REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FELICIANA C. BADILLO
represented by RUDY C.
BADILLO,
Petitioner,

- versus -

C.T.A. CASE NO. 5320

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUN 10 1998

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DECISION

The issue which is presented for our consideration is whether or not petitioner is entitled to a refund of the amount of P4,413.50 allegedly representing its excess donor's tax for the year 1994.

It appears that on December 28, 1993, petitioner donated a piece of real property (TCT No. 195316) consisting of 37.5 square meters, with a fair market value/zonal value of ₱285,000.00, to her son, Rudy C. Badillo, (Exh. A) and paid therein the amount of P8,000 as donor's tax. This was clearly shown in the Donor's Tax Return (Exh. B) which was filed with the respondent's Bureau on January 27, 1994.

On June 2, 1994, petitioner filed with the Appellate Division of the BIR a claim for the refund of the amount of P4,413.50 on the ground that only one-half (1/2) of the subject donation is subject to donor's tax as the property donated is conjugal property, thus, the other half belongs to the estate of the husband of herein petitioner, Lupo Badillo.

The aforementioned claim for refund was not acted upon by the respondent, hence, on January 17, 1996, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason for the petition for review, that when the subject real property donated was declared with the BIR for the issuance of a Certificate Authorizing Transfer/Registration thereof with the Registry of Deeds, the latter considered the fair market value (P104,100.00) (Exh. C-2) of the building (improvement) which stands on the real property donated as part of the donated property subject to donor's tax; and that the land & building donated were considered conjugal for tax purposes, thus, only 1/2 of the property or only 18.75 square meters (Exh. F-2) was authorized by the BIR to be registered in the name of the donee (Exh. F). As a result, the donor's tax due is only P3,586.50 and therefore the amount of P4,413.50 (Exh. D-5) is refundable, computed as follows:

Residential Land	P285,000.00
Building (Improvement)	104,100.00
Total Property Value	P389,100.00
Donor's Conjugal Share/ Taxable Amount	P194,550.00
Donor's Tax Due	P 3,586.50
Less: Tax Payment 1-27-94	8,000.00
Tax Refundable	P 4,413.50

Respondent in her Answer, raises the usual token defense that (1) petitioner has no cause of action, (2)

66

the tax which petitioner seeks to be refunded was collected in accordance with law, (3) the donor's tax in the total amount of P8,000 sought by petitioner to be refunded is not properly documented, and (4) petitioner has not complied with Section 230 of the Tax Code. Respondent further manifested during the trial that what has been donated in this case is the entire property and not only one-half thereof, and that the deed of donation has not been rescinded or amended, much less controverted by the petitioner.

As earlier adverted to, the issue to be resolved by the Court is whether or not petitioner is entitled to the refund in the amount of P4,413.50 allegedly representing its excess donor's tax paid in the year 1994.

It is a well-settled rule in this jurisdiction that when a taxpayer overpays his tax obligation or pays an amount of tax which turns out to be not due from him, he will be entitled to a refund under the law, provided he files a written claim for refund with the Commissioner within two (2) years after the payment of the tax or penalty (Sec. 204 (3) NIRC). In other words, petitioner must establish two things before recovery of the amount of P4,413.50 is allowed: (1) that there was an actual collection and receipt by the Government of the tax sought to be recovered, and (2) that he has complied with the statutory requirements relative to the two- year prescriptive period for filing claims for refund mentioned in Section 204(3), *ibid.*

In the case at bar, petitioner tried to convince the Court that she paid the respondent by mistake an amount which is over and above that which is legally due from her by presenting Exhibits A to G-2. Furthermore, petitioner pointed out that what is legally due to respondent as donor's tax is only P3,586..50 (Exh. D-4) but she erroneously paid the amount of P8,000.00, thus, the excess amount of P4,413.50 should be refunded (Exh. D-5). It also stressed that the Donor's Tax Return was prepared and filed in good faith and on the premise that the subject donated property is not conjugal, thus, it paid the whole amount of P8,000 instead of only the sum of P3,586.50. The Transfer Certificate of Title No. 195316 of the donated property (Exh. A-7) shows that the same is owned by the donor and her spouse, thus, should form part of their conjugal assets. Also, the Certificate Authorizing Transfer/Registration issued by the BIR (Exh. F, F-1 & F-2) clearly shows that only one-half of the property donated was cleared by the latter for registration with the Register of Deeds. The evidence presented by the petitioner convince this Court that the said donated property is indeed conjugal, thus, only one-half (1/2) of it belongs to the donor and the other half belongs to the estate of the donor's husband.

68

Further, the check used for the payment of said donor's tax in the amount of P8,000 (Exh. B-4) and the machine validation of the Pilipinas Bank on January 27, 1994 indicating the receipt of such amount, clearly shows that indeed petitioner has complied with the first requirement for the claim for refund that the amount sought to be recovered was actually collected by the respondent.

The respondent argued that since the Deed of Donation covers the entire property and was not rescinded, the entire property should be subject to donor's tax.

We disagree.

The donor cannot donate property which do not legally belong to her in its entirety. The aforementioned evidence submitted by the petitioner remained uncontroverted. As shown from the records, the stand of herein respondent is different from her previous stand as shown in Exhibits F, F1, F2 that only one-half of the donated property should be subjected to donor's tax, thus, a clear inconsistency.

Records of the case has led this Court to opine that the real intention of the respondent with regard to the donated property is to treat the same as conjugal as shown by her failure to issue a deficiency donor's tax assessment with regard to the building (improvement) which stands on the real property donated. As the

69

records clearly stated, the Donor's Tax Return filed on January 27, 1994 (Exh. B) did not include the building (improvement) as part of the subject donation. Thus, to avoid injustice, respondent should have CLEARED the whole property for transfer and not only one half (1/2) as shown in exhibits F, F1 & F2 if respondent really believed that the donated property is not conjugal. Taxpayers owe honesty to the government just as government owes fairness to taxpayers. (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). In any case, a taxpayer should not be held to suffer loss by his good intention to comply with what he believes is his legal obligation, where such obligation does not really exist. (*Ramie Textiles, Inc. vs. Mathay, Sr., 89 SCRA 586*). When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact which would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it. (*4 Am. Jur. 514*)

Since it was clearly established in the case at bar that petitioner paid the amount of P8,000 on the mistaken and erroneous belief that it is the donor's tax legally due to respondent, and the latter accepted the payment, it therefore gave rise to the application of the principle of *solutio indebiti* under Article 2154 of the New Civil Code, which states that "if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

As discussed by the Supreme Court in the case of *Ramie Textiles, Inc. vs. Mathay, Sr., supra.*, the quasi-contract of *solutio indebiti*, is one of the concrete manifestations of the ancient principle that no one shall enrich himself unjustly at the expense of another. Hence, it would seem unedifying for the government, that knowing it has no right at all to collect or to receive money for alleged taxes paid by mistakes, it would be reluctant to return the same.

The timeliness of the claim for refund was complied with by the herein petitioner. The records show that petitioner paid the tax in question on January 27, 1994 and filed the instant petition on January 17, 1996, thus, it has complied with the statutory requirements mentioned in Sections 204(3) and 230 of the Tax Code by having filed its written claim for refund with the respondent and a suit on appeal to this Court within the two (2) year period from the date of payment of the tax.

IN THE LIGHT OF ALL THE FOREGOING, we are persuaded to extend the relief sought by the petitioner.

71

Respondent is hereby **ORDERED** to **REFUND** in favor of herein petitioner the amount of P4,413.50, without pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

72