2/28/58

FINLEY J. GIBBS, as Trustee
for JOHNSON KELLEY GIBBS,
ALLISON DE FRANCE GIBBS,
CANDANCE GIBBS, DOUGLAS
FLETCHER GIBBS, AND
REGINAL KELLEY GIBBS,
Plaintiff,

ALLISON J. GIBBS and ESTER K.
GIBBS,
Plaintiffs-Intervenors,

February 28, 1958

- versus -

MANILA CIVIL
CASE NO. 19541

COLLECTOR OF INTERNAL REVENUE,
Defendant.

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D E C I S I O N

This relates to (1) two complaints, amended and intervention, for the refund of the total amount of ₱56,911.78 representing alleged overpayment of donors' and donees' gift taxes plus interest thereon, and (2) a counterclaim, interposed by defendant Collector of Internal Revenue, of the total sum of ₱7,503.04 as deficiency donors' and donees' gift taxes. The donors' and donees' gift taxes here involved refer to two (2) sets of Deeds of Sale and Declarations of Trusts dated September 25, 1950 and December 28, 1951 (hereinafter referred to as 1950 Deeds and 1951 Deeds, respectively), by virtue of which plaintiffs-intervenors Allison J. Gibbs and Ester K. Gibbs deeded, transferred, sold and assigned in trust in favor of their children 530,000 and 224,000 shares of stock respectively.

On the basis of a partial stipulation of facts (hereinafter cited as Stifacts) and the additional evidence adduced by the parties, the following facts have been established in this case. On September 25, 1950 the spouses Allison J. Gibbs and Ester K. Gibbs (hereafter referred to as "trustoos") executed ten (10) identical documents entitled "Deed of Sale and Declaration of Trust" (Exhibits "G" and "1" to "G-9" and "10", pp. 1-100, BIR rec.), by virtue of which they deeded, transferred,sold and assigned in trust to each of their five children, named Johnson Kelley Gibbs, Allison De France Gibbs, Candance Gibbs, Douglas Fletcher Gibbs and Reginald Kelley Gibbs (hereinafter cited as beneficiary or beneficiaries, as the case may be) 53,000 shares of Lepanto Consolidated Mining Company, then with a market value of ₱34,980.00, for the stipulated consideration of ₱26,227.70. The consideration under the said deeds was payable by the common trustee, Finley J. Gibbs, on or before December 23, 1950, the funds to be obtained by the latter by selling, mortgaging, hypothecating, or pledging part or all of the corpus of the trust.

Each trust is irrevocable and created "an endowment fund for the support, maintenance, care, health, higher education and travel of the"Beneficiary" named and the launching of his career after he becomes of age. The terms of the trusts appear to be uniform and the principal characteristics are herewith summarized. The trustee "shall invest and re-invest the corpus and accumulate, invest and re-invest the income of the trust, until the Beneficiary reaches the age of thirty-five (35)." However, "prior to the beneficiary reaching the age of 21, the trustee, in his sole discretion, may advance, contribute towards, or pay out of the income or the accumulated income or corpus of the trust part or all of the expenses incurred by the beneficiary" for the purposes hereof already recited. It is also provided that after the beneficiary shall have reached the age of 21 and until the age of 35, "the trustee must distribute to the former all of the annual income of the trust" either in monthly, quarterly or semi-annual installments, or "distribute part or all of the trust corpus or accumulated income" in installments or lump sums; that "when the beneficiary reaches the age of 34, the trust shall terminate and the trustee shall turn over to the beneficiary the entire trust corpus or the remainder thereof and any accumulated income"; that if the beneficiary dies before he reaches the age of 35, leaving legitimate issue, the benefits of the trust shall accrue to the issue; and, in the absence of such issue, the corpus of the trust and any accumulated income shall be turned over to trustors' legitimate children and/or the latter's legitimate issues; that if the beneficiary dies before the age of 35, there being neither issue thereof, nor surviving children of trustor or surviving issue of the latter, the remaining corpus of the trust and any accumulated income shall be turned over within 60 days of the beneficiary's death to Ester K. Gibbs (trustor herein) and the trust shall be terminated; and if Ester K. Gibbs should not be alive at such time, the remaining corpus and accumulated income shall be turned over to the Board of Trustees of Leland Standford University for its benefit. Under the instruments referred to above, the trustors were denominated as "Vendors". Plaintiff Finley J. Gibbs, a resident of San Francisco, California, U.S.A. and younger brother of trustor Allison J. Gibbs, was, by the said documents, appointed trustee, and thru the latter as his attorney-in-fact, accepted the trust for and in behalf of the beneficiaries.

On October 19, 1950, plaintiff thru his counsel and Attorney-in-fact, Allison J. Gibbs, requested Lepanto Consolidated Mining Company (Lepanto Company, for short) to cancel all the 530,000 Lepanto shares, subject of the ten documents herein involved, and reissue them to plaintiff as trustee thereof (Exhibit "K"). On October 21, 1950, plaintiff through counsel filed with the Central Bank an application for license to sell, assign, encumber, transfer or deliver the 530,000 shares to plaintiff-trustee, which application was finally approved by said bank on December 2, 1950 (Exhibits "J" and "J-2"). On December 7, 1950, new Lepanto Company certificates of stock were accordingly forwarded to the plaintiff through his Attorney-in-fact Allison J. Gibbs.

Meanwhile, on October 24, 1950, plaintiff wrote defendant Collector of Internal Revenue, notifying the latter of the creation of the ten (10) trusts and requesting a ruling on whether or not the transfer of shares effectád in pursuance thereof was subject to donor's and donee's taxes. The copies of the deeds in question (Exhibits "L" and "55", pp. 101-102, BIR rec.) were likewise submitted. On the theory that the beneficiaries of the trusts in question were donees (par. 13, Stifacts), defendant on December 14, 1950, issued the following gift tax assessments notices:

Donor	Assessment No.	Amount of Tax
Allison J. Gibbs	G-A-1283-50	₱774.04
Ester K. Gibbs	G-A-1284-50	774.04

Donees	Assessment No.	Amount of Tax
Donor- Allison J. Gibbs		
Johnson K. Gibbs	G-A-12383-50	₱75.04
Allison D. Gibbs	"	"
Candaoe Gibbs	"	"
Douglas F. Gibbs	"	"
Reginald K. Gibbs	"	"
Donor- Ester K. Gibbs		
Allison D. Gibbs	G-A-1284-50	"
Candace Gibbs	"	"
Douglas F. Gibbs	"	"
Reginald K. Gibbs	"	"

(Exhibits "L-2" to "L-13", pp. 112-122, BIR rec.)

Each gift tax assessment was based on the alleged gift represented by the difference between the market value of the Lepanto shares of stock transferred in each of the said deeds which is ₱34,980.00 and the amount of

₱26,227.70, which was the consideration stated therein (par. 13, Stifacts).

On December 22, 1950, plaintiff wrote defendant, requesting reissue of the assessment notices to the trustee in lieu of the beneficiaries on the ground that legal title to the Lepanto shares had been vested in the trustee. Plaintiff further pointed to a supposed error in the calculation of the donor's gift taxes which should be ₱842.84 for each donor, instead of the assessed ₱774.04 (Exhibit "M", pp. 129-130, BIR rec.). In accordance with this request, defendant, on December 22 and 23, 1950, issued revised donor's gift tax assessments notices in the names of trustors for the amount of ₱842.84 for each donor (Exhibits "36", p. 135, BIR rec. and "35", p. 133, BIR rec.), or a total of ₱1,685.68. Likewise, amended donee's gift tax assessments were issued in the trustee's name corresponding to each donee, each in the sum of ₱8,928.45 (Exhibits "37", p. 137, BIR rec. and "38", p. 140, BIR rec.) or a total of ₱17,856.90. Like the original assessments, the amended donee's gift tax assessments were based on the theory that each trust involves the gift of Lepanto shares, insofar as the fair market value of the same exceeded the monetary consideration stipulated in the conveyance (par. 16, Stifacts). The gift taxes demanded in the amended assessments were paid on May 15, 1951 (see Exhibits "P", "Q", "R" and "S", pp. 134, 136, 139 and 142, BIR rec.).

However, in a letter, dated April 4, 1951, plaintiff requested defendant to reconsider the aforementioned amended donee's gift tax assessments with the view of revising the same on the theory that the children of the trustors are the beneficiaries in fact and not the trust created. (Exhibits "58", pp. 147-153, BIR rec.). Hence, plaintiff requested in two letters, dated June 9, 1951, "that after deducting the donee's gift taxes from the deposit of ₱8,928.45 on the basis that the said children are the donees-beneficiaries, the excess be refunded". (Exhibits "T" and "T-1", pp. 163-164, BIR rec.). On August 23, 1951, defendant denied the request for refund on the ground that the deeds in question effected a transfer of present interest in the property, not to the children of trustors, but to the trust itself (Exhibits "U" and "61", p. 166-170, BIR rec.).

Plaintiff appealed the matter to the Secretary of Finance, who in turn referred the matter to defendant for comment and recommendation (Exhibit "62-A", p. 237, BIR rec.). Defendant reconsidered his stand saying that he was "inclined to consider the beneficiaries (children) of the trust rather than the trust itself as the donees" (Exhibit "62-B", pp. 238-243, BIR rec.). In view of existing administrative procedures at the time, the matter was referred to the defunct Board of Tax Appeals (Exhibits "U-3" and "62-D",

p. 245, BIR rec.; par. 23, Stifacts). On April 17, 1952, the said Board approved defendant's decision that the beneficiaries of the trust (children of the trustors) rather than the trust itself are the donees (Exhibits "U-11" and "66", p. 342, BIR rec.).

Meanwhile, in reply to an inquiry relative to the payment of the consideration stipulated in the 1950 deeds, trustors, in a letter dated March 24, 1952, explained that there was a deferment thereof and that the same was due to the delay in the issuance by the Central Bank of the license approving the transfer of the Lepanto shares; trustor's leaving the Philippines on account of the worsening international condition; and, subsequent pressure of his work. Hence, trustee requested that the payment thereof be deferred until after the approval by the Central Bank of the transfers effected under the 1951 deeds. Accordingly, it was then the alleged plan of the trustee to liquidate the specified consideration under the 1950 and 1951 deeds as soon as possible after approval by the Central Bank of the transfers effected by the latter deeds by hypothecating the shares involved with a local bank for the necessary sum (Exhibits "U-7" and "68", pp. 307-309, BIR rec.).

The case was referred to the Conference Staff for investigation and recommendation (Exhibit "54", pp. 380-381, BIR rec.). Meanwhile, on May 12, 1953, plaintiff filed the original complaint in this case before the Court of First Instance of Manila, which, by virtue of Republic Act No. 1125, remanded the same to this Court for final disposition.

In the interim the Conference Staff of the Bureau of Internal Revenue recommended that -

> "the sum of ₱17,106.50 be credited against whatever deficiency donor's and donee's taxes may be due from the taxpayer" (and) "that the total fair market value of all the shares of stock of Lepanto Consolidated Mining Company covered under the ten (10) Deeds of Sale & Declarations of Trust be considered a gift by the spouses to their children x x x." (Exhibit "54-E", pp. 419-430, BIR rec.)

In view thereof, defendant, on June 16, 1954, issued two amended donor's gift tax assessments in the names of trustors (intervenors) each in the sum of ₱9,071.00. After crediting the alleged overpayment on the donee's gift tax in the amount of ₱3,977.29, there is left a balance of ₱5,093.71 on account of donor's gift taxes (Exhibits "RRR" and "80", p. 510, BIR rec.; "SSS" and "81", p. 508, BIR rec.; par. 26, Stifacts). As the request of the trustors for the deferment of payment thereof was denied, these assessments were paid under protest (Exhibits "UUU-4" and "UUU-5") and a claim for the refund thereof was filed with defendant within the statutory period (Exhibits "TTT-3" and "TTT-4", pp. 519 and 525, BIR rec.).

Meanwhile, on June 15, 1953, trustors and trustee (plaintiff), the latter acting through his attorney-in-fact, Allison J. Gibbs (one of the trustors), executed ten (10) compromise agreements corresponding to each of the 1950 Deeds. By virtue of each of these compromise agreements, the trustee obligated himself to liquidate the consideration of ₱26,227.70 stipulated in each of the deeds of September 25, 1950, by paying the trustors ₱5,227.70 on or before June 30, 1953 and the balance of ₱21,000.00 on or before fixed dates which ranged from April 4, 1959 to March 11, 1971 (on or before the twenty-first birthday of the child involved) or the date of the termination of the trust, whichever date first occurs (Exhibits "LLL" to "LLL-9", pp. 475-496, BIR rec.; see also pp. 112-113, CTA rec.). The sum of ₱5,227.70 was in fact paid on June 29, 1953 (Exhibits "C" and "D"). Apparently, in pursuance of these compromise agreements, trustee executed and delivered ten undated and unwitnessed promissory notes to trustors for ₱21,000.00 each, the sum payable without interest on the dates provided for in the said agreement.

Independently of the 1950 deeds, trustors executed on December 28, 1951 ten (10) identical documents entitled "Deed of Sale & Declaration of Trust" (Exhibits "H" and "11" to "H-9" and "20", pp. 252-443, BIR rec.), by virtue of which they respectively deeded, transferred, sold and assigned in trust to each of their five children, heretofore named, 22,400 shares of Lepanto Consolidated Mining Company stock for the stipulated consideration of ₱17,430.00, then with a market value of ₱19,264.20, payable by the trustee within one hundred twenty (120) days after the transfer of said stock is effected in the books of Lepanto Company. The consideration thereof was to be obtained by selling, mortgaging, hypothecating, or pledging part or all of the corpus of the trust. Except for the subject matter and consideration thereof and the date of payment of the latter, the 1951 deeds are a faithful reproduction of the 1950 deeds heretofore described. Plaintiff was also appointed and constituted trustee under the latter deeds.

Pursuant thereto, application for license to sell, assign, encumber, transfer or deliver and/or export the 224,000 Lepanto shares from trustors to trustees was filed with the Central Bank. On February 29, 1952, the Central Bank approved an amended application (Exhibit "Y"), authorizing the transfer of the shares covered by the 1951 deeds subject to the following conditions: (1) that the stock certificates will not be exported abroad but maintained in the Philippines; (2) that payments to be made from the stock certificates shall be made from pesos lawfully due to the said trustee or from dollar remittances from abroad; (3) that any amounts realized from the future disposition of these certificates shall be maintained in a block account with any of our (Central Bank) authorized agents; (4) that the trustee shall waive remittance of any future divided on said certificates; and (5) that the stock certificates transferred under license x/L-530 covering application x-431 (on transfer of September 25, 1950) shall not be exported (Exhibits "Y-3" and "Y-4").

Subsequently, however, on June 15, 1953, trustors and trustee (plaintiff), the latter acting thru his attorney-in-fact, Allison J. Gibbs (one of the trustors), executed ten (10) compromise agreements corresponding to each of the 1951 deeds. By each of these agreements, the trustee resold, retransferred and reassigned unto trustors 22,400 Lepanto shares, subject of the 1951 deeds, for a price of ₱19,264.00. It was agreed thereunder that the stipulated consideration of ₱17,430.00 in each of the 1951 deeds was to be credited against the ₱19,264.00 price agreed in the compromise, leaving a balance of ₱1,834.00 which was to be paid to the trustee upon the trustors' repossession of the Lepanto Company certificates of stock evidencing said 22,400 shares (Exhibits "MMM" to "MMM-9", pp. 445-474, BIR rec.).

Meanwhile, on January 25, 1952, plaintiff requested from defendant a ruling as to whether the transfers covered by the 1951 deeds were subject to the gift tax under Section 111 of the Tax Code. On March 24, 1952, Donor Gift Tax Returns (Exhibits "U-7" and "68", pp. 307-309, BIR rec.; see Exhibits "Z" and "39" and "AA" and "40", pp. 334-337, BIR rec.) and Donee Gift Tax Returns (Exhibits "U-7" and "68", pp. 307-309, BIR rec.; see Exhibits "BB" and "41" to "KK" and "41-I", pp. 314-333, BIR rec.) were filed. On the basis of these returns, defendant issued the following gift tax assessment notices;

Donor	Assessment No.	Amount of Tax
Allison J. Gibbs	G-A-1283-51	₱304.42
Ester K. Gibbs	G-A-1284-51	304.42
Donees		
Donor- Allison J. Gibbs		
Johnson K. Gibbs	G-A-1283-51(a)	₱36.69
Allison D. Gibbs	G-A-1283-51(b)	"
Candace Gibbs	G-A-1283-51(c)	"
Douglas F. Gibbs	G-A-1283-51(d)	"
Reginald K. Gibbs	G-A-1283-51(e)	"
Donor- Ester K. Gibbs		
Johnson K. Gibbs	G-A-1284-51(a)	"
Allison D. Gibbs	" (b)	"
Candace Gibbs	" (c)	"
Douglas F. Gibbs	" (d)	"
Reginald K. Gibbs	" (e)	"

(Exhibits "LL" and "52" to "WW" and "42", pp. 344, 347, 350, 353, 356, 359, 362, 365, 368, 371, 377 and 374, BIR rec.).

All of the above assessments were paid on May 14, 1953, (Exhibits "XX" and "YY", pp. 375, and 378, BIR rec.; and Exhibits "22", "AA" to "III", pp. 372, 369, 366, 363, 360, 357, 354, 351, 348 and 345, BIR rec.).

On June 16, 1954, defendant issued Amended Donor's Gift Tax Assessment notices against trustors, each for ₱9,093.20 as donor's gift tax. However, deducting therefrom the sum of ₱304.42 which was paid on May 14, 1952, deficiency donor's gift tax of each donor is ₱8,788.78 (Exhibits "NNN" and "79", "OOO" and "78", pp. 507 and 509, BIR rec.). Simultaneously, two amended consolidated Donees Gift Tax Assessment notices were issued against the beneficiaries, each for the sum of

₱6,203.60. Credited thereto is the sum of ₱183.45 which was paid on May 14, 1952, thereby leaving in each case a deficiency donee's gift tax of ₱6,020.15 (Exhibits "PPP" and "76", "QQQ" and "77", pp. 505 and 506, BIR rec.). These deficiency assessments were accordingly paid and subsequently the refund therefor was requested on July 31, 1954 by plaintiffs. (Exhibits "TTT-3", "TTT-5", "TTT-6", "TTT-4", "TTT-2" and "TTT-7", pp. 519, 521, 523, 525, 527, and 529, BIR rec.).

The instant case, as previously stated, was remanded to this Court for final disposition pursuant to Republic Act No.1125. On the basis of all the foregoing facts, the questions herein raised boil down to the following:

> 1. Whether or not the transfer of Lepanto shares effected by the Deeds of Sale and Declarations of Trust, dated September 25, 1950 and December 28, 1951, are subject to gift tax, and if in the affirmative;
>
> 2. Whether or not the gift tax should be based upon the stipulated monetary consideration ofthe transfer or upon the difference between the market value of the shares and their stipulated monetary consideration, or upon the market value of the shares.

The resolution of these two issues hinges upon the application of Sections 108 and 111 of the National Internal Revenue Code, which read as follows:

> "Sec. 108. <u>Imposition of tax</u>.- (a) There shall be levied, assessed, collected, and paid upon the transfer by any individual, resident or non-resident, of property by gift, a tax, computed as provided in section 109.

> (b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.
>
> "Sec. 111. Transfer for less than adequate and full consideration.- Where property is transferred for less than an adequate 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."

Relative to the first issue, plaintiff (trustee) and plaintiff-intervenors (trustors) maintain that the transfer of the Lepanto shares covered by the 1950 and 1951 deeds is a sale or transfer of stocks for a valuable consideration consisting of a promise to pay a certain sum of money. As such, it is argued that the same should not be subject to gift tax. However, it may be stated by way of observation that plaintiff apparently admits the gift tax liability upon the difference between the market value of the Lepanto stock and stipulated purchase price in the total sum of ₱3,411.82. (See par. 18, Memorandum for Plaintiff; 1st page Memorandum for Intervenors). Upon the other hand, defendant contends that said transfers are donations for the reason that the considerations stated in the deeds are simulated with intent to defeat the gift tax laws. Both parties seem to agree that the resolution of this issue turns upon the proper factual circumstances and appreciation thereof.

The determination of whether or not the conveyance in each case of the Lepanto shares in question was propelled and impelled by a donative intent perforce leads to the ascertainment of what transpired in the minds of the trustors. For obvious reasons, we shall determine their subjective element by the objective manifestations of both trustors and trustee.

We shall accordingly consider all circumstances affecting the two sets of Deeds (1950 and 1951) separately and in the order of their execution. With respect to the 1950 deeds, it is to be noted that by each deed, each trustor conveyed in trust to each of the children-beneficiary 53,000 Lepanto shares for a stipulated consideration of ₱26,277.70. By these deeds, trustors transferred and conveyed a total of 530,000 Lepanto shares for an aggregate price of ₱262,277.00. The current market value of the shares, i.e. value at the time of the transaction, was ₱349,800.00. In addition to the substantial disparity between the market value and the alleged price therefor, it should be noted that the deeds contained no provision as to payment of the consideration involved except a condition to the effect that the trustee was authorized to sell, mortgage, hypothecate or pledge part or all of the corpus of the trust to pay the trustors. Although the deeds in question provided that the payment of the consideration should be made on or before December 23, 1950, no attempt was made to effect such payment then. In fact, purportedly pursuant to the compromise agreement of June 15, 1953, the trustee appears to have paid on June 29, 1953, only the sum of ₱5,277.70, on each trust or a total of ₱52,277.00 on the entire property leaving the balance of ₱21,000.00 on each trust or a total unpaid balance of ₱210,000.00. To answer for the payment of this balance, the trustee purportedly executed and delivered to the trustors ten (10) undated and unwitnessed promissory notes, each of which is redeemable on or before the twenty-first birthday of the child concerned, or the date of the termination of the trust, whichever date first occurs. However, it appears striking to us that besides being undated the promissory notes bear no place of execution.

From the evidence further adduced, we note that the trustee is the younger brother of trustor, Allison J. Gibbs. In addition, the trustor himself is in turn the attorney-in-fact of the trustee Finley J. Gibbs and acted as such in behalf of the latter in the execution of the 1950 and 1951 deeds and the compromise agreements of June 15, 1953. While ordinarily this consanguineous relationship alone should not excite suspicion, yet when all these facts are taken together we cannot help but subscribe to the proposition that the transfer of Lepanto shares of September 25, 1950 could not be a sales transaction at arm's length, for the parties thereto have been practically one and the same individual acting in dual capacities on matters which are usually and mutually incompatible with each other.

It should be noted that by the terms of the 1950 deeds, the trustee is to pay the stipulated consideration by selling, mortgaging, hypothecating, or pledging part or all of the corpus of the trust. Although the transfer of the 530,000 Lepanto shares was approved by the Central Bank as early as December 2, 1950, and the corresponding shares, duly transferred in the name of the trustee on December 7, 1950, yet there is no showing that the trustee made any attempt to sell, mortgage, hypothecate or pledge part or all of the corpus in order to liquidate the stipulated considerations. Neither did the trustors press for such sale, hypothecation or pledge. All these serve to indicate that the sales transactions were not serious in their entirety not to say fictitious.

Finally, we note that the purpose behind the various trusts, as aforestated, was to establish endowment funds for the support, maintenance, care, health, higher education and travel of the beneficiaries and the launching of their careers after they became of age. If this be so, then it would seem highly incomprehensible why extremely burdensome monetary considerations were imposed in the trusts. This seems to us to be rather inconsistent. We assume that the trustors were indeed serious about the purpose of the trusts. With this in mind, we cannot conceive how the purpose of the trust may readily and libesally be achieved if the trust were to be burdened by such onerous monetary consideration. Without the consideration, the purpose or purposes of the trusts could have been more readily obtained. Consequently, we feel constrained to treat the monetary considerations of the trusts as an intended superfluity, if not a subtlety, to becloud the donative intent of trustors.

It may however be stated that in many instances as between relatives, nay between parents and children, property may be sold at a bargain price, thus negativing the possibility of liberality or gift. Nevertheless, all the foregoing circumstances when taken together, especially the influence of family affection and relation, lend light to the conclusion that the transactions were in fact gifts. We add to this the rule that the determination by the Collector of Internal Revenue that a gift has been made, is presumptively correct, and thus the taxpayer is burdened with the duty of disproving such gift (see John D. Archbold vs. Commissioner, 42 BTA 453).

The compromise agreements of June 15, 1953, amply supply the explanation regarding the nature of the transfer of Lepanto shares. As stated above, by these agreements, plaintiff trustee obligated himself to liquidate the total consideration of ₱262,277.00 stipulated in the 1950 deeds by paying tsustors ₱52,277.00 on or before June 30, 1953 and the balance of ₱210,000.00

variously on or before the twenty-first birthday anniversary of the child involved. The sum of ₱52,277.00 was paid on June 29, 1953. The balance of ₱210,000.00 was equally diffused in ten promissory notes which are separately redeemable on or before the twenty-first birthday of the child concerned. In view of our observations relative to the circumstances attending the execution of these notes and other antecedents of the case, we are compelled to conclude that this consideration of ₱210,000.00 is a simulated one. But, as the market value of the 530,000 Lepanto shares was ₱349,800.00 and only the amount of ₱52,277.00 was paid therefor, it follows that said shares were transferred for less than their adequate and full consideration. The amount by which the market value of the shares exceeded the consideration actually paid is, therefore, a gift (Section 111, National Internal Revenue Code).

We hold the same observation with respect to the transfer of 224,000 Lepanto shares effected in the 1951 deeds. We note that the stipulated consideration of said transfer has not been liquidated. The second set of compromise agreements, which, by their terms, resold and retransferred the same shares to plaintiffs-intervenors for a total sum of ₱192,640.00, serve to coördinate our findings that the transactions of September 25, 1950 and December 28, 1951, to the extent that the market value exceeded the price actually paid, constituted gifts by the trustors to their children and are taxable under sections 108 and 111 of the Tax Code. To our mind, the compromise agreements made in 1953, and the purported resale by the trustee to the trustors of the shares of stock were futile attempts to bolster trustors' contention that the earlier deeds were founded upon valid and sufficient consideration. It should be noted that these were made at the time defendant had already made the tax assessments in question. By attempting to resell or reconvey the shares, it was apparently the hope of the trustors that the 1950 and 1951 transactions would be considered as true sales.

The contention that the 1950 and 1951 deeds created future interests, and, therefore, the transfer of Lepanto shares effected thereby should not be taxable as gift is entirely without merit. By the terms of the various trusts, trustors have completely, irrevocably and immediately relinquished economic domination over the Lepanto shares in favor of the trustee and ultimately in favor of the beneficiaries. As such, the gift tax should attach for "the taxable event is, therefore, the irrevocable divestment of all the donor's right in the property, rather than the irrevocable vesting of rights, in particular beneficiaries. (Helvering v. Robinette, 129 F 2d 832, 834, quoting Warren, Correlation of Gift and Estate Taxes, 55 Harvard Law Review 1, 15). Indeed, the essence of a gift by trust is the abandonment of control over the property in trust." (Smith v. Shanghnessy, 318 U.S. 176, 181, 87 L Ed 690, 693.)

The argument that there can be no transfer by way of donation or trust because neither parents nor beneficiaries-children accepted the transfer is equally untenable. While it is true Article 741 of the Civil Code requires the acceptance of donations made in favor of minors and incapacitated persons through their parents or legal representatives, for the validity of the same, we believe that said legal requirement is not necessary in those cases of donations as the ones herein involved where the donors are the natural parents of the donees. Be that as it may, tax laws concern itself more on the substance rather than the form. In the case at bar, the donors are the natural parents of the donees. It would be superflous and fatuous to require trustors to accept in behalf of beneficiaries (their children) the donations that they (the former) themselves made. The observation that to require the former to accept the donation would be a superfluity and fatuity is more demonstrably true if we were to bear in mind that one of the trustors is Allison J. Gibbs, and is also the attorney-in-fact of plaintiff-trustee, who accepted the very trusts that he and his wife established. Consequently, we also believe that the acceptance of the trusts by the trustee, Finley J. Gibbs, acting through his said attorney-in-fact, is sufficient for purposes of the imposition of the gift tax on the various donations in question.

We now come to the second issue. With respect to the transfer of Lepanto shares effected in the 1950 deeds, we have heretofore made a finding that the sum of ₱52,277.00 was actually paid for said transfer. To the extent of this amount, the estates of plaintiffs-intervenors-donors were replenished. However, it appearing that the 530,000 Lepanto shares had then current market value of ₱349,800.00, it follows that said shares were transferred for less than an adequate and full consideration. By provision of law, the difference between the then current market value of the Lepanto shares in the amount of ₱349,800.00 and the sum of ₱52,277.00 actually paid, or the difference of ₱297,523.00 should be subject to gift tax (Section 111, National Internal Revenue Code).

With regard to the transfer of 224,000 Lepanto shares made in the 1951 deeds, we have heretofore found that the consideration thereof, amounting to ₱174,300.00, has not yet been paid. There was no replenishment to plaintiffs-intervenor's estates as far as their transfer is concerned. The transfer was, therefore, a donation. And, it also appearing that these shares had a market value of ₱192,642.00 at the time of their transfer, it therefore follows that this amount of ₱192,642.00 is subject to gift tax under Section 108 of our Tax Code.

IN VIEW OF THE FOREGOING, the decision appealed from is modified, and the defendant Collector of Internal Revenue is hereby ordered to refund to the plaintiff the sum of ₱5,381.88, as computed in Annex "A" hereof, with interest at the legal rate from date of payment. Without special pronouncement as to costs.

SO ORDERED.

Manila, Philippines, February 28, 1958.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

CTA decision affirmed by S.C. in G.R. No. L-14166 & L-14338, April 28, 1962.

ANNEX "A"

DONORS GIFT TAX - 1950

Donors - Allison J. Gibbs & Ester K. Gibbs

Market value of 530,000 shares		₱349,800.00
Less: Consideration actually paid		52,277.00
Net gifts made by Allison & Esther Gibbs		₱297,523.00
or for each donor		₱148,761.50

Computation for donor Allison J. Gibbs

Donor's gift tax due on ₱148,761.50		₱ 6,743.30
Less amounts paid:		
Donor's tax per prior years computation	₱ 842.84	
Overpayment on donees gift tax (per computation below) ...	4,678.00	5,520.84
Deficiency gift tax		₱ 1,222.46
1/2% mo. interest on ₱1,222.46 from 5/15/51 to 7/31/54		235.32
Total gift tax and interest		₱ 1,457.78
Amount paid 7/31/54		5,093.71
Refund due		₱ 3,635.93

Computation for donor Esther K. Gibbs

Refund due (same as above)	₱ 3,635.93
Total refund due to above donors for 1950	₱ 7,271.86

DONEES GIFT TAX - 1950

Donees - Johnson, Allison, Candace, Douglas & Reginal Gibbs

1/5 of ₱148,761.50 = ₱29,752.30

Computation of gift tax due from above donees on donation made by Allison Gibbs

Donees gift tax due on ₱29,252.30 ...	₱850.09	
	x 5	
Total gift tax due from the above donees		₱ 4,250.45
Less amount paid		8,928.45
Overpayment credited to donors gift tax payable (see computation above)		₱ 4,678.00
For the donations received by the above donees from Esther Gibbs, Donor, same amount was credited to her donor's gift tax payable		₱ 4,678.00

S U M M A R Y

Refund due on donors' taxes	1950	₱ 7,271.86
Deficiency donors taxes	1951	(1,311.86)
Deficiency donees taxes	1951	(578.12)
Total refund due		₱ 5,381.88

DONORS GIFT TAX - 1951

Donors - Allison J. Gibbs & Esther K. Gibbs

Market Value of 224,000 shares	₱192,642.00
or for each donor	₱ 96,321.00

COMPUTATION FOR DONOR ALLISON J. GIBBS

Net gifts made in 1950	₱148,761.50	
Net gifts made in 1951	96,321.00	
Total	₱245,082.50	
Gift tax due on ₱245,082.50	₱ 15,387.42	
Less: Gift tax for 1950	6,743.30	
Donor's gift tax due		₱ 8,644.12
Less: amount paid - Donor's tax per prior years computation ...		304.42
Deficiency gift tax		₱ 8,339.70
1/2% mo. interest on ₱8,339.70 from 5/15/52 to 7/31/54		1,105.01
Total gift tax and interest		₱ 9,444.71
Less amount paid 7/31/54		8,788.78
Net deficiency gift tax due		₱ 655.93

COMPUTATION FOR DONOR ESTHER K. GIBBS

Deficiency gift tax (same as above)	₱ 655.93
Total deficiency gift tax due from above donors	₱ 1,311.86

DONEES GIFT TAX - 1951

Donees - Johnson, Allison, Candace, Douglas & Reginald Gibbs

1/5 of ₱96,321.00 = ₱19,264.20

Computation of gift tax due from above donees on donation made by Allison Gibbs

Net gifts made in 1950	₱29,752.30	
Net gifts made in 1951	19,264.20	
Total	₱49,016.50	
Donees gift tax due on above	₱ 2,000.99	
Less: gift tax for 1950	850.09	
Donee's gift tax due from each donee		₱ 1,150.90
		x 5
Total gift tax due from the above donees		₱ 5,754.50
Less amount paid		183.45
Deficiency gift tax		₱ 5,571.05
1/2% mo. interest on ₱5,571.05 from 5/15/52 to 7/31/54		738.16
Total gift tax and interest		₱ 6,309.21
Amount paid 7/31/54		6,020.15
Net deficiency gift tax due		₱ 289.06
For the donations received by the above donees from Esther K. Gibbs, donor, same amount due as above		₱ 289.06
Total deficiency donees gift taxes for 1951 ...		₱ 578.12