REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLIDBANK CORPORATION (a.k.a. THE CONSOLIDATED BANK AND TRUST CORPORATION) and SUSANA REALTY, INC.,
Petitioners,

- versus -

C.T.A. CASE NO. 4868

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 1997

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DECISION

Originally, herein case was instituted by Solidbank Corporation (a.k.a. The Consolidated Bank and Trust Corporation) and the present lone petitioner Susana Realty, Inc. (both hereinafter referred to as SBC and SRI, respectively, for brevity) through a petition to review the letter-decision of the respondent, dated July 6, 1992, denying their letter-protest dated August 13, 1991 against the following deficiency tax assessments, to wit:

1. FAS-1-69-84-91-002320 - P15,316,258.23 - deficiency income tax against unregistered partnership of SBC and SRI

2. FAS-2-69-84-91-002321 - P6,383,776.99 - deficiency donor's tax against SRI

3. FAS-1-69-84-91-002322 - P732,358.51 - deficiency withholding tax against SRI

4. FAS-1-69-84-91-002323 - P732,358.51 - deficiency withholding tax against SBC

However, pursuant to Revenue Memorandum Orders (RMOs) Nos. 45-93 and 54-93, then petitioner SBC opted and paid the compromise amount attendant to the above assessments issued against it, as exhibited by an Authority to Accept Payment with No. 67588 in the amount of P2,867,704.76, dated June 21, 1995 (Annex "C" of Motion and Manifestation dated July 5, 1995; p. 226, CTA rec.). Consequently, in a Resolution dated July 25, 1995 (pp. 230-231, CTA rec.), the case in so far as petitioner SBC is concerned, was withdrawn and deemed closed and terminated by virtue of its availment of the benefits of said compromise settlement.

On its part, petitioner SRI who had earlier joined petitioner in the availment of the benefits of respondent's aforementioned RMOs', decided to forego the avenue of compromise settlement on account of respondent's alleged obstinate stand against a further reduction of the compromise amount due it in the sum of P4,862,634.76 (Annex "D" of Motion and Manifestation dated July 5, 1995; p. 227, CTA rec.), and instead, pursued the present appeal before this Court.

The basic facts are as stated in the petition, to wit:

3. On or about 5 December 1965, herein petitioners, in a "Deed of Sale With Option and Agreement for Administration of Property" became co-owners of three (3) parcels of land covered by TCT Nos. 37559, 37600 and 37601 together with a four (4) storey building thereon when Consolidated Bank and Trust Corporation (now SOLIDBANK) acquired from Susana Realty, Inc., one-half ($^1/_2$) ownership and interest of Susana Realty, Inc. and for which earnest money of P50,000.00 was paid for by Consolidated Bank and Trust Corporation and received by Susan Realty, Inc.;

4. On July 30, 1984, Solidbank filed a complaint with the Regional Trial Court of Manila, Branch XXIX, Civil Case No. 84-22406, for Partition. As co-owner, Solidbank demanded the portion of the property owned in common pursuant to Article 494, Civil Code, for the reason that physical division of the building and improvements thereon would not be compatible to the best interest of the parties and that a more practical solution is "Buy-Out" or "Sell-Out" of the share of one to the other co-owner or sale to any party conformably with] the provision of Article 498 of the Civil Code;

5. After several hearings, realizing the futility of their claims and the adverse effect the case may bring on their respective business establishments and business reputations, the parties (herein Petitioners) agreed to settle the case amicably. In the "Motion for Judgment Based on Compromise Agreement" submitted by the parties, the Court rendered judgment on 28 August 1984, approving the compromise agreement and terminating the co-ownership of the parties and vesting the sole, absolute, exclusive and indefeasible title in favor of Solidbank;

6. On or about 24 April 1987, an informer, a former employee of Susana Realty, Inc., motivated by ill-will and obsessed in collecting a reward under Sec. 331 (now 281) of

> the National Internal Revenue Code, filed an information denouncing Consolidated Bank and Trust Corporation and Susana Realty, Inc. The informer opined that as a result of said amicable settlement, Solidbank and Susana Realty, Inc. waived and completely gave away their claims against each other and are therefore subject to and liable for donors tax prescribed under Sections 120 and 121 (now 91 and 92) of the National Internal Revenue Code.

The ensuing findings of the respondent which were ventilated and argued *a quo* are explained in the letter of denial of then Commissioner of Internal Revenue, Jose U. Ong, dated July 6, 1992 (page 222, CTA records), addressed to the law office of Los Reyes, Bañaga, Briones and Associates relative to the protests made in behalf of their clients, the petitioners. Thus:

> Re: Unregistered partnership
>
> It is our contention that Solid Bank Corporation and Susana Realty Inc. were unregistered partners of the subject property and therefore subject to corporate income tax prescribed under Section 24(a) in relation to Section 20(b) of the National Internal Revenue Code.
>
> It is our view that the elements of a partnership, as discussed in the case of Eufemia Evangelista vs. Collector of Internal Revenue (102 Phil. 140) cited in the case of Mariano P. Pascual & Renato P. Dragon vs. CIR, G.R. No. 78133, October 18, 1988, are present in the instant case, to wit:
>
> The deed of sale with option to purchase provided that the parties, Consolidated Bank ad Trust Company (now Solid Bank Corp.) and Susana Realty, Inc. actually agreed to embark in real estate business by leasing the building to the public. They contributed capital as follows: Susana Realty contributed its 1/2 equity in the

property plus its share of rental income in the leasing business. Consolidated Bank and Trust Company also contributed its other 1/2 equity plus industry including its share from rental income, as the same shall have been realized. This leasing business is likewise bolstered by the following findings of the investigating examiners:

1. Solidbank is to administer the building to advertise any vacant space; to secure tenants sign contracts of lease; collect rents; to deposit all rents in a separate property management bank account in the name of the parties; make the necessary repairs, etc; pay taxes and assessments and perform all other acts incidental to the proper management of the property;

2. Equal division of the net income on the gross rental received after expenses;

3. For CBTC to make improvements and remodelling of the building and to advance or make available sufficient funds to finance the remodelling and/or improvement of the building in accordance with the specification both parties may agree upon;

4. That Susana Realty, Inc. shall pay for its share of the cost thru its share from income derived therefrom;

5. That if CBTC does not exercise its option to buy, cost due from Susana Realty, Inc. to remodel the building shall be continuously charged against Susana's share of rental income until the expense is fully liquidated.

Since the purpose and activities that arose from the transaction was a leasing business activity, it follows that they did not merely enter into a co-ownership agreement - rather, they in fact entered into a joint venture and engaged in leasing business, hence under the law, have formed a taxable corporation.

Re: Donor's Gift Tax

It is our stand that the outright purchase of Susana's Realty Inc. share in the alleged "co-ownership" of the MRS building in an amount far less than its fair market value constitutes a donation subject to gift tax.

It is established that from 1969 to 1984, the parties derived a gross rental income of P30.89M and a total net income of P24.7M. Susana's Realty, Inc. share in the total net income, as impliedly expressed in the agreement is P11.96M. However, in the compromise agreement, Susana Realty Inc. was made to accept only P1.3M for its equity in the property, equivalent only to the acquisition cost of the property. The difference therefore is clearly subject to donor's tax (Sec. 93, NIRC) irrespective of the donative intent because the transfer of the property in favor of CBTC is far below its fair consideration in money or money's worth.

Re.: Withholding tax on inter-corporate dividend.

As a result of the foregoing taxable partnership, the unregistered partnership is assessed 10% final withholding tax on inter corporate dividends beginning August 24, 1975 to 1984 (P.D. 778) from its undistributed net income.

Further, the dividends accruing each partner during the period from 1969 to August 23, 1975 are directly subject to corporate income tax against CBTC and SRI in their respective capacities.

Records show that petitioner protested the assessments on August 13, 1991 but the same was eventually denied by the respondent in the aforequoted letter, dated July 6, 1992, and received by SRI and SBC on October 7, 1992. In the instant petition, petitioner SRI together with the erstwhile petitioner SBC raised, *inter alia*, the following affirmative defenses, to wit:

x x x x x

22. Contrary to the contention made by the respondent, the facts and circumstances in the Evangelista Case, G.R. 9996 (102 Phil. 140) upon which the tax assessment against the petitioners was anchored are not applicable to the present case. xxx xxx xxx

23. The settled laws and jurisprudence to determine whether a partnership exists or not are:

x x x x x

c. In the Supreme Court Decision on Mariano P. Pascual and Renato P. Dragon vs. CIR and CTA, G.R. 78133, October 18, 1988, the Court in forming its decision made references to the following:

(1) "The common ownership of property does not itself create a partnership between the owners, though they may use it for the purpose of making gains; and they may, without becoming partners, agree among themselves as to the management and use of such property and application of the proceeds therefrom." (Spurlock vs. Wilson, 142, S.W. 363, 160 No. App. 14)

(2) "In order to constitute a partnership inter sese there must be (a) an intent to form the same; (b) generally participating in both profits and losses; (c) and such community of interest, as far as third persons are concerned as to enable each party to make contract, manage the business and dispose of the whole property." (Municipal

> Paving Co. vs. Herring, 150 p. 1067, 50 111 470)
>
> (3) "The sharing of returns does not itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. There must be a clear intent to form a partnership, the existence of juridical personality different from the individual partners, and the freedom of each party to transfer or assign the whole property."

Petitioner SRI pointed out the fact that "the true intention of the parties are not to become partners and to operate the acquired property for profit but for it to ultimately sell and convey the acquired property in favor of Solidbank in the future since Solidbank was using the building as its Head Office in its banking operations" (Petition, pp. 12-13).

The aforementioned intention is allegedly clearly manifested, from, among others, by the following: that the document executed by the parties was a deed of sale with option to purchase the other half of the property owned by petitioner SRI and not one embodying articles of partnership; that SBC exercised its option to purchase by demolishing one-half of the portion of the building and registering said improvements under the name of Solidbank, Inc.; and, that the latter corporation occupied almost all of the rentable areas of the said ten- storey building without payment of any rental or compensation of whatsoever kind.

In the alternative, petitioner SRI and SBC asseverate that the basis of the assessments is whimsical, arbitrary and in gross violation of generally accepted accounting principles. They contend that their alleged rental income based on rentable spaces and rates per square meter of office spaces in the vicinity of the subject building were never substantiated by figures and facts and that the same was never proven in court by the respondent as having been actually realized; that the depreciation on the building was not considered by the respondent in the determination of the net taxable income; and that, assuming arguendo, that petitioner SRI and SBC are unregistered partners, still their alleged net income was excessive because computation was done in one lump sum and not on a yearly basis, thus, resulting in the overstatement of the taxable amount subjected to the 35% bracket, inasmuch as the first P100,000.00 of the taxable net income which was subject to 25% tax only as provided under Section 24 of the Tax Code (1970 ed.) was deducted only once instead of 16 times.

Petitioner SRI also disputes as without factual and legal basis the donation theory maintained by the respondent over the execution of the judicial compromise agreement, supra, dated August 28, 1984, by and between SRI and SBC. Allegedly, the rental income was never proven in Court nor was it substantiated by the examiners in the course of their examination, hence, the valuation arrived at by the respondent is erroneous; that the cited judicial compromise agreement was the result of a court case and not by a sham or a false proceeding; and that the valuation of the donation should be based on the original contract (Deed of Sale with Option and Agreement for Administration of Property, hereinafter referred to as the "Deed" for brevity) because the transaction was more of an exercise of right of ownership, with the termination of the co-ownership by way of the judicial compromise agreement being a legitimate exercise.

It is further asserted that even, assuming arguendo, that petitioner SRI is subject to tax, still the tax assessed was unjust and excessive because petitioner SRI is being penalized to pay for the entire alleged valuation of the property/equity when as a co-owner it is entitled only to one-half.

By way of special defenses, petitioner SRI and SBC are of the view that respondent's right to assess and collect the alleged deficiencies has prescribed. They invoked Section 324 (now 235) of the Tax Code which provides that books and accounts shall be subject to examination only once in a taxable year, except on cases specified therein. Allegedly, the reinvestigation conducted on their cases was not in accordance with said section and was not even covered by a letter of authority.

Moreover, they claim that respondent never imputed any fraud committed by them, by reason of which, the exceptions as to the period of limitation of assessment and collection of tax as provided under Section 223 of the Tax Code do not apply.

Lastly, they reserved their right to submit tax amnesty returns which may have been availed of by them during the period in question. Relative thereto, be it noted that petitioner SRI, in its memorandum submitted before this Court, singly raised the issue of its availment of a tax amnesty. It presented in evidence the memorandum of respondent's revenue enforcement officers addressed to the chief of respondent's Tax Fraud Division and received on January 11, 1988 stating that "...[p]er records of the Tax Amnesty Implementation Office only Susana Realty, Inc. availed of the tax amnesty under E.O. No. 41 covering the years 1981 to 1985 with File No. 30-F-000854-41B, while Solidbank has no record of amnesty availment." (Exh. "S-2-b", page 257, CTA records)

After a careful scrutiny of all the preceding facts, this Court recognizes the following issues pertinent to the resolution of herein case, to wit:

1) Whether petitioner SRI and SBC by virtue of the Deed have thereby formed an unregistered partnership which is subject to corporate income tax prescribed under Section 24(a) in relation to Section 20(b) of the Tax Code; and if in the affirmative,

2) Whether the unregistered partnership is subject to 10% withholding tax on inter-corporate dividends beginning August 24, 1975 to 1984 (P.D. No. 778) from its undistributed net income; and

3) Whether the Compromise Agreement entered into by petitioner SRI and SBC in Civil Case No. 84-22406 of the Regional Trial Court of Manila, Branch XXIX, which was in accordance with the terms and conditions of the Deed, constitutes a transfer of property for less than adequate and full consideration as provided under Section 93 of the Tax Code, thus, making it liable to donor's tax.

Anent the first issue, this Court is of the conclusion that what petitioner SRI and SBC had entered into under the Deed is a transaction resulting in co-ownership and not unregistered partnership. The agreement for administration of property is but a mere incident of the co-ownership and not an act reflective of their intention to engage in a mutual fund for profit or business.

The provision of law governing the instant issue is found in Article 1767 of the Civil Code of the Philippines, which provides:

> "By the contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves."

The above article prescribes two essential elements of a partnership, namely: (a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties. It would seem at first glance that petitioner SRI and SBC are well-covered by the essential elements. Respondent has alleged that they contributed capital in order to engage in a leasing business activity (letter of denial dated July 6, 1992, supra).

After a more exhaustive study, however, of the facts, circumstances, and jurisprudence available on the matter, We are convinced that no agreement, direct or implied, was reached by petitioner SRI and SBC to purposely contribute money, property or industry to a common fund, and that, no such intent to divide the profits arising from the use of the common fund in a business activity was ever contemplated by the parties.

A close reading of the Deed pertinently provides:

xxx xxx xxx

Article II

OPTION TO PURCHASE OTHER PRO-INDIVISO ONE-HALF OWNERSHIP AND INTEREST

1. For and in consideration of the sum of FIFTY THOUSAND (P50,000.00) PESOS, in hand paid by the BUYER-OPTIONEE to the SELLER-OPTIONOR and receipt whereof is hereby acknowledged by the latter, the SELLER-OPTIONOR hereby grants unto the BUYER-OPTIONEE the exclusive option and privilege to purchase the SELLER-OPTIONOR'S pro-indiviso one-half ($^1/_2$) ownership and interest in the above described real property and thereby for the BUYER-OPTIONEE to consolidate in its full ownership of the said real property, within five (5) years from the execution hereof, upon payment of the following amounts.

xxx xxx xxx

Article III

AGREEMENT FOR ADMINISTRATION OF PROPERTY

1. The BUYER-OPTIONEE shall be the administrator of the said building and for this purpose it shall have the authority on its own behalf and on behalf of the SELLER-OPTIONOR as co-owner to advertise any vacant space; secure tenants; sign contracts of lease under such terms and conditions as it may deem reasonable; collect rents and prosecute suits for rents or possession of said premises or when deemed expedient, compromise such suits; deposit all rents in a separate property management bank account in the name of the co-owners; make the necessary repairs, alterations, etc., which it

may deem necessary; purchase and pay all supplies and other necessary materials; employ, supervise, discharge, and pay all janitors and other employees; keep the property insured for its full insurable value; pay taxes and assessments, and perform all other acts incidental to the proper management of the property. No administrator's fee shall be charged by the BUYER-OPTIONEE. After deducting all expenses incurred in the administration of the building from the gross rentals received, the net income thereof shall be divided equally between the parties hereto at the end of each calendar year or at such other periods as may be mutually agreed between them.

2. The BUYER-OPTIONEE shall advance or make available sufficient funds necessary to finance the remodelling and/or improvement of the M.R.S. Building now existing on the above described lots in accordance with the plans and specifications that the parties hereto may actually agree upon. The BUYER-OPTIONEE shall have preference in the occupancy of the first and second floors of the said building as well as of such other available space therein as it may require for its business and shall pay the rental corresponding thereto in accordance with the prevailing rentals charged in the locality.

3. Should the BUYER-OPTIONEE not exercise the option given it in Art. II hereof to purchase the SELLER-OPTIONOR'S pro-indiviso $^{1}/_{2}$ of the amounts actually spent by the BUYER-OPTIONEE for the remodelling and improvement of the M.R.S. Building, excluding, however, the amounts spent by the said BUYER-OPTIONEE to remodel and improve the premises occupied by it, shall be charged against the SELLER-OPTIONOR beginning with the 6th year from and after the date hereof shall be retained and paid over to the BUYER-OPTIONEE until the full amount of such expenses corresponding to the SELLER-OPTIONOR shall have been fully reimbursed to the BUYER-OPTIONEE.

From the foregoing, it is clear that petitioner SRI and SBC entered into a transaction involving sale of property. The deed gave SBC the option to buy the pro-indiviso one-half (1/2) ownership and interest of petitioner SRI over the subject property within five (5) years from the execution thereof. It is manifest from the wordings of the Deed that the real intention was to sell petitioner SRI's share to SBC.

It is also important to note that in 1967 or 1968, without the prior approval and consent of petitioner SRI and contrary to the terms of the Deed, SBC demolished the one-half portion of the building and constructed on the demolished site a new ten-storey building known as "Solidbank Building"(Answer of petitioner SRI as defendant in Civil Case No. 84-22406, supra, p. 8; p. 23, petitioner's folder of exhibits). SBC claimed the building it constructed as its own. Petitioner SRI did not appear in the assessment rolls and in the Mayor's Permit of said building (BIR Memorandum, dated May 31, 1989, p. 10, BIR records). These facts, to Our mind, are evidences establishing the absence of any intent to form a partnership over the property in question. SBC mainly acted on its own in handling its business affairs.

In so far as the administration of the property is concerned, We cannot construe the terms and conditions appearing under Article III of the deed as explicit circumstances showing the intent to form a partnership.

In the Evangelista case, supra, Mr. Justice Angelo Bautista made the following concurring opinion (cited by the Honorable members of the Supreme Court in the later case of **Pascual vs. Commissioner of Internal Revenue, 166 SCRA 560,** in supporting their decision that no unregistered partnership was formed therein), to wit:

> I wish however to make the following observation: Article 1769 of the new Civil Code lays down the rule for determining when a transaction should be deemed a partnership or a co-ownership. Said article paragraphs 2 and 3, provides:
>
> > "(2) Co-ownership or co-possession does not itself establish a partnership whether such co-owners or co-possessors do or do not share any profits made by the use of the property;
> >
> > (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;"
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> From the above it appears that the fact that those who agree to form a co-ownership share or do not share any profits made by the use of the property held in common does not convert their venture into a partnership. Or the sharing of the gross returns does not of itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. This only means that, aside from the circumstance of profit, the presence of other elements constituting partnership is necessary, such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the

> freedom to transfer or assign any interest in the property by one with the consent of the others (Padilla, Civil Code of the Philippines Annotated, Vol. I, 1953 ed., pp. 635-636).
>
> It is evident that an isolated transaction whereby two or more persons contribute funds to buy certain real estate for profit in the absence of other circumstances showing a contrary intention cannot be considered a partnership.

The mere circumstance of profit sharing, thus, is not indicative of partnership. The presence of other elements constituting partnership such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the freedom to transfer or assign any interest in the property by one with the consent of the other has been regarded by the Supreme Court as necessary in determining whether partnership exists or not.

In the case at bar, respondent bolstered her finding that petitioner SRI and SBC were engaged in the leasing business by solely relying on the terms and conditions stipulated under Article III of the Deed (Respondent's Letter of Denial, dated July 6, 1992, p. 2, supra).

A painstaking scrutiny of the aforesaid article would reveal that, as found by the respondent, SBC has been given authority by petitioner SRI to do the following acts, namely: (1) principally administer and manage the building and its operations which included the signing of contracts of lease, collection of rents, the duty to deposit all rents in a separate management bank account in the name of the parties, make necessary repairs, and to perform all other acts incidental to the proper management of the property; and (2) to make improvements and remodelling of the building and to make available sufficient funds to finance such remodelling and/or improvement in accordance with the specification both parties may agree upon.

It is also stipulated in the article concerned that the net income on the gross rental received after expenses shall be divided equally among themselves; that petitioner SRI shall pay its share of the cost of the building improvements and/or remodelling from its share of rental income; and that if SBC does not exercise its option to buy, said cost due from petitioner SRI shall be charged against its (SRI) share of rental income until the expense is fully liquidated.

Analyzing the above circumstances with that of the parameters set by the Supreme Court in the case of Evangelista, We firmly believe that the existence of a juridical personality different from that of the individual partners is absent in this case for the following reasons, namely:

1. The law is unmistakable in saying that co-owners who share any profits made by their use of the property does not by itself establish a partnership. In here, although petitioner SRI and SBC realized net income or profit from the lease of their building, such fact does not per se mean that they are engaged in partnership. The Supreme Court said in the aforecited Evangelista case, that aside from the circumstance of profit, the presence of other elements constituting partnership must be considered.

2. Petitioner SRI and SBC did not create a common fund in order to engage in leasing business activity. It must be observed that the original building has four storeys (Answer of petitioner SRI as defendant in Civil Case No. 84-22406, supra) and that SBC had the preference to occupy the first and second floors thereof as well as other available space therein as it may be required for its business (Deed, Article III, par. 2, supra). Also upon the completion of the construction of the ten-storey building by SBC, the latter occupied at least eighty-five percent (85%) of the rentable area of the said building inclusive of the remaining portion of the four-storey building (Answer of petitioner SRI, as defendant, par. 3.8, p. 31, petitioner's folder of exhibits). These circumstances convincingly show that SBC occupied more

than half of the two buildings for its own business needs. The intent is evident that SBC bought one-half of property for its own personal use. This is further supported by the fact that it constructed a new building under its own name and largely occupied it.

Moreover, the act of SBC in constructing the building without the consent of petitioner SRI negates any mutual agreement between them to form a partnership. The deed signed by the parties only talked of making improvements and remodelling. It did not contemplate demolition and construction of a new building. The resulting civil case between the parties as a step to end their co-ownership precisely attempted to resolve the aspect of their respective share of the net income due and owing through the years.

Furthermore, the parties retained title to their respective share of the properties. This is most evident on the part of SBC when it constructed the ten-storey building under its name.

3) Petitioner SRI and SBC only entered into an isolated transaction. They simply bought and co-owned the four-storey building inclusive of the land where it stands and invested nothing more. The act of leasing the building cannot be deemed as a series of transactions indicating habituality in a business either, because as

stated above, SBC mainly occupied the rentable areas thereof (85%) for nearly 20 years for its own personal use. If the parties really formed a partnership for business why did SBC allow itself to occupy the building premises and be charged profit or gain over the one-half property it rightfully owns and shares with petitioner SRI? The more plausible reason, as common business sense would dictate, was for SBC to pay one-half of the building and administration expenses only, or to let the building premises to other persons for profit, unless, the real intent of the parties was to manage the property in co-ownership. But, inasmuch as the property was co-owned pro-indiviso, it was more convenient and logical for the parties to collect rental and divide the net income after expenses rather than to occupy specific areas of the building which would be tantamount to partition already. Prescindly, be it noted also that the supposed net income received by SBC was in actuality a mere return of capital or money it owned and paid for the rentals.

4) There is no authority given to SBC to transfer or assign any interest in the property which may be construed as indicative of partnership. The deed only granted acts of administration. The leasing of the rentable areas of the building was an act of

administration and not one involving alienation of ownership or interest.

5) No administration fee was given to SBC in its administration of the building. If the parties were in a partnership business, labor or services rendered must necessarily be compensated. It is unthinkable that in a business enterprise, one would work for free without any conceivable reason for it.

Expounding more on the distinction between co-ownership and partnership, the Supreme Court in the aforecited case of Pascual vs CIR, 166 SCRA 560, further stated:

> "Persons who contribute property or funds for a common enterprise and agree to share the gross returns of that enterprise in proportion to their contribution, but who severally retain the title to their respective contribution, are not thereby rendered partners. They have no common stock capital, and no community of interest as principal proprietors in the business itself which the proceeds derived." (Elements of the Law of Partnership by Floyd R. Mechem, 2n Ed., section 83, p. 74.)
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> "A joint purchase of land, by two, does not constitute a co-partnership in respect thereto, nor does an agreement to share the profits and losses on the sale of land create a partnership; the parties are only tenants in common." (Clark vs. Sideway, 142 U.S. 682, 12 S. Ct. 327, 35 L. Ed., 1157.)
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> "Where plaintiff, his brother, and another agreed to become owners of a single tract of realty, holding as tenants in common, and to divide the profits of disposing of it, the brother and the other not being entitled to

share in plaintiff's commissions, no partnership existed as between the three parties, whatever their relation may have been as to third parties." (Magee vs. Magee, 123 N.E. 673, 233 Mass. 341.)

"In order to constitute a partnership inter sese there must be: (a) An intent to form the same; (b) generally participating in both profits and losses; (c) and such a community of interest, as far as third persons are concerned as enables each party to make contract, manage the business, and dispose of the whole property." (Municipal Paving Co. vs. Herring, 150 P. 1067, 50 Ill. 470.)

"The common ownership of property does not itself create a partnership between the owners, though they may use it for purpose of making gains; and they may, without becoming partners, agree among themselves as to the management and use of such property and the application of the proceeds therefrom." (Spurlock vs. Wilson, 142 S.W. 363, 160 No. App. 14.). (Cited in the Evangelista case, supra)

As regards the second issue thus, We find the assessment of withholding tax on inter-corporate dividends on account of the alleged unregistered partnership by respondent as without basis in view of our preceding finding that there existed no partnership between petitioner SRI and SBC.

With respect to the third issue, We find the assessment of donor's tax similarly to be without basis and invalid due to the availment by petitioner SRI of a Tax Amnesty under Executive Order (E.O.) No. 41 as amended by E.O. No. 64, covering the years 1981 to 1985. E.O. No. 64 provides:

> SEC. 2. The scope and coverage of Executive Order No. 41, as amended, is hereby expanded to include not only income taxes but also estate and donor's taxes under Title III and the tax on business under Chapter II, Title V, of the National Internal Revenue Code, as amended, for the years 1981-1985.
>
> SEC. 3. The immunities and privileges provided under Section 6 of Executive Order No. 41, as amended, for the time period January 1, 1981 to December 31, 1985 is hereby extended to the tax liabilities provided in Section 2 hereof.

The alleged donation arose by virtue of the Compromise Agreement signed by the parties on August 28, 1984 (Exh. "A-25"). Hence, the same is covered by the tax amnesty.

WHEREFORE, in view of the foregoing, assessment FAS-1-69-84-91-002320 in the amount of P15,316,258.23, FAS-2-69-84-91-002321 in the amount of P6,383,776.99 and FAS-1-69-84-91-002323 in the amount of P732,358.51 in so far as they charge deficiency income tax, deficiency donor's tax and deficiency withholding tax, respectively against petitioner Susana Realty, Inc., are hereby **CANCELLED** and **WITHDRAWN.**

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