do-	392,000.00	-	392,000.00
Subtotal	P20,317,450.00	(P5,869,500.00)	P 14,447,950.00
Add: Property in Hagonoy, Bulacan wrongly classified as exclusive by respondent (Table 2, Nos. 5 & 6)			2,249,793.00
Total Conjugal Real Property			P 16,697,743.00
Conjugal Personal Property per review of respondent			P 10,000.00
Add: Personal property wrongly classified as exclusive by respondent			1,353,041.69
Total Conjugal Personal Property			P 1,363,041.69
Total Conjugal Property			P 18,060,784.69
1/2 Share of Teresita R. Reyes (P18,060,784.69/2)			**P 9,030,392.35**

Therefore, the conjugal share of Teresita Reyes is P9,030,392.35.

B. Exclusive/Paraphernal Property - P1,931,662.05

Petitioners valued the exclusive/paraphernal property of Teresita R. Reyes composed mostly of shares of stocks at P1,657,418.57. Respondent, for his part, valued the property at P1,931,662.05. A review of the records reveals that only P1,861,064.05 should be considered by the Court since this is only the amount supported by evidence as exclusive personal property of Teresita Reyes.

C. Inheritance Share - P1,605,018.25

The respondent computed the inheritance share of Teresita R. Reyes from the estate of her spouse, based on the following:

On Conjugal Real and Personal Properties:

Total Zonal Value of Conjugal Real Property (Table 1)	P20,317,450.00
Total Conjugal Personal Property per review of respondent	10,000.00
Total Conjugal Estate	P20,327,450.00

1/24[31] share of Teresita Reyes in Conjugal Estate	P 846,977.08
On Exclusive Real and Personal Properties:	
Total Zonal Value of Exclusive Real Property (Table 2)	P 7,743,452.33
Total Exclusive Personal Property per review of respondent	1,353,041.69
Total Exclusive Estate	P 9,096,494.02
1/12 share of Teresita Reyes in Exclusive Estate	P 758,041.17
Total Inheritance Share	**P 1,605,018.25**

In view of the above computation, respondent used the gross (conjugal and exclusive) estate of Fidel F. Reyes of P29,423,944.02 (P20,327,450.00 + P9,096,494.02) to ascertain the inheritance share of Teresita R. Reyes of P1,605,018.25. Respondent failed to consider the allowable deductions from the gross estate as provided under Section 86(A) of the NIRC of 1997, such as funeral expenses, claims against the estates, and family home before computing Teresita R. Reyes's inheritance share. However, the inheritance share of Teresita R. Reyes should have been only 1/12 (Fidel F. Reyes had 12 heirs – 11 children and spouse, Teresita R. Reyes) of the net estate of Fidel F. Reyes. Since Fidel F. Reyes died intestate, Teresita R. Reyes inherited the same share as that of the legitimate children.[32]

In addition, the properties to be divided among the heirs consist of the total exclusive property of Fidel F. Reyes and ½ of the total conjugal property. The other half of the conjugal estate is legally owned by Teresita R. Reyes and thus, should not be included in the determination of her inheritance share.

After considering all the necessary adjustments, the inheritance share of Teresita R. Reyes is P1,067,934.62, computed as follows:

½ Share in the Conjugal Property (Table 3)	P 9,030,392.32
Exclusive Property of Fidel F. Reyes (Table 2, Nos. 1, 2, 3, 4, 7, & 8)	5,493,659.33
Gross Estate	P14,524,051.65

[31] Fidel F. Reyes had 12 heirs - 11 children and spouse, Teresita R. Reyes. Instead of dividing the conjugal estate by 12 to get the share of Teresita R. Reyes, it was divided by 24 (1/24) because 1/2 of the total property is the conjugal share of Teresita R. Reyes.

[32] Articles 980 & 996 of the New Civil Code

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Less: 1/2 Conjugal Expenses of Fidel F. Reyes'		
Estate	P 708,836.18	
Family Home	1,000,000.00	1,708,836.18
Net Estate		P12,815,215.47
Total Inheritance Share (1/12)		**P 1,067,934.62**

D. Funeral Expenses - P200,000.00

The amount of P496,873.23[33] was deducted as funeral expenses from the estate of Teresita F. Reyes. However, respondent limited the deduction to P200,000.00 under Section 86(A)(1)(a) of the 1997 NIRC which reads:

> ***"SEC. 86. Computation of Net Estate. – xxx***
> ***(A)Deductions Allowed to the Estate of Citizen or a Resident. – xxx***
> ***(1) Expenses, Losses, Indebtedness, and Taxes. – Such amounts--***
> ***(a) For actual funeral expenses or in an amount equal to five percent (5%) of the gross estate, whichever is lower, but in no case to exceed Two hundred thousand pesos (P200,000)."***

Based on the foregoing discussion, the gross estate of Teresita R. Reyes is P11,959,390.99, summarized as follows:

Conjugal Share (Real and Personal Properties)	P 9,030,392.35
Exclusive/Paraphernal Properties (Personal Properties)	1,861,064.05
Inheritance Share (Real and Personal Properties)	1,067,934.62
Gross Estate of Teresita R. Reyes	P11,959,391.02

Consequently, 5% of the above gross estate is P597,969.55. Thus, the value of funeral expenses was properly computed at P200,000.00 by respondent.

We will now proceed to the fourth issue of whether or not there was an overstatement of vanishing deductions in the estate of Teresita R. Reyes. The vanishing deductions applied by respondent is P862,030.83, computed below:

	Per Review	**Fractional Share**	**Property Previously Taxed**
Conjugal Property	P13,170,494.00	1/24	P 548,770.58
Exclusive Real Property	5,813,532.33	1/12	484,461.03
Exclusive Personal Property	1,353,041.69	1/12	112,753.47
Initial Basis	P20,337,068.02		P 1,145,985.08

Initial Basis	P 1,145,985.08
Divided by Gross Estate of TR Reyes	13,700,405.30

33 Exhibit C-2, pp. 37-38, Records

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Quotient	.0836
Multiply to Deductions of TR Reyes' Estate	P 818,287.52
Proportionate Deductions	P 68,446.54

Initial Basis	P 1,145,985.08
Proportionate Deductions	68,446.54
Final Basis	P 1,077,538.54
Multiply	80%
Vanishing Deductions	**P 862,030.83**

Petitioners explained that it was its accountant, Ms. Kapunan, who computed the vanishing deductions, detailed as follows:[34]

Gross Estate (GE)- (13/24 x P26,316,591.36) + (P1,657,418.57)	P15,912,238.89
Total Deductions Other Than Property Previously Taxed (PPT)	P 1,019,359.82

Computation for the Vanishing Deduction (VD):

Proportional Deduction:

$$\frac{\text{PPT}}{\text{GE}} \quad \frac{14{,}254{,}820.32^{35}}{15{,}912{,}238.89} \times 1{,}019{,}359.82^{36} = \text{P } 906{,}376.00$$

PPT (Initial Basis)	P14,254,820.32[37]
Less Proportional Deduction	904,376.00
Final Basis	P13,350,444.29
Multiply:	80%
Vanishing Deductions	P10,680,355.43

Vanishing deduction is a deduction allowed from the gross estate of citizens, resident aliens and non-resident estates for properties which were previously subject to donor's or estate taxes. The deduction allowed diminishes for a period of five (5) years.[38] Section 86(A)(2) of the 1997 NIRC provides for the computation of property previously taxed, to wit:

> ***"(2) Property Previously Taxed. — An amount equal to the value specified below of any property forming a part of the gross estate situated in the Philippines of any person who died within five (5) years prior to the death of the decedent, or transferred to the decedent by gift within five (5) years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise or inheritance, or which can be identified as having been acquired in exchange for property so received:***

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[34] Exhibit C-2
[35] Exhibit C-2, pp. 37 & 42, Records
[36] *Ibid.*
[37] Share in Conjugal Real and Personal Property (13/24 x P26,316,591.36)
[38] Abelardo T. Domondon, Bar Reviewer in Taxation, Vol. 1, 2004 edition, p. 727

xxx xxx xxx

"Eighty percent (80%) of the value, if the prior decedent died more than one (1) year but not more than two (2) years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death;

xxx xxx xxx

These deductions shall be allowed only where a donor's tax or estate tax imposed under this Title was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the estate of the prior decedent, no deduction was allowable under paragraph (2) in respect of the property or properties given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the donor's tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under said Subsection shall be reduced by the amount so paid. Such deduction allowable shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this Subsection as the amount otherwise deductible under said paragraph (2) bears to the value of the decedent's estate. Where the property referred to consists of two or more items, the aggregate value of such items shall be used for the purpose of computing the deduction."

An evaluation of the records reveals that there was an overstatement of vanishing deductions in petitioners' computation of the estate of Teresita R. Reyes. The initial basis used by the petitioners is 13/24 of the gross estate of Fidel F. Reyes instead of only 1/24 (petitioners considered all the properties of Fidel Reyes as conjugal), which is the inheritance share of Teresita R. Reyes. This resulted to the bloating of the vanishing deductions. The correct initial basis should be the inherited property previously taxed, detailed as follows:

	Per Court's Findings[39]	Fractional Share	Property Previously Taxed
Conjugal Property	P14,042,228.69	1/24	P 585,092.86
Exclusive Property	P3,563,739.33	1/12	296,978.28
Initial Basis			P 882,071.14

Initial Basis	P 882,071.14
Divided by Gross Estate of TR Reyes	P11,959,390.99
Quotient	.0738
Multiply to Deductions of TR Reyes' Estate	P 722,486.59
Proportionate Deductions	P 53,287.38

Initial Basis	P 882,071.14
Proportionate Deductions	53,287.38
Final Basis	P 828,783.76
Multiply by	80%[40]
Vanishing Deductions	**P 663,027.01**

Based on the foregoing, the vanishing deductions should be P663,027.01.

Considering the above, the deficiency estate tax of Teresita R. Reyes is P671,043.01, excluding interest and surcharges, computed as follows:

Gross Estate (Share from exclusive and conjugal properties)		P11,959,390.99
Less: Deductions		
a. Funeral Expense	P 200,000.00	
b. Accrued/Unpaid taxes	422,486.59	
c. Claim against the Estate	100,000.00	
Subtotal[41]	P 722,486.59	
d. Vanishing Deductions	P 663,027.01	1,385,513.60
Net Estate		P10,573,877.39
Less: Family Home	P1,000,000.00	
Standard Deductions	1,000,000.00	
Medical Expenses[42]	95,801.47	2,095,801.47
Net Taxable Estate		P 8,478,075.92
Estate Tax Due		P 986,711.39
Less: Payment on 2/24/1999	P 268,377.60	
Payment on 10/17/2001	53,672.52	322,050.12
Deficiency Estate Tax		**P 664,661.27**

[39] Figures as used in the computation of Fidel F. Reyes' estate.
[40] Fidel Reyes died on January 23, 1997 while Teresita R. Reyes died on August 24, 1998.
[41] Not disputed.
[42] Pursuant to Revenue Regulations No. 02-03, dated December 16, 2002, medical expenses are not included in the deductions referred under Section 86 (A) (1) of the NIRC of 1997 but are treated as a special item of deduction under Section 86 (A) (6) of the same Code.
The medical expenses were added by respondent in his computation, which reduced the deficiency estate tax.

With the above findings, We can now properly resolve the fifth issue of whether or not the subject estate tax returns filed were false as to justify the ten (10)-year period to assess applied by the respondent.

Petitioners submit that the tax returns are not false or fraudulent in accordance with Section 222 of the 1997 NIRC. There was no attempt on their part to conceal any vital information affecting their taxability. They merely committed a mistake as shown in the following circumstances: a) utilization of the market value as per tax declaration of the properties instead of the zonal values in determining the gross value of the estates; b) erroneous classification of some properties into conjugal and/or capital/paraphernal; (c) miscalculation of vanishing deductions in the estate tax return of Teresita R. Reyes; and (d) misdeclaration of the properties which should not have comprised the estate of Fidel Reyes.

According to the petitioners, "intention to evade taxes" under Section 222(a) of the 1997 NIRC refers to both false and fraudulent return. Error or mistake of law is not fraud. The final assessment notice (FAN) dated November 29, 2002 was made after four (4) years and 11 months from the date of the filing of the estate tax return of the estate of Fidel Reyes on December 29, 1997; while respondent issued the FAN against the estate of Teresita Reyes on November 29, 2002 or three (3) years nine (9) months and twenty eight (28) days from February 24, 1999 which was the filing of the estate tax return of the latter. Due to the absence of any falsity or fraudulent intent in the filing of the returns, respondent was supposed to assess petitioners of deficiency estate taxes within a period of three (3) years from the filing of the respective estate tax returns. Thus, respondent is already barred from assessing petitioners of deficiency/delinquency estate taxes.

The Supreme Court in the case of **Aznar vs. Court of Tax Appeals,**[43] already resolved this issue when it made a distinction between "false" and "fraudulent" returns as provided for by the law. To quote:

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[43] 58 SCRA 519 (1974)

> ***"[W]e believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (fraud), (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely – "falsity", "fraud" and "omission".*** **That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**
>
> ***The ordinary period of prescription of five (5) years [now three (3) years] within which to assess tax liabilities under Section 331 of the NIRC [now Section 203] should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file return, the period of ten years provided for in Section 332 (a) NIRC [now Section 222(a)], from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced."***

Based on the above pronouncements, false returns do not necessary mean with intent to evade taxes, otherwise, there will be no distinction between false and fraudulent returns and the law would not have provided for the distinct situations. Simply put, whenever intent to evade taxes exists, fraud already exists. To apply petitioners' interpretation that both false and fraudulent returns require the "intent to evade taxes" element would mean that in false returns, fraud also necessarily exists because of the requirement of the intent to evade payment correct taxes accompanying the falsity.

However, to bolster its assertion on respondent's erroneous assessment of deficiency estate taxes, petitioners cited the cases of Commissioner of Internal Revenue vs. B.F. Goodrich Philippines (303 SCRA 546) and Packaging Products Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4464) alleging, among others, that they have acted in good faith in declaring all the properties which they honestly believed belonged to the estates. Mere honest mistake of judgment or negligence resulting in the payment of lower taxes is not tantamount to a willful intent to evade payment of taxes that will justify the application of the ten (10)-year prescriptive period.

Petitioners' reliance on the Goodrich and Packaging Products Corporation cases is misplaced.

In the instant case, the tax involves estate tax which is imposed on the right to transmit property upon death and on certain transfers by the decedents during their lifetime made by the law equivalent of testamentary dispositions.

In the case of Commissioner of Internal Revenue vs. B. F. Goodrich Philippines, *supra*, the corporation was assessed of deficiency donor's tax for taxable year 1974 when it sold the parcels of land for a price lesser than its declared fair market value.

According to the Supreme Court, B.F. Goodrich is not liable in filing a false return or a fraudulent return because a property may be sold less than the adequate consideration for bona fide business purpose.

In conformity with the Supreme Court's decision, this Court agrees that in a business transaction, the vendor has the prerogative whether or not it would subject itself to a losing position or stands to gain from the sale. In the filing of estate tax returns, the estate must declare all existing properties conveyed to the decedent's lawful heirs.

In the Packaging Products Corporation case, the Commissioner of Internal Revenue's findings on the prescription of the assessment of deficiency manufacturer's sales for taxable year 1986 was not upheld by this Court due to the absence of any falsity or fraudulent return. Thus, the ten (10)-year prescriptive period was not applied. This Court then emphasized that the assessment letter only imposed a 25% surcharge and 20% interest instead of a 50% surcharge since falsity or fraud was not proved.

In the case at bar, the bases for the falsity of the returns are the substantial underdeclaration of properties in the amounts of P497,789.12 and P664,661.27 for the estates of Fidel F. Reyes and Teresita R. Reyes and overstatement of vanishing deductions in the amount of P10,680,355.43 for the estate of Teresita R. Reyes. In the case of Packaging Products Corporation, the absence of falsity of the return stemmed from different interpretation of the law with regard to the availment of tax credits on sales taxes.

Indeed, there is no indicia of fraud in the instant case. The estates of Fidel and Teresita Reyes, through Administrator Pacheco, availed of the VAP of the government and even included properties not forming part of the estates which negate any deceitful intention to defraud the government of revenues. However, the Court is convinced that petitioners filed false returns taking into account that:

1) Despite having reported conjugal and paraphernal properties, both real and personal, the estate of Fidel Reyes failed to declare basic deficiency estate tax worth P497,789.12;

2) Instead of the vanishing deductions claimed of P10,680,355.43, the estate of Teresita R. Reyes may only claim vanishing deductions of P663,027.01. The failure to correctly include deductions actually incurred by the taxpayer, in effect lowered deficiency estate tax of the estate of Teresita Reyes; and

3) The estate of Teresita R. Reyes did not report basic deficiency estate tax in the sum of P664,661.27.

To reiterate, in the filing of false returns, intention to evade taxes need not exist. A fraudulent return is always an attempt to evade a tax, but a merely false return may not be.[44] The filing of a false return is sufficient to warrant assessment of ten (10) years from date of discovery of the falsity.[45]

Having established that petitioners filed false returns, We therefore hold that the subject deficiency estate tax assessments were issued within the prescribed period mandated by law.

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[44] Commissioner vs. Javier, 199 SCRA 824 citing Yutivo Sons Hardware Co. vs. Court of Tax Appeals, 1 SCRA 160 (1961) and Rick vs. U.S., App. D.C., 161 F. 2d 897, 898 cited in Words and Phrases; (1958 ed.), Vol. 17A, 210)
[45] Aznar vs. Court of Tax Appeals, 58 SCRA 519 (1974)

Under Section 203 of the 1997 NIRC, the assessment period for estate tax deficiency is within three (3) years from the expiration of the due date or the actual date of the return, whichever is later. Petitioners are required to file estate tax returns within six (6) months from the demise of the decedents.[46]

Pursuant to Section 222(a), there are three instances when the three (3)-year prescriptive period to asses deficiency taxes do not apply, namely: a) false returns; b) fraudulent returns with intent to evade tax; and c) failure to file returns.

In any of these situations, the Commissioner of Internal Revenue is given the option to dispense with assessment and proceed to collect delinquency taxes or he may assess the taxpayer within ten (10) years from discovery of the falsity, fraud or omission.[47]

In the case at bar, the assessments dated November 29, 2002 and received by the petitioners on January 7, 2003, although issued beyond three (3) years from the filing of the estate returns of the estates of Fidel F. Reyes and Teresita R. Reyes on December 29, 1997 and February 24, 1999, respectively, were issued within the prescribed period of ten (10) years. Accordingly, petitioners are liable for deficiency estate tax amounting to P1,286,751.53 on the estate of Fidel F. Reyes and of P1,508,326.84 for the estate of Teresita R. Reyes, summarized as follows:

Estate of Fidel F. Reyes

Deficiency Estate Tax	P 497,789.12
Add: 50% Surcharge	248,894.56[48]
20% Interest (7/24/97 to 12/30/02)	540,067.85
Total Amount Due	**P1,286,751.53**

Estate of Teresita R. Reyes

Deficiency Estate Tax	P 664,661.27
Add: 50% Surcharge	332,330.64[49]
20% Interest (2/25/99 to 12/30/02)	511,334.93
Total Amount Due	**P1,508,326.84**

[46] Section 90(B) of the 1997 NIRC
[47] Section 223 of the 1997 NIRC; Philippine National Oil Company vs. C.A., *et.al.* 457 SCRA 32 (2005)
[48] Section 248(B) of the 1997 NIRC
[49] Section 248(B) of the 1997 NIRC

Finally, with respect to the sixth issue, petitioners are not liable to pay any deficiency/delinquency donor's tax and compromise penalty.

A. Delinquency Donor's Tax

Respondent assessed delinquency donor's tax against the legal heirs of Spouses Fidel and Teresita Reyes on the basis of the following:[50]

	Francisco R. Reyes	Prisculla R. Pacheco	Lourdes R. Reyes	Carlos R. Reyes	Rovin R Reyes	Adolfo R. Reyes	Total
Total gift of the donors to the donees	P1,482,889.86	P362,427.65	P327,999.79	P208,253.85	P139,074.65	P34,748.69	
Donor's tax due	P 82,631.19	P 8,497.11	P 7,119.99	P 2,330.15	P 781.49	Exempt	
Less: DT paid per return	0.00	0.00	0.00	0.00	0.00	0.00	
Def. Donor's Tax	P 82,631.19	P 8,497.11	P 7,119.99	P 2,330.15	P 781.49	0.00	P101,359.93
Add: 50% Surcharge							56,679.96
20% Interest (10-22-99 to 12/30/02							64,592.65
Total Amount Due							**P216,632.54**

Petitioners are contesting the said deficiency donor's tax assessment on the grounds that (1) the transfer of ownership that took place was in the nature of transfers *mortis causa*, thus, donor's tax, which contemplates transfers *inter vivos*, is not applicable, and (2) the legal requirements of a valid assessment under Section 228 of the NIRC of 1997 were not complied with. Assuming that the assessment was valid in form, petitioners claim that it is devoid of legal basis because the heirs could not donate something that they did not own. A repudiation of the share in the inheritance by the mere act of relinquishing their aliquot part in any of the properties of the estate in favor of a co-heir is tantamount to a waiver on their part of their ownership thereto.

The Court agrees with the petitioners.

The act of some of the legal heirs of the Spouses Reyes in waiving their rights to part of the estate in the extrajudicial settlement is considered as an act of repudiation and is

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[50] Exhibits G-4 & V

purely voluntary and free.[51] The effect of the heirs' repudiation retroacted to the moment of death of the decedents.[52] This militates the concept of a donation which is in the nature of transfer *inter vivos* meaning, that the conveyance of ownership from the giver to the receiver transpires during the lifetime of the former. Here, the legal heirs could not have transferred ownership over the properties which do not belong to them because they have renounced their rights over the estates. The legal heirs act of repudiation took away their right to inherit, thus, any part of the estate was never theirs. Such repudiation, therefore, could not be considered as a donation.

Moreover, in legal succession, the share of the person who repudiates the inheritance shall always accrue to his co-heirs.[53] Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, the part assigned to the one who renounces is added or incorporated to that of his co-heirs.[54]

A number of BIR Rulings have supported the above view. In BIR Ruling [DA-143-01], dated August 30, 2001, the BIR ruled that in cases when the children renounced their respective share in the inheritance, they did not donate the property, which had never become theirs. Such being the case, the renunciation is not subject to donor's tax imposed under Section 98 of the 1997 Tax Code.[55]

Based on the foregoing, respondent has no legal basis in assessing petitioners of deficiency donor's tax in the amount of P216,632.54.

B. Compromise Penalty

Petitioners asseverate that respondent erroneously ordered payment of compromise penalty on the basis of the following:[56]

Late filing/payment of Estate Tax	P 20,000.00
Late filing/payment of Donor's Tax	17,900.00
Total Amount Due	**P 37,900.00**

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[51] Article 1041, New Civil Code
[52] Article 1042, *id.*
[53] Article 1018, New Civil Code
[54] Article 1015, *id.*
[55] See also BIR Ruling Nos. 105-99, DA-251-99, DA-304-33, DA-093-04, dated July 13, 1999, April 23, 1999, September 16, 2003, and March 1, 2004, respectively.
[56] Exhibit K

The Court concurs with the petitioners that the compromise penalty imposed by respondent should be cancelled.

Compromise penalties are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue.[57]

In the instant case, petitioners did not concur with the compromise penalty charged upon by the respondent. A compromise implies mutual agreement.[58] Absent a showing that petitioners in the present case consented to the compromise penalty, its imposition cannot be mandatorily enforced. A compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[59]

WHEREFORE, premises considered, the assessments against the estates of Spouses Fidel and Teresita Reyes are hereby **AFFIRMED** but in the reduced amounts of P1,286,751.53 and P1,508,326.84, respectively, computed as follows:

I. ESTATE OF FIDEL REYES

	Per Respondent's Review	Add/(Deduct) Adjustments	Per Court's Finding
Real Properties - Conjugal	P13,160,494.00	(P 481,307.00)	P12,679,187.00
Real Properties - Exclusive	5,813,532.33	(2,249,793.00)	3,563,739.33
Personal Properties - Conjugal	10,000.00	1,353,041.69	1,363,041.69
Personal Properties - Exclusive	1,353,041.69	(1,353,041.69)	0.00
Gross Estate	P20,337,068.02	(P2,731,100.00)	P17,605,968.02
Less: Exclusive Properties			3,563,739.33
Gross Conjugal Estate			P14,042,228.69
Less: Conjugal Deductions			
a. Funeral Expenses			(P 59,260.00)
b. Claims against the Estate			(1,358,412.36)
Net Conjugal Estate			P12,624,556.33
Less: ½ share of surviving spouse (P12,624,556.33/2)			6,312,278.16
Net Estate			P 6,312,278.17
Add: Exclusive Properties			3,563,739.33
Total Net Estate			P 9,876,017.50

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[57] Collector of Internal Revenue vs. UST, 104 Phil. 1062

[58] Rightfield Property Ventures, Inc. (now known as Universal Rightfield Property Holdings, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5972, October 16, 2003

[59] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., G.R. No. 35266, 193 SCRA 86 (1991) citing Coll. vs. UST., 104 Phil. 1062; Phil. Int. Fair vs. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962

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Less: Family Home	(1,000,000.00)
Net Taxable Estate	P 8,876,017.50
Estate Tax Due	**P 1,046,402.63**
Less: Payment on 12/29/1997	251,031.51
Payment on 7/29/1998	297,582.00
Deficiency Estate Tax	**P 497,789.12**
Add: 50% Surcharge	248,894.56
20% Interest (7/24/97 to 12/30/02)	540,067.85
Total Amount Due	**P1,286,751.53**

II. ESTATE OF TERESITA REYES

Gross Estate (Share from exclusive and conjugal properties)		P11,959,390.99
Less: Deductions		
a. Funeral Expense	P 200,000.00	
b. Accrued/Unpaid taxes	422,486.59	
c. Claim against the Estate	100,000.00	
Subtotal[60]	P 722,486.59	
d. Vanishing Deductions	663,027.01	1,385,513.60
Net Estate		P10,573,877.39
Less: Family Home	P1,000,000.00	
Standard Deductions	1,000,000.00	
Medical Expenses[61]	95,801.47	2,095,801.47
Net Taxable Estate		P 8,478,075.92
Estate Tax Due		P 986,711.39
Less: Payment on 2/24/1999	P 268,377.60	
Payment on 10/17/2001	53,672.52	322,050.12
Deficiency Estate Tax		**P 664,661.27**
Add: 50% Surcharge		332,330.64
20% Interest (2/25/99 to 12/30/02)		511,334.93
Total Amount Due		**P 1,508,326.84**

Accordingly, the estates of Fidel F. Reyes and Teresita R. Reyes are hereby **ORDERED TO PAY** the respondent the amounts of P1,286,751.53 and P1,508,326.84, respectively, representing deficiency/delinquency estate taxes for taxable years 1997 & 1998. In addition, 20% delinquency interest is imposed thereon from December 31, 2002 until the respective amounts are fully paid pursuant to Section 249 (C)(3) of the 1997 NIRC.

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[60] Not disputed.

[61] Pursuant to Revenue Regulations No. 02-03, dated December 16, 2002, medical expenses are not included in the deductions referred under Section 86 (A) (1) of the NIRC of 1997 but are treated as a special item of deduction under Section 86 (A) (6) of the same Code.
The medical expenses were added by respondent in its computation, which reduced the deficiency estate tax.

However, the assessments for deficiency donor's tax in the amount of P216,632.54 and compromise penalty in the amount of P37,900 are hereby **CANCELLED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice