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ANTONIO E. QUEROL, NUMERIANA TAVORA, JESUS T. QUEROL, EUFROSINA Q. DE NISCE and PLACIDA Z. DE OSIAS,
Petitioners,

- versus -

Feb. 28/58

C.T.A. CASE NO. 301

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - - -x

DECISION

This is an appeal from the decision of respondent Collector of Internal Revenue assessing against and demanding from petitioners donor's and donee's gift taxes in the aggregate amount of ₱1,139.26, including surcharges, compromise penalties, and interests thereon from May 15, 1951 to November 15, 1954.

From the facts established by the parties it appears that on December 26, 1950, petitioners Antonio E. Querol and Numeriana Tavora, spouses, respectively, sold under separate instruments a lot and house owned by them to their children, the other petitioners herein. The latter include Jesus T. Querol and Eufrosina Q. de Nisce who are legitimate children, and Placida Z. de Osias who is the adopted child of said spouses. The lot was sold to the three children at a consideration of ₱4,000.00 (Exh. A, p. 26, CTA rec.) while the house was sold to only the two (2) legitimate children, Jesus and Eufrosina, at a consideration of ₱8,000.00 (Exh. B,

10

p. 27, CTA rec.).

The property in question is located at the corner of Mayon and Maria Clara Streets, Sta. Mesa Heights, Quezon City. The lot was previously acquired from the J. M. Tuason & Co., Inc., on March 6, 1943 for a consideration of ₱3,725.48 (Exh. 5, p. 64, CTA rec.). The house is residential of two-stories and made of strong materials. It was constructed early in 1946, at a cost of ₱8,000.00.

The house and lot were assessed in 1947 for real estate taxation, respectively at ₱14,060.00 and ₱3,780.00 (Exhs. F and E, pp. 32-33, CTA rec.). During the year 1948, the assessed value of the lot was increased to ₱9,060.00 (Exh. 6, p. 64, CTA rec.). At the time of the sales in question the assessed value of the house and lot were respectively, ₱14,060.00 and ₱9,060.00 (see also Exh. 8, p. 66, CTA rec.).

Acting upon the report and recommendation of Examiner Elpidio P. Rivera (see p. 16, BIR rec.), respondent on October 16, 1954, issued individual assessment notices and demanded from each of petitioners (Exhs. 17 to 20, inclusive, pp. 21-24, BIR rec.) donor's and donee's gift taxes as follows:

<u>For Donor's Gift Tax</u>

Antonio E. Querol	₱113.50
Numeriana Tavora	447.50

<u>For donee's Gift Tax</u>

Jesus T. Querol and Eufrosina Q. de Nisce	₱407.40
Placida Z. de Osias	170.86

On October 27, 1954, petitioners filed a letter dated October 26, 1954 (Exh. C, p. 28, CTA rec.; Exh. 21, p. 30, BIR rec.) requesting for a reconsideration of respondent's assessments on the ground that the sale in question is valid, and "with a sufficient and fully adequate consideration." Respondent, on July 5, 1956 denied this request and maintained that petitioners are subject to gift taxes under section 111 of the Tax Code on the ground that transactions in question were not made for full and adequate consideration (Exh. 23, p. 46, BIR rec.). Hence, this appeal instituted by petitioners.

The sales here involved are admittedly valid. Hence, the sole question before us is whether or not the properties in question were transferred for less than an adequate and full consideration.

Before proceeding to the discussion of the issue presented by the parties, we shall first dispose of petitioners' "Ex-Parte Motion to Correct Transcript of Stenographic Notes" filed on December 5, 1957. The caption of the motion is indicative of its purpose. However, after a consideration of the reasons advanced by both parties at the hearing of this incident for and against the motion, we find the same not meritorious and we hereby deny the same.

Proceeding to the principal question on the merits, we quote hereunder section 111 of the Tax Code which applies to the case at bar.

"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 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." (Underlining supplied.)

Petitioners, in line with their contention that the properties were transferred for full and adequate consideration, presented evidence tending to show that the true market values thereof are lower than the market values assigned to them by respondent. To corroborate the testimony of petitioner Antonio E. Querol, Mrs. Consuelo Almeda-Quirino was presented to confirm that the properties were offered to her for sale. She testified that her offer to buy the lot and house was in the total amount of ₱12,000.00 or ₱8,000.00 for the house and ₱4,000.00 for the lot. This was the same amount at which the properties were sold to the children of the said spouses under the transaction in questions. Although petitioner Antonio E. Querol testified that Mrs. Quirino was one of those to whom the properties were offered for sale, we note that she was the only witness presented to whom such an offer allegedly was made. We also note that when the offer to sell was made, petitioner A. E. Querol did not specify nor mention with definiteness the price at which he was willing to sell. These facts do not show a willingness on the part of petitioner spouses to sell the properties at their fair market. Assuming arguendo that the offer was definite or specific, yet in order that there could be a reasonable basis for the determination of the market value of the properties, reasonable efforts should have been exerted by petitioners to find a purchaser who will give the highest price for such properties.

> "The 'market value' of property is the price the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it." (Macondray & Co. v. Sellners, 33 Phil. 370, 375.)

Again, assuming that there was a definite offer to sell by petitioner A. E. Querol to Mrs. Consuelo Almeda-Quirino with a specified price, we do believe that the former would offer the properties for a price of at least ₱23,120.00, considering that at the time, this was the total assessed value thereof. There would be no basis to sustain the theory that petitioner A. E. Querol would sell or offer to sell the properties in question at a price lower than their assessed value.

In addition to the testimony of petitioner A. E. Querol, his son Jesus (one of petitioners) testified that the house in question was in a depreciated state at the time of the sale. It is thus claimed that the assessed value of ₱14,060.00 was then excessive. In the attempt to prove their point, petitioners presented a copy of a letter dated March 1, 1948 addressed to the City Assessor of Quezon City purporting to contest the questioned assessment (Exh. G, p. 34, CTA rec.). However, there is no evidence that the letter was mailed or that it was received by the latter.

The house in question is admittedly of "strong materials" (see Exh. B, p. 27, CTA rec.). We do not believe that the building after four years old could have depreciated in value to such an extent that its true value at the time of sale was very much lower than the assessed value thereof as then contended by petitioners. We should also take note of the fact, which is of common knowledge, that assessed values of properties in the Philippines generally are lower than their market values. (See Maria B. Castro v. Collector, CTA No. 141, Resolution of December 29, 1956, 53 O.G. No. 10, May 31, 1957, pp. 3163, 3211.) It may be added that in 1946 the said properties were employed as security for a loan obtained by petitioners from the Peoples Bank and Trust Company in the amount of ₱10,000.00. In keeping with the generally known banking practices, the properties must have had a value very much more than the loan obtained and for which the properties serve as security.

Except those discussed previously, petitioners presented no other evidence to sustain their contention as to the market value of the lot in question. Neither is their evidence as to the market value of lots similarly situated such as those adjacent to petitioners' property.

Respondent, on the other hand presented Examiner E. P. Rivera, who conducted the investigation of this case. Examiner Rivera testified on the manner and method used by him in order to arrive at the fair market value of each of the properties. He explained that the assessed values of the properties were increased by 100% on the basis of his own opinion and experience. However, he arrived at the market valuation in spite of the fact that he had not seen the properties. Neither did he take the alternative of asking the Manila Office of the Bureau of Internal Revenue to conduct an ocular inspection of said properties. In fact, he failed to make inquiries from the City Assessor of Quezon City as to the prevailing market prices of similar properties in the vicinity where the properties in question were located. Thus, it would appear that Examiner Rivera did not observe any schedule or standard in arriving at the true market value of the properties.

Respondent, however, presented documentary evidence which purports to cover a sale of a lot located in the neighborhood of petitioner's properties at a price of ₱10.00 per square meter in 1953 (Exh. 4, p. 62, CTA rec.). Nevertheless, besides the fact that this sale took place more than three years after the sale involved in this case, there is no showing that these properties are similar in circumstances. The two sales had occurred at a long interval that we are not in a position to adopt a reasonable comparison. Of course, in fairness to respondent, it may be stated that the sale of petitioners' properties involve a corner lot which generally commands a higher price than a noncorner lot which is the same as that covered by the 1953 sale.

Apparently, also to justify his stand, respondent presented evidence which tend to establish the existence of business and commercial establishments near petitioners' properties. Except for the public market operated since 1946, situated at the corner of Laong-Laan and Mayon streets and about 260 meters from the properties in question, there is no evidence that these establishments were established on or before the date of sale in 1950. We cannot therefore, consider that these commercial establishments directly brought about a general increase in the fair market values of the properties in the neighborhood of petitioners' properties.

On the procedure adopted by respondent, we cannot but make the following observations. The revenue examiner who investigated this case failed to conduct an ocular inspection of the properties nor make inquiries as to the prevailing market price of properties situated in the neighborhood at a certain time. Neither did he request that the inspection be conducted by some other officer of the Bureau of Internal Revenue where the former could not perform the same. And on top of that, the examiner proceeded to adopt a value which he denominated as fair market value fixing the same arbitrarily without a reasonable basis such that the same was more or less a guess work.

Since taxpayers taken as a whole contribute to the coffers of the government, each one regardless of the extent of their contributions should be treated justly and fairly. To our mind, the manner or method used in this case in arriving at the market values of the properties here involved is unfair and prejudicial to the taxpayers. For to allow an examiner to make up his own personal judgment without considering at all the circumstances surrounding the property and fix the values thereof on this alone is utterly unfair and unjust. The duty to assess the value of property is undoubtedly an act requiring a considerable degree of discretion which must be fairly exercised. (See Manila Railway Co. v. Velasquez, 32 Phil. 314.)

The determination of values of real properties is necessarily and admittedly a question of fact. To arrive at a certain valuation is to depend upon various factors such as time, place, condition and people (Paul, Federal Estate and Gift Taxation, Vol. II, p. 1217, citing March A. B. de Pont Laird, 38 BTA 926, 928). And the market value of a piece of property is attained by the consideration of all those factors which make such property valuable (Manila Railway Co. v. Velasquez, supra, pp. 286, 316), but which respondent has failed to consider.

In this case, we find that neither of the parties has shown by competent and adequate evidence the fair market value alleged by each of them. Because of such deficiency in the evidence, we are of the opinion that the assigned market values are not the true and fair market values of the properties in question. Hence, the determination of the market value of the properties must accordingly be made in pursuance of section 113 of the Revenue Code which provides as follows:

> "Sec. 113. Valuation of gifts made in property. - If the gift is made in property the fair market value thereof at the time of the gift shall be considered the amount of the gift: Provided, That in case of real property, the assessed value in the year of the gift as shown in the tax rolls shall be considered as the fair market value, unless the contrary is shown." (Underscoring supplied.)

Under the foregoing rule and in view of the absence of evidence to the contrary, the assessed values of the lot and house, at the time of the sale in 1950 which is ₱9,060.00 and ₱14,000.00, respectively, must be considered as their fair market values. By applying section 111 of the National Internal Revenue Code cited earlier and a simple process of subtraction, we will arrive at the excess of the market values of the properties in question over and above the selling prices, at which they had been transferred by petitioner spouses to their children (also petitioners herein). These figures are detailed as follows:

	Lot	House
Market value	₱9,060.00	₱14,060.00
Selling price	4,000.00	8,000.00
Difference	₱5,060.00	₱6,060.00

We note a substantial disparity between the market values of the properties in question and the selling prices thereof. These differences provide strong proof that donative intent was present in the transfers of the property (Paul, supra, p. 1112) as contemplated by section 111 of the Tax Code. It would therefore follow that the excess of the market values of the properties involved here over their selling prices must be deemed a gift.

The intention of section 111 of the Tax Code is to envelop all transactions where the quid pro quo is unbalanced, and therefore includes all sales and exchanges which materializes as "bad bargains". The transaction may ordinarily pass as a sale or exchange, but if there is a comparative disparity in consideration, the difference is deemed a gift (Paul, Ibid., p. 1111; see also Formilleza, Commentaries on the Internal Revenue Code, Vol. II, p. 636). That a gift was intended comes into bold relief considering the fact that, as in the instant case, the transaction or sale is between parents and children with price paid that is far below the market value of the properties involved (Harry F. Robertson, 5 BTA 748, cited in Mertens, Law of Fed. Income Taxation, Vol. 1, pp. 250-251 and Paul, supra, p. 1112). There being a gift, we are of the opinion and so hold that the parties thereto must be liable for the corresponding donor's and donee's gift taxes, if any.

Incidentally, it may be mentioned that petitioness raised no issue as to the imposition of the 50% penalty for failure to file a return. As petitioners have in fact failed to file a return covering the transfers in question which are subject to the gift taxes and petitioners having failed to contest the imposition of the surcharge, we believe and so hold that the 50% surcharge may be imposed in this case.

[With respect to the compromise penalties being demanded for alleged violation of the Tax Code, suffice it to state that where the compromise was not accepted by one of the parties, or that no agreement was reached on the payment of compromise penalty, we could not acquire jurisdiction thereof to compel petitioners to pay the same. (Soledad R. Briñas v. Collector, C.T.A. Case No. 16, Sept. 14, 1955; University of Sto. Tomas v. Collector, C.T.A. Case No. 10, Sept. 10, 1956.)]

In sum, we are of the opinion and we so hold that the excess of the market values of the properties in question over the selling prices of the properties constitute taxable gifts and that the respective liabilities of petitioners for donor's and donee's gift taxes is as follows:

Donor's Gift Tax

Lot: Antonio E. Querol

Amount of taxable gift	₱5,060.00
1% gift tax due on the gifts in excess of ₱5,000.00	0.60
Add: 50% surcharge for failure to file returns ...	.30
Total donor's gift tax due	₱ 0.90

House: Numeriana Tavora

Amount of taxable gift	₱6,060.00
1% gift tax due on the gifts in excess of ₱5,000.00	10.60
Add: 50% surcharge for failure to file returns ..	5.30
Total donor's gift tax due	₱ 15.90

Donee's Gift Tax

Lot: Jesus T. Querol, Eufrosina Q. de Nisce and Placida de Osias

Amount of taxable gift (see above schedule)..	₱5,060
Share of each of the three (3) children	₱1,686.66
Deduct: ₱5,000 exemption ...	5,000.00
Taxable gifts	n o n e

House: Jesus T. Querol, and Eufrosina Q. de Nisce

Amount of taxable gift (see above schedule) ...	₱6,060
Share of each of the two (2) children	₱3,030.00
Deduct: ₱5,000 exemption	5,000.00
Taxable gifts	n o n e

WHEREFORE, the decision of respondent should be, as it is hereby, modified. Petitioners Antonio E. Querol and Numeriana Tavora are hereby ordered to pay to respondent on the day following the finality of this decision the amounts of ₱0.90 and ₱15.90, respectively, with the corresponding surcharge and interest should petitioners default.

Petitioners Jesus T. Querol, Eufrosina Q. de Nisce and Placida de Osias are hereby declared not liable for donee's gift tax and the assesements against them accordingly cancelled.

DECISION -
C.T.A. CASE NO. 301

With costs against petitioners Antonio E. Querol and Numeriana Tavora.

SO ORDERED.

Manila, February 28, 1958.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
dissents in a separate
opinion.

Not appealed

87

ANTONIO E. QUEROL, NUMERIANA TAVORA, JESUS T. QUEROL, EUFROSINA Q. DE NISCE and PLACIDA Z. DE OSIAS,
Petitioners,

- versus -

C.T.A.
CASE NO. 301

COLLECTOR OF INTERNAL REVENUE
Respondent.

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DISSENTING OPINION

I dissent. I can not agree to the opinion that the lot and house in question situated at the corner of Mayon and Maria Clara Streets, Sta. Mesa Heights, Quezon City, had a fair market value, for tax purposes, in 1950, equivalent to the assessed value.

Section 111 of the Revenue Code provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration shall, for the purpose of the gift taxes, be deemed a gift, and shall be included in computing the amount of the gifts during the calendar year. Section 113 provides that if a gift is made in property, the fair market value thereof at the time of the gift shall be considered the amount of the gift. In case of real property, the assessed value thereof in the year of the gift as shown in the tax rolls shall be considered as the fair market value, unless the contrary is shown.

In this case, the spouses Antonio E. Querol and Numeriana Tavora sold to their children in December, 1950 the said house and lot for less than their assessed value. Respondent, believing that the fair market value of said property was twice the assessed value, considered the difference between the fair market value as determined by him and the assessed value as a gift to the children (purchasers of the property), and assessed the corresponding donor's and donee's gift taxds. On the other hand, petitioners insist that the selling price of the property as shown in the deeds of sale represents the actual fair market value. Both parties, therefore, agree that the assessed value is not the fair market value.

For convenience, the following is a statement of the assessed value of the property and the values assigned to it by the parties:

	Assessed Value	Selling Price	Fair Market Value as Determined by Respondent
House	₱14,060.00	₱ 8,000.00	₱ 28,120.00
Lot	9,060.00	4,000.00	18,120.00
Totals	₱23,120.00	₱12,000.00	₱ 46,240.00

My colleagues refused to believe petitioners and I agree with them. They also refused to accept the determination of the fair market value made by respondent who considered the assessed value as only 50% of the fair market value. The reason given is that -

> "x x x . The revenue examiner who investigated this case failed to conduct an ocular inspection of the properties nor make inquiries as to the prevailing market price of properties situated in the neighborhood at a certain time. Neither did he request that the inspection be conducted by some other officer of the Bureau of Internal Revenue where the former could not perform the same. And on top of that, the examiner proceeded to adopt a value which he denominated as fair market value fixing the same arbitrarily without a reasonable basis such that the same was more or less guess work."

I agree that the investigation made as to the fair market value of the property was haphazard, as is usually the case. But I am sure that if proper investigation had been made, it would have produced surprising results in favor of the position taken by the Government. But this is neither here nor there. The question is whether the fair market value of the property is as determined by respondent. My colleagues say that the fair market value was fixed by respondent arbitrarily without a reasonable basis. In this I am unable to concur. I quote from a decision rendered by my colleagues:

> "x x x a review of the cases decided by the Supreme Court on the determination of fair market value of lands satisfies us that, comparatively, the assessed value of real estate in the Philippines is around one-half of its actual value." (Castro v. Collector of Internal Revenue, C.T.A. No. 141, Dec. 29, 1956, citing cases decided by the Supreme Court.)

The fair market value as determined by respondent is exactly in accordance with the opinion of this Court in the case cited above, which is twice the assessed value. How can it be said, therefore, that the fair market value was fixed by respondent arbitrarily without reasonable basis? A person who follows an opinion of a court can not be said to have committed an arbitrary act. As between the assertion of petitioners and the determination made by respondent, which is supported by the findings and opinions of the Supreme Court and recently echoed by this Court, there is very little choice.

I vote to affirm the decision appealed from.

R M Umali
ROMAN M. UMALI
Associate Judge