REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DONALD DY, in his capacity
as Executor of the Testate
Estate of Deceased Dy Pac,
Petitioner,

- Versus - C.T.A. CASE No. 1929

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
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Dec 12/73

DECISION

Petitioner Donald Dy, in his capacity as executor of the testate estate of Dy Pac, appealed from the decision of respondent Commissioner of Internal Revenue holding the decedent's estate liable for deficiency estate and inheritance taxes amounting to ₱351,542.33 and ₱263,169.90, respectively, inclusive of 50% surcharge and deficiency interests.

Dy Pac, a chinese citizen residing at Juan Luna, Tondo, Manila, died testate on February 9, 1963. His will was submitted to probate in Special Proceedings No. 54698 of the Court of First Instance of Manila (Branch IV) in August, 1963. The probate court appointed Donald Dy, son of the deceased, as executor and administrator of the decedent's estate.

On March 6, 1964, petitioner filed, through his accountant, Carlos J. Valdez & Co., the corresponding transfer tax return and paid estate and inheritance taxes amounting to ₱50,676.99 and ₱28,995.36, respectively.

Upon investigation conducted by Revenue Examiner Benjamin San Diego, he recommended that deficiency estate and inheritance taxes of ₱23,101.26 and ₱19,233.76 be assessed against the decedent's estate. The same were paid by petitioner on January 8, 1965 and February 8, 1965, respectively.

On February 24, 1965, after payment of the additional transfer taxes due, petitioner's accountant, Carlos J. Valdez & Co., requested respondent under Sec. 97 of the Revenue Code that petitioner be discharged from personal liability for any deficiency transfer taxes that might thereafter be found due from the decedent's estate. On March 16, 1965, said request was granted by then Deputy Commissioner of Internal Revenue Misael P. Vera.

In May, 1966, another investigation was conducted by Revenue Examiners Jose Mendoza, Dominador Pecayo and Amado Soriano. After the reinvestigation, they reported and recommended to respondent that a revised transfer tax assessment be issued based on the findings that: (1) the appraisal made by the previous examiner of the fair market value of the real property of the late Dy Pac was very low; (2) certain "receivables" due the deceased were omitted from the return; (3) unsupported judicial expenses were allowed as deduction from the decedent's gross estate; and (4) certain claims against the decedent's estate were not substantiated by evidence.

On April 6, 1967, respondent demanded from petitioner, executor of Dy Pac's estate, payment of ₱351,542.33 and ₱262,169.90 representing deficiency estate and inheritance taxes, computed as follows:

Estate tax	₱279,129.41
Less amount already paid	73,549.52
Deficiency estate tax	₱205,579.89
50% surcharge for fraudulent return	102,790.45
½% deficiency interest on ₱205,580.89 from 2/9/64 to 5/9/67	43,171.99
DEFICIENCY ESTATE TAX & PENALTIES DUE	₱351,542.33
Inheritance tax	₱203,491.60
Less amount already paid	48,229.12
Deficiency inheritance tax	₱155,262.48
50% surcharge for fraudulent return	77,631.24
½% deficiency interest on ₱155,262.48 from 2/9/64 to 5/9/67	30,276.18
DEFICIENCY INHERITANCE TAX & PENALTIES DUE	₱262,169.90

Upon receipt of the demand letter on April 26, 1967, petitioner's brother and Attorney-in-Fact, Mr. Delfin Dy, requested the reconsideration and cancellation of the new assessment.

On January 3, 1968, without answering the said request filed on behalf of petitioner who was then abroad, a warrant of distraint and levy was issued by respondent to collect the said deficiency transfer taxes and the same was served upon petitioner. In two (2) letters dated January 10, 1968 (received by respondent on January 11, 1968) and February 3, 1968, petitioner requested that the respondent's warrant be lifted and cancelled. Respondent, however, failed to answer said requests.

On April 10, 1968, respondent filed a Proof of Claim with the Court of First Instance of Manila in Special Proceedings No. 54698 seeking the collection of the aforesaid taxes. Respondent's pleading was received by petitioner on April 30, 1968, and the latter filed the present appeal on May 18, 1968.

The two issues submitted to the Court for resolution are the following:

(1) Whether or not this Court has jurisdiction to entertain the present appeal; and

(2) Whether or not the disputed deficiency assessment for estate and inheritance taxes is valid and justified under the facts obtaining in this case.

First Issue:

Respondent contends that this Court is without jurisdiction to entertain the appeal because the same was filed beyond the thirty-day period prescribed in Section 11, Republic Act No. 1125. He contends that respondent's final and appealable decision was the warrant of distraint and levy which was received by petitioner on January 3, 1968. From the said date to the filing of petitioner's appeal on May 18, 1968, more than thirty (30) days had already elapsed.

Petitioner, however, denies that respondent's final and appealable decision is the warrant of distraint and levy. He contends that the Proof of Claim filed by respondent in the testamentary proceedings of the decedent's estate, which was received by petitioner on April 30, 1968, entitled him to appeal to the Tax Court until May 30, 1968. Since only eighteen (18) days had elapsed from receipt of the Proof of Claim, petitioner claims that his appeal was seasonably filed with the Tax Court.

We find petitioner's stand maritorious. The issuance and service of the warrant of distraint and levy against the decedent's estate cannot be considered as respondent's decision on the disputed assessment. Respondent knew, as he ought to know, from the decedent's estate and inheritance tax return that testamentary proceedings were instituted in court for the settlement of the estate of the late Dy Pac. Consequently, as the property or estate of the late Dy Pac were in <u>custodia legis</u>, the issuance of respondent's warrant was made merely to establish a lien for the collection of taxes. We are, therefore, in the persuasion that when respondent subsequently filed a pleading in the probate court praying for satisfaction of the transfer taxes and penalties due from the transmission of the decedent's estate, the action taken by respondent constitutes his final decision on a disputed assessment.

Assuming _arguendo_ that the warrant of distraint and levy was respondent's final and appealable decision, we still find that petitioner's appeal was filed on time because eight (8) days after service of the said warrant, petitioner filed a request for its cancellation. The said request suspended the running of the prescriptive period for appeal. When petitioner received the Proof of Claim on April 30, 1968, the action taken by respondent is an implied denial of petitioner's request for reconsideration. Therefore, the prescriptive period of appeal began to run again. On May 18, 1968, when the present appeal was filed, a total of only 26 days have been availed of by petitioner in perfecting his appeal, computed as follows:

From <u>Jan. 3, 1968</u>, date of service of the warrant of distraint and levy (as appealable decision) to Jan. 11, 1968, date of receipt by respondent of petitioner's request for cancellation thereof	8 days
From <u>April 30, 1968</u>, date of receipt by petitioner of respondent's proof of claim to <u>May 18, 1968</u>, date of filing of the present appeal	<u>18</u> days
Total	<u>26 days</u>

Accordingly, this Court has jurisdiction to entertain petitioner's appeal.

Second Issue:

We will now discuss the controversial items in the order of their preference, to wit:

Valuation and area of decedent's real property.

The two (2) parcels of land of the late Dy Pac at Juan Luna St., Tondo, Manila, had an assessed value of ₱865,440.00 at the time of his death on February 9, 1963. In the transfer tax return filed with the BIR, the fair market value thereof was declared at ₱1,298,160.00 (Exh. D, p. 123, CTA rec.). Revenue Examiner Benjamin San Diego, however, reported that the fair market value of the same property amounted to ₱2,019,035.55, computed as follows:

Land (covered by TCT No. 31084) with an area of 23,023.10 sq. m., at ₱73.00 per sq. m.	₱1,680,686.30
Land (covered by TCT No. 39716) with an area of 1,268.80 sq. m. at ₱266.66 per sq. m.	338,349.25
TOTAL	₱2,019,035.55

(See pp. 1, 34 & 36, BIR rec.)

The new set of revenue examiners increased the valuation of the same property to ₱3,142,912.00, computed as follows:

Land (covered by TCT No. 31084) with an area of 23,023.10 sq. m. at ₱120.00 per sq. m.	₱2,762,272.00#

#correct figure - ₱2,762.772.00

Land (covered by TCT No.
39716) with an area of
1,268.80 sq. m. at
₱300.00 per sq. m..... ....₱ 380,640.00
TOTAL ....₱3,142,912.00
(See pp. 5, 42, & 46, BIR rec.)

After sifting and evaluating the documentary evidence presented in Court, we find that, except the correct fair market value of ₱300.00 per sq. m. of the land covered by TCT No. 39716, the areas and valuation of the two parcels of land transmitted by the deceased are as follows:

Decedent's Land	Area in Sq. M.	Unit Price	Market Value
TCT #31084	19,074.20	₱ 80.00	₱1,525,936.00
TCT #39716	1,561.16	300.00	468,348.00
	TOTAL		₱1,994,284.00

Transfer Certificate of Title No. 31084 issued in the name of the late Dy Pac and involving a number of lots contained a total area of 19,074.20 sq. m. instead of 23,023.10 sq. m. as reported by the two sets of revenue examiners. (See Exhs. R, R-1 to R-14, inclusive, pp. 146-147, CTA rec.) The area of 19,074.20 sq. m. is corroborated by the appraisal report of a real estate appraiser. (See Exhs. S & S-3, pp. 149-150, CTA rec.) On the other hand, the increased area of 1,561.16 sq. m. of land, instead of only 1,268.80 sq. m. as reported by the investigating revenue examiners, is evidenced by Transfer Certificate of Title No. 39716 marked as

Exhibit T (p. 159 CTA rec.).

The fair market value of ₱80.00 per square meter of the land covered by TCT No. 31084 is substantiated by the Appraisal Report and the uncontradicted testimony of Mr. Mariano Racpan, a professional real estate appraiser and vice-president of the Appraisal Service Company, Inc. (Exh. S, supra.) In fact, the correctness of Mr. Racpan's valuation has been admitted in respondent's memorandum quoted hereunder:

> In the course of the trial on the merits of this case, it was established by no less than petitioner's own witness, Mr. Mariano T. Racpan who has distinguished himself as an expert witness in the field of appraisals of real properties that the fair market value per square meter of the parcels of land covered by TCT Nos. 31084 and 39716 all of which are situated at Juan Luna, Tondo, Manila, and belonging to the estate of the late Dy Pac were ₱80.00 and ₱300.00, respectively. Whereas, in the original report of investigation, the appraisal made of the said real properties by the investigating revenue examiner was only ₱73.00 and ₱266.66 per square meter, respectively. Obviously, therefore, there was an undervaluation in the appraisal of the real properties covered by TCT Nos. 31084 and 39716 as discovered and determined by the reinvestigating revenue examiners, or a difference of ₱7.00 and ₱33.34 per square meter, respectively. (See pp. 8-9, Respondent's memorandum; pp. 277-278, CTA rec.)

This Court adopts the fair market value of ₱80.00 per square meter of the Tondo lot referred to as appraised by Mr. Racpan because "where there is no valid reason for disregarding the opinion of experts, weight must be given to their testimony where there is no contradictory evidence." (Cullers vs. Comm., 237 F(2d) 729.)

The valuation of ₱300.00 per square meter of the decedent's land covered by TCT No. 39716 is not disputed. In fact, petitioner's expert witness, Mr. Mariano T. Racpan, tended to support the said valuation. (See pp. 80-81, t.s.n.) We find, therefore, that the Tondo real property of the late Dy Pac has a total fair market value of ₱1,994,284.00, supra, instead of ₱3,142,912.00 as reported by the re-investigating revenue examiners.

Receivables of ₱437,076.76 and ₱77,565.60.

The original revenue examiner, Mr. Benjamin San Diego, reported that the fair market value of the late Dy Pac's personal property amounted to ₱735,209.02, including ₱28,050.12 due and collectible from Dy Pac & Co., Inc. (See pp. 1, 5, 34 & 36, BIR rec.) The re-investigating revenue examiners, however, reported that the receivables due from Dy Pac & Co., Inc., was ₱437,076.76 instead of ₱28,050.12; and that long term and current installment receivables amounting to ₱64,638.00 and ₱12,927.60, respectively, were not included in the decedent's gross estate for transfer tax purposes.

The said receivables of ₱437,076.76 were reflected in the balance sheet of Dy Pac as of December 31, 1961 which was attached to his individual income tax return for the same year. The late Dy Pac, however, died on February 9, 1963, but the subsequent investigating revenue examiners considered the said amount as part of the gross estate of the decedent at the time of his death. This conclusion of the three (3) examiners is a mere speculation bereft of any factual support. It disregarded the findings of Revenue Examiner Benjamin San Diego who reported that the balance of the said "receivables" as of February 9, 1963 was only ₱28,050.12. This amount represents the balance of the account receivable by the deceased from Dy Pac & Co., Inc., after the said corporation has made several payments amounting to ₱409,024.64 during Dy Pac's lifetime based on the undisputed evidence presented during the trial of this case.

The reinvestigating revenue examiners likewise considered the long term and current installment receivables of ₱64,638.00 and ₱12,927.60, respectively, or a total of ₱77,565.60, as part of the decedent's gross estate as of February 9, 1963 based on another balance sheet of the late Dy Pac as of December 31, 1962. Again, we have to disregard the conclusion of the reinvestigating examiners and sustain the findings of Revenue Examiner Benjamin San Diego who originally investigated this case. The said receivables of ₱77,565.60 were paid to Dy Pac before his death as evidenced by paid cash vouchers and official receipts submitted to this Court. (See Exhs. X, X-1 to X-42 and Z, Z-1 to Z-4, pp. 175-223, CTA rec.)

Judicial expenses of ₱100,000.00.

The judicial expenses of ₱100,000.00 were allowed as deduction from the decedent's gross estate by the original revenue examiner but the same were disallowed by the reinvestigating examiners for lack of record or evidence to substantiate the same.

Again, the evidence adduced at the trial show that judicial proceeding was filed in the Court of First Instance of Manila for the probate of the will and settlement of the estate of the deceased. The executor of the decedent's estate, therefore, incurred expenses for the professional services of accountants and lawyers in the settlement of the decedent's estate, itemized as follows:

Sebastian C. Sandoval (Certified Public Accountant)	₱ 20,000.00
Rosauro V. Noroña (Attorney & Counselor-at-Law)	30,000.00
Semaco P. Sacmar (CPA-Lawyer)	50,000.00
TOTAL	₱100,000.00

(See pp. 189-195, t.s.n.; and Exhs. AA, BB & CC, pp. 224, 225 & 226, CTA rec.)

Consequently, the judicial expenses of ₱100,000.00 are deductible from the decedent's gross estate under Sec. 89(a)(1)(B) of the Revenue Code.

Claims of ₱1,101,327.43 against the decedent's estate.

The deduction of ₱1,101,327.43 from the decedent's gross estate was also rejected by the subsequent investigating examiners because Dy Pac's balance sheet as of December 31, 1962 did not reflect said liabilities. The said examiners, therefore, concluded that from January 1 to February 9, 1963, the late Dy Pac could not have incurred liabilities of ₱1,101,327.43 in such a short period of time.

We agree with the subsequent investigating examiners that the said bank liabilities must be reflected in the 1962 balance sheet of the late Dy Pac. But such omission alone is not sufficient to warrant a denial of the deduction from the decedent's gross estate (assets) of the staggering amount of ₱1,101,327.43. In the first place, the subsequent investigating examiners could have easily conferred with Revenue Examiner Benjamin San Diego to find out why it should not be allowed as a deduction from the decedent's gross estate. Secondly, the said bank indebtedness might not have been revealed by the late Dy Pac to his accountant. And lastly, a taxpayer's liability which does not appear in his balance sheet has no material bearing on his income tax liability.

Above all the conclusion and speculation of the re-investigating examiners, it has been established by the preponderance of evidence at the trial of this case that the late Dy Pac was indebted in the total amount of ₱1,101,327.43 to the China Banking Corporation, Philippine Bank of Communications and Philippine National Bank in the amounts of ₱555,169.49, ₱200,454.48 and ₱345,703.46, respectively, at the time of his death on February 9, 1963. (See pp. 1, 5 & 35, BIR rec.)

50% Surcharge.

The 50% surcharge as fraud penalty imposed by Section 102 of the National Internal Revenue Code is not applicable to this case because respondent's examiners failed to establish by evidence that the decedent's executor and administrator has defrauded the Government of its lawful revenue. On the contrary, respondent's three (3) examiners appear to be careless and haphazard in their investigation of the decedent's estate.

Against the findings of the revenue examiners, this Court found in the record and in the evidence submitted by petitioner a lower net taxable estate of the late Dy Pac amounting to only ₱722,389.80 computed as follows:

Real property		₱1,994,284.00
Personal property		735,209.02
Gross Estate		₱2,729,494.02
Less: Deductions		
1. Funeral expenses	₱ 83,386.00	
2. Judicial expenses	100,000.00	
3. Claims against the estate	1,101,327.43	1,284,713.43
Net estate		₱1,444,779.59
Less 50% thereof as share of wife ..		722,389.79
Net estate subject to tax		₱ 722,389.79

In the final analysis, the transfer taxes legally due and collectible from the transmission of the decedent's estate appear to be lower than the total estate and inheritance taxes of ₱121,778.64 paid by the executor of the decedent's estate.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is reversed and the deficiency estate and inheritance taxes of ₱351,542.33 and ₱263,169.90, inclusive of penalties, assessed against and demanded from the decedent's executor and administrator are hereby cancelled and declared of no force and effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 12, 1973.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge