REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VICTOR Z. MANLAPAZ AND MARIA CZARINA OLIVEROS MANLAPAZ,
Petitioners,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9765

Members:

CASTAÑEDA, JR., *Chairpersor,*
and
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 2 3 2018

2:45 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed on February 12, 2018 by Victor Z. Manlapaz and Maria Czarina Oliveros Manlapaz to seek the refund of donor's tax they allegedly erroneously paid in the total amount of Seven Hundred Sixty Thousand Eight Hundred Pesos (₱760,800.00).

[1] Docket, pp. 10-16.

THE FACTS

Petitioners Victor Z. Manlapaz and Maria Czarina Oliveros Manlapaz are both Filipinos, of legal age, formerly married to each other but with a judicially annulled marriage.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties, and responsibilities of the said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. He holds office at the BIR National Office Building, Diliman, Quezon City.

On November 3, 2015, a Decision was rendered by Presiding Judge Liza Marie R. Picardal-Tecson of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 144, Makati City, declaring as null and void *ab initio* the marriage between Victor Z. Manlapaz and Maria Cristina Oliveros Manlapaz.[3] In the said Decision, the RTC also approved the "Agreement on Custody and Support and Liquidation, Dissolution, and Separation of the Property Regime" (the "Agreement") entered into by and between the former spouses.[4] The above Decision likewise dissolved the property relations between the former spouses.[5]

Section IV of the Agreement provides that the Tropical 58 Unit in Makati (a condominium unit) shall be donated to Bea Liana Oliveros Manlapaz, the common child of the petitioners.[6]

In accordance with the Agreement, the petitioners executed a Deed of Donation in favor of their common child, Bea Liana Oliveros Manlapaz.[7] The petitioners both filed their respective donor's tax returns on the donation they made to their common child, Bea Liana Oliveros Manlapaz.[8] On February 16, 2016, each of the petitioners paid the amount ₱380,400.00 as donor's tax, or in the total amount of

---

[2] Joint Stipulation of Facts & Issues (JSFI), Manifestation and Motion, Docket, p. 93.
[3] *Id.*, p. 94.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

₱760,800.00.[9] Thus, the respondent issued a Certificate Authorizing Registration.[10]

The title covering the property donated was subsequently transferred to the donee, Bea Liana Oliveros Manlapaz.[11] Condominium Certificate of Title (CCT) No. 006-2016009490 was thereafter issued under the name of Bea Liana Oliveros Manlapaz by the Register of Deeds for Makati City.[12]

On May 29, 2017, petitioner Victor Z. Manlapaz filed with the respondent an application for refund of the donor's tax he paid for the donation made to Bea Liana Oliveros Manlapaz.[13] On February 2, 2018, petitioner Victor Z. Manlapaz received a denial of his application for refund.[14]

On February 8, 2018, petitioner Maria Czarina Oliveros Manlapaz filed her application for refund of the donor's tax she paid for the donation made to Bea Liana Oliveros Manlapaz.[15] Such application for refund was not acted upon by the respondent.[16]

On February 12, 2018, petitioners filed the present Petition for Review.

Within the extended period granted by this Court,[17] respondent filed his Answer[18] interposing therein the following Special and Affirmative Defenses, to wit:

a. The petitioner[s] must proved (sic) the taxes was (sic) erroneously paid;[19]

b. BIR Ruling No. DA-102-2003 is not applicable in this case;[20]

---

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] JSFI, Docket, p. 95.
[16] *Id.*
[17] Order dated March 21, 2018, Docket, p. 40.
[18] Docket, pp. 54-60.
[19] *Id.*, p. 56.
[20] *Id.*

c. The donation is valid and subsisting;[21] and

d. Tax refunds are strictly construed against the taxpayer.[22]

The Pre-Trial Conference[23] was held on May 24, 2018. Respondent's Pre-Trial Brief[24] was filed via registered mail on May 18, 2018 while petitioner's Pre-Trial Brief[25] was filed on May 21, 2018.

The parties filed their Joint Stipulation of Facts and Issues, Manifestation and Motion[26] on June 13, 2018, which was approved by the Court in its Pre-Trial Order[27] dated August 15, 2018.

In the Joint Stipulation of Facts and Issues, Manifestation and Motion, the parties manifested that with the submission of the Joint Stipulation of Facts and Issues, there is no more need to conduct a hearing for the reception of evidence on factual matters and the issue could be resolved upon submission by the parties of their respective Memorandum.[28] Accordingly, the parties moved for the cancellation of the hearing set on July 23, 2018 and for the grant of a period of forty-five (45) days from notice within which to submit their respective Memorandum.[29]

In a Resolution[30] dated July 12, 2018, this Court granted the parties' Manifestation and Motion. Accordingly, the hearing set on July 23, 2018 was cancelled and the parties were given a period of forty-five (45) days from notice within which to submit their respective Memorandum.[31]

---

[21] Docket, p. 57.
[22] *Id.*, p. 58.
[23] Minutes of the Hearing dated May 24, 2018, Docket, p. 84.
[24] Docket, pp. 86-90.
[25] *Id.*, pp. 71-76.
[26] *Id.*, pp. 93-97.
[27] *Id.*, pp. 108-110.
[28] *Id.*, p. 96.
[29] *Id.*
[30] *Id.*, pp. 103-104.
[31] *Id.*

Petitioners filed their Memorandum[32] on August 24, 2018 while respondent filed his Memorandum[33] via registered mail on September 10, 2018. The present case was submitted for decision in a Resolution[34] dated October 3, 2018.

THE ISSUE

The parties submitted the issue stated below for this Court's resolution:

> "[W]hether the petitioners could be refunded the amount of Three Hundred Eighty Thousand Four Hundred Pesos (₱380,400.00) each for the donor's tax they paid on February 16, 2016, or in the total amount of Seven Hundred Sixty Thousand Eight Hundred Pesos (₱760,800.00). Specifically, whether the 'donation' made by the petitioners to their common child of her presumptive legitime for the purpose of dissolving their absolute community resulted to compliance with the provisions of the Family Code, Article 102(5) in relation to Article 51 hence not a taxable donation." [35]

THE COURT'S RULING

The petitioners mainly anchored their claim for refund on the argument that the subject donation was made without donative intent on their part.[36] They posit that the donation was not premised on a pure act of liberality but for the purpose of complying with the legal requirements of the dissolution of the property relations between the former spouses.[37] Petitioners likewise postulate that since there is doubt as to whether there is donative intent involved in the subject donation or not, then the doubt should be resolved in their favor.[38] Petitioners also assert that respondent, in requiring them to secure a BIR ruling, is adding a requirement which is not present in the law.[39]

---

[32] *Id.*, pp. 111-120.
[33] *Id.*, pp. 122-129.
[34] *Id.*, p. 131.
[35] JSFI, Docket, pp. 95-96.
[36] Petition for Review, Docket, p. 13.
[37] *Id.*
[38] *Id.*, p. 14.
[39] *Id.*, p. 15.

Petitioners maintain that there is no provision of law that requires a prior BIR ruling before an application for refund may be granted.[40]

Respondent, on the other hand, asserts that petitioners must prove that the taxes were erroneously paid.[41] In this regard, respondent claims that petitioners failed to substantiate why the donor's taxes were erroneously paid given that there was a valid transfer of title to the donee.[42] Respondent also pointed out that the BIR Ruling No. DA-102-2003 being invoked by petitioners was obtained by other taxpayer who may or may not be similarly situated as the petitioners, and that there is no evidence that the latter have requested for and relied on a BIR ruling confirming their exemption from donor's tax.[43] Finally, respondent noted that the certificate of title covering the property donated was already transferred to the donee.[44] Accordingly, respondent contends that to allow the donee to retain the title to the property donated and to grant the tax refund at the same time will result to violation of the NIRC because in such case, there will be an existing transfer of title without the corresponding payment of the applicable transfer tax.[45]

The Petition for Review lacks merit.

Donor's tax is an excise tax imposed on the privilege of transferring property by way of gift *inter vivos*.[46] Donor's tax shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift.[47] The imposition of donor's tax shall be made 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.[48]

Although the National Internal Revenue Code of 1997, as amended (1997 NIRC) does not define "transfer of property by gift", the same is understood to include "donation" defined under Article 725

---

[40] *Id.*
[41] Answer, Docket, p. 56.
[42] *Id.*
[43] *Id.*, pp. 56-57.
[44] *Id.*, p. 57.
[45] Respondent's Memorandum, Docket, p. 127.
[46] *Lladoc v. Commissioner of Internal Revenue*, G.R. No. L-19201, June 16, 1965, 14 SCRA 292.
[47] Section 98(A), 1997 NIRC.
[48] Section 98(B), 1997 NIRC.

of the Civil Code as "an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it".[49]

Donation has the following elements: (a) the reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and, (c) the intent to do an act of liberality or *animus donandi*.[50]

Section 11 of Revenue Regulations (RR) No. 2-2003, as amended,[51] in implementing the relevant provisions of the 1997 NIRC on donor's taxes, provided as follows:

> "**The donor's tax shall not apply unless and until there is a completed gift. The transfer of property by gift is perfected from the moment the donor knows of the acceptance by the donee; it is completed by the delivery, either actually or constructively, of the donated property to the donee.** Thus, the law in force at the time of the perfection/completion of the donation shall govern the imposition of the donor's tax.
>
> In order that the donation of an immovable may be valid, it must be made in a public document specifying therein the property donated. The acceptance may be made in the same Deed of Donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor." *(Emphasis supplied)*

Donor's tax is imposed to complement estate tax by preventing the tax-free depletion of the transferor's estate during his lifetime.[52] It is also imposed to compensate for the possible loss of income taxes when incomes of large estates are split by donations.[53]

---

[49] *Abello v. Commissioner of Internal Revenue*, G.R. No. 120721, February 23, 2005, 452 SCRA 162, 168.
[50] *Id.*, citing Republic of the Philippine v. Guzman, 326 SCRA 90 (2000); *Tayoto v. Heirs of Cabalo Kusop*, 184 SCRA 355 (1990).
[51] Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act No. 8424, the Tax Reform Act of 1997.
[52] *Harris v. Commissioner of Internal Revenue*, 340 U.S. 106 (1950).
[53] HECTOR S. DE LEON AND HECTOR M. DE LEON, JR., THE NATIONAL INTERNAL REVENUE CODE ANNOTATED VOL. 1 619-620 (8TH ED. 2003).

In the present case, there is no doubt that donation was actually made by the parties because all of the elements of a valid donation are present. The petitioners have executed a Deed of Donation transferring the ownership of the subject property to their common child. In so doing, the patrimony of the petitioners were reduced by the amount commensurate to the value of the subject property while the patrimony of their common child correspondingly increased by the same amount. Given that petitioners gave the subject property to their common child without any material consideration, accordingly, there arises an implication of intent to do an act of liberality or *animus donandi*.

As stated earlier, petitioners have taken issue with the presence (or absence) of *animus donandi* or donative intent in the subject transaction. They claim that the subject transaction was not premised on a pure act of liberality but merely for the purpose of complying with the legal requirements of the dissolution of the property relations between them.

Petitioners' argument is unmeritorious.

Even granting that the subject donation was made by petitioners for the purpose of complying with the legal requirements of the dissolution of the property relations between them, the same does not negate the presence of donative intent in the subject transaction considering that petitioners gave portion of their patrimony to their common child without any material consideration. As aptly held by the Supreme Court in *Abello v. Commissioner of Internal Revenue*,[54] to wit:

> "**First of all, donative intent is a creature of the mind. It cannot be perceived except by the material and tangible acts which manifest its presence. This being the case, donative intent is presumed present when one gives a part of one's patrimony to another without consideration. Second, donative intent is not negated when the person donating has other intentions, motives or purposes which do not contradict donative intent.** This Court is not convinced that since the purpose of the contribution was to help elect a candidate, there was no donative intent. Petitioner's

[54] *Supra*, Note 49.

> contribution of money without any material consideration evinces *animus donandi.* The fact that their purpose for donating was to aid in the election of the donee does not negate the presence of donative intent." *(Emphasis supplied)*

Petitioners also postulate that the transfer of the subject property to their common child is not in consequence of a donation but by operation of law.[55] They contend that the donation was the resulting effect of the dissolution of the absolute community of property as adopted and approved by the RTC when it decreed the nullity of petitioners' marriage.[56]

Petitioners' argument is untenable.

The ownership over the subject property was transferred under the name of petitioners' common child neither by virtue of the Agreement between the former spouses, which merely provides that the subject property "shall be donated to" petitioners' common child,[57] nor even by virtue of Decision of the RTC approving the Agreement and dissolving the property relations between the parties.[58] On the contrary, it is the execution and completion of the donation by the petitioners that legally transferred the ownership of the subject property to their common child.

While it is true that Articles 51[59] and 102(5)[60] of the Family Code mandate the delivery of the presumptive legitime of the common

---

[55] Petitioners' Memorandum, Docket, p. 116.
[56] *Id.*
[57] JSFI, Docket, p. 94.
[58] *Id.*
[59] Article 51 of the Family Code states:

> "**Art. 51**. In the said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, **shall be delivered** in cash, property or sound securities, **unless the parties, by mutual agreement judicially approved, had already provided for such matters**.
>
> The children or their guardian, or the trustee of their property, may ask for the enforcement of the judgment.
>
> The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime." *(Emphasis supplied)*

[60] Paragraph 5 of Article 102 provides:

children upon dissolution of the absolute community regime and the partition of the properties of the spouses, the same do not *ipso jure* cause the transfer of title or ownership over the properties comprising the presumptive legitime from either or both of the spouses to their common children. Indeed, nothing in these provisions would indicate that the presumptive legitimes of the common children are *ipso jure* transferred upon dissolution of the absolute community regime. At most, these provisions merely prescribe a specific executory obligation that the spouses have to comply with. And in the present case, petitioners have actually complied with the foregoing Family Code provisions through the execution of the Deed of Donation over the subject property in favor of their common child, Bea Liana Oliveros Manlapaz.

To reiterate, donor's tax is an excise tax imposed on the privilege of transferring property by way of gift *inter vivos*, i.e., during the lifetime of the donor. In the present case, what is being subjected to the payment of donor's tax is the privilege, duly exercised by petitioners, of transferring the subject property to their common child. It is beyond doubt that the said transfer of property by way of gift was made during the lifetime of the petitioners. The transfer is fully consummated as the title over the subject property was already issued under the name of the donee. Consequently, the said transfer falls within the ambit of Section 98 of the 1997 NIRC. On the other hand, the subject donation is not one of those enumerated under Section 101 of the 1997 NIRC as exempt from donor's tax. In sum, this Court finds that there is simply no basis for the grant of petitioners' claim for refund.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

"Art. 102. Upon dissolution of the absolute community regime, the following procedure shall apply:

x x x x x x x x x

(5) The presumptive legitimes of the common children **shall be delivered** upon partition, in accordance with Article 51." *(Emphasis supplied)*

I CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice