REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANUEL G. ABELLO, JOSE C. CONCEPCION, TEODORO D. REGALA and AVELINO V. CRUZ,
Petitioners,

-versus -

C.T.A. CASE NO. 4296

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

10/7/91

D E C I S I O N

Petitioners have been assessed gift taxes in the amount of P263,032.66 each for their cash contributions in the electoral campaign of elected Senator Edgardo J. Angara.

Through a letter to the Commissioner dated August 2, 1988 (P. 51, Record), petitioners submitted their position that a political or electoral contribution is not a gift within the contemplation of the National Internal Revenue Code (NIRC).

Their position having been denied in a reply by respondent on August 4, 1988 (received August 12, 1988), petitioners filed this petition and point to these grounds for their case.

a) The history and purpose of the Philippines' gift tax law show that a political contribution is not a gift within the contemplation of the Tax Code. The underlying purpose behind the adoption of the Philippines' gift tax law is to complement estate and inheritance taxes, in order to forestall possible attempts by property owners to void the estate and inheritance taxes by transferring their property by way of donations *inter vivos*. However, a political contribution is not made to avoid payment of estate taxes or inheritance taxes.

b) A political contribution does not meet the definition of a gift. Because the Tax Code contains no settled definition of a donation or a transfer by way of gift, the Civil Code definition must control. However, a political contribution does not meet the definition of a donation in Article 728 of the Civil Code, namely, "an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it";

c) The definition of an "electoral contribution" set forth in Section 94(a) of the Omnibus Election Code, clearly states that it is "made for the purpose of influencing the results of the elections". Accordingly, it cannot be an act of liberality, since its objective precludes donative intent;

d) Assuming, **arguendo**, that a political contribution is a donation, then it is a donation where a burden is imposed upon a donee which is not subject to a donor's tax, because the burden imposed on the donee is considered adequate consideration. A donee is at liberty to use and/or dispose of the donated property any way he pleases. However, under Section 102 of the Omninus Election Code, a political contribution must be used exclusively for election - related expenses;

e) Our gift tax law was lifted bodily from the Federal gift tax law of the United States. However, in Stern b. U.S., 436 F 2d, 1329, where a taxpayer contributed handbills, posters, sample ballots and newspaper and television advertising to a candidate, the U.S. Court of Appeals, 5th Circuit, held that the contributions were made by the desire to promote a slate of candidates that would protect and advance the contributor's personal and property interests and that the contribution was made for an adequate and full consideration, among others, since the contributor was making an economic investment that she believed would have a direct and favorable effect upon her property holdings and business interest.

f) In **Carson vs. Commissioner**, 641 F 2d, 864, the United States Court of Appeals affirmed a decision of the Tax Court to the effect that "campaign contributions, xxx when considered in the light of the history and purpose of the gift tax, are simply not gifts within the meaning of the gift tax laws".

g) In 1982, the Internal Revenue Service of the United States issued Revenue Ruling No. 82-216 where the Internal Revenue Service stated that it would not contend that political contributions are transfers subject to the gift tax.

h) The giving of electoral contributions is a manifestation of the exercise of one's political rights. To subject political contributions to donor's tax would thereof constitute an undue restraint on the exercise of political rights.

i) Because the Philippine law on gift taxes merely reproduced the Federal law on gift taxes and because of the similar circumstances under which political contributions are made in the United

States and in the Philippines, the judicial and administrative interpretation of the gift tax law in the United States not only has strong persuasive effect in the Philippines, but should be adopted, particularly because the evidence on hand indicates that it is only recently that the BIR has attempted to subject political contributions to donor's taxes.

j) The gift tax law should be construed liberally in favor of the petitioners and most strongly against the government, because burdens are not to imposed beyond what statutes expressly and clearly import, particularly if such statutes impose a liability for taxes."

Respondent's opposite view rests on these arguments:

a) Petitioners' political contribution are gifts considering the relationship between the petitioners/donors and the donee, being partners in the law firm of Angara, Abello, Concepcion, Regala and Cruz or ACCRA.

b) Even if the purpose of a political contribution is to influence the results of the election, such purpose is immaterial since the gift tax is imposed regardless of the purpose of the transfer.

c) Whether under the Civil Code or the gift tax law, a political contribution is a donation or a gift because it is an act or liberality or a voluntary transfer without any consideration or compensation.

d) The cited United States court decisions are not binding nor persuasive.

e) The gift tax is not an infringement on the exercise of political rights.

f) Tax exemptions are construed strictly against the taxpayer.

The provisions on (Gift) Donor's Tax in controversy states:

> "Sec. 91. Imposition of tax. - (a) There shall be levied, assessed, collected, and paid upon the transfer by any person, resident, or non-resident, of the property by gift, a tax computed as provided in Section 92."
>
> (b) The tax shall apply 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."
>
> "Sec. 93. Transfer for less than adequate and full consideration. - Where the property, other than real property referred to in Section 21(e), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the

> value of the 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. (As amended by P.D. 1773 and EO 37)

It is acknowledged that our gift tax law was bodily lifted from the Federal gift tax law of the United States (***St. Stephen's Association v. Collector of Internal Revenue***, *C.T.A. Case No. 173, May 23, 1959, G.R. No. L-15562, May 31, 1961, 2 SCRA 456;* ***Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue***, *G.R. No. L-26145, February 20, 1984; 127 SCRA 483)* As a result, it has also been recognized that "it would be proper to resort to applicable cases decided by the American Federal Courts for guidance and enlightenment." *(Manila Wine v. Commissioner, supra).*

In this particular case, however, respondent voices resistance to the use of interpretation derived from American law for the reason that such construction was not known at the time of the adoption of the gift tax law in the Philippines (citing 82 C.J.S. 866). Respondent is referring to the recent cases of **Stern v. U.S.** (436 F 2d 1327) and **Carson v. Commissioner of Internal Revenue** (641

F 2d 864), the latter affirming the decision of the U.S. Tax Court that "campaign contributions ... when considered in light of the history and purpose of the gift tax, are simply not 'gifts' within the meaning of the gift tax law".

It is not sufficient for respondent to hold that the construction of the gift tax law pronounced in the abovecited U.S. cases were not yet in existence at the time we adopted the U.S. gift tax law. For, it has also been realised that:

> "In interepreting a statute it is not enough to check the legislative intent with respect to the exact question that presented themselves to the legislative mind at the time the statute was enacted. The construction of statutes is not such a narrow fact-finding process. One has to determine what the intention would have been if the problem before the court had presented itself to the legislative mind when the statute was enacted (**Paul, Federal Estate & Gift Taxation, Vol. I Section 1.08, p. 44, [1921]**; citing Cardozo, The Nautre of the Judicial Process, p. 15 [1921]; Gray, The Nature and Sources of the Law, p. 176 (2d Ed., 1921). Compare Estate of Sanford v. Comm., 308 U.S.39, 48 (1939), in which the Court said: "We are concerned here with a question to which Congress has given no answer in the words of the statute, and it must be decided in conformity to the course of judicial decision applicable to a unified scheme of taxation of gifts whether made *inter vivos* or at death."

Considering further the extensive and elaborate phases and development the gift tax law has undergone, the **Stern** and Carson cases are indispensable in this case.

If in the Carson case it was concluded that based on the history and purpose of the gift tax campaign contributions are simply not 'gifts' within the meaning of the gift tax law, it would seem that all suggestions otherwise are rendered unavailing. We likewise think it must be so.

Two cases are cited in the Carson case as representative of the purpose of the gift tax and why contributions in elections are not taxable as "gifts", **Harris v. Commissioner** (340 U.S. 106, 71 S. Ct. 181, 95 L. Ed. 111 [1950]) and **Estate of Sanford v. Commissioner** (308 U.S. 39, 44 60 S. Ct. 51, 56, 84 L. Ed. 20 [1939]). In the landmark case of Estate of Sanford v. Commissioner, *supra*, the history and purpose of the gift tax in the United States was noted as "to prevent or compensate for avoidance of death taxes by taxing the gifts of property *inter vivos* which, but for the gifts, would be subject in its original or converted form to the tax laid upon transfers at death.

The design for the Philippine gift tax law is similar, thus:

> "Why gift taxes are imposed. - With the adoption of an estate tax to supplement the inheritance tax, it is possible that some property owners might attempt to avoid the estate and inheritance taxes by transferring their property by way of donation *inter vivos* which, under the present law, is exempt from inheritance tax. It is not unnatural that they may desire to avoid the imposition of the inheritance tax upon their estates so that such estates may pass on to the objects of their bounty unimpaired. To forestall such attempts, it is proposed to tax every transfer without valuable or adequate consideration in money or money's worth, at 75% (rates of the two taxes are now the same) of the rates of the estate or inheritance taxes. While the lower rates of the gift tax may constitute a strong incentive on the part of property owners to donate their property to the objects of their bounty, so as to avoid in the future the payment of a higher rate of estate and inheritance taxes, it is believed that whatever loss the Government may entail as a consequence thereof will be compensated by the earlier payment of the gift tax and by the acceleration of the distribution of wealth. (**Aranas, Anno. & Jurisprudence on the NIRC,** Vol. I [1983 ed] p. 691, quoting the Report of the Tax Commission)".

The gift tax statute refers to transfer of property "by gift" and that the tax shall apply "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". Further, if "property is tranferred for less than adequate and full consideration then the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year". We are not oblivious of the interpretation that the terms "property", "transfer", "gift", and "indirectly" are used in the broadest and most comprehensive sense. *(**Angela Perez Y. Tuazon**, C.T.A. Case No. 1707, February 10, 1969, G.R. No. L-30403, July 3, 1969; **Burnet v. Guggenheim**, 288 U.S. 280, 286 [1933])*. Despite this expansive interpretation of the statute, a complete enumeration of transfers subject to tax has not been made. Nevertheless, the ingredients of a taxable gift have been examined in numerous cases. It is appropriate that the **Stern** and **Carson** cases have added refinements to the meaning of a gift *vis-a-vis* contributions in elections.

An examination of the meaning of "contribution" and "expenditure" in elections has given us the view that "contribution" or "expenditure" in elections do not involve acts meant to avoid the estate tax. The foremost reason is that the definitions given to these terms by the law (Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881, December 3, 1985) plainly says so.

> "Sec. 94. - The term "contribution" includes a gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute, whether or not legally enforceable, made for the purpose of influencing the results of the elections but shall not include services rendered without compenssation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. It shall also include the use of facilities voluntarily donated by some persons, the money value of which can be assessed based on the rates prevailing in the area." (Underscoring supplied)
>
> "The term "expenditure" includes the payment of delivery of money or anything of value, or a contract, promise or agreement to make an expenditure, for the purpose of influencing the results of the election. It shall also include the use of facilities personally owned by the candidate, the money value of the use of which can be assessed based on the rates prevailing in the area." (Underscoring supplied)

Section 102 of the same Code curtails the purposes for which expenditures may be devoted.

The paramount purpose for which "contribution" or "expenditure" is intended, which is to influence the results of the election, can be isolated from other imagined intentions like the avoidance of estate tax. More so when we consider the case of political parties who also spend for the election of its candidates, yet, expenses incurred in this regard may not be counted as contributions or expenses of the candidate but included instead in the computation of the total expenditures of the political party (See Section 101 of the Omnibus Election Code.) In this particular case, therefore, the purpose of the "contribution" or "expenditure" as being intended to influence the results of the election is best of all emphasized. Avoidance of the estate or donative intent, for that matter, should be the least of the considerations therefore when we talk of electoral "contribution' or "expenditure".

The position of respondent is susceptible of inconsistencies as against the provisions of the gift tax law in other respects. It is not correct for respondent to say that "referebce to the purpose of the legislature in enacting the gift tax law in not material" for he himself had inquired into this subject in this arguments. Looking into the purpose of the gift tax law is surely necessary considering its breadth and the sweeping extent it hoped to enclose.

It has been considered relevant in deciding a transfer of property as involving a gift to look into whether strings upon property may have been retained despite the relinquishment of the normal incidents of ownership (*Estate of Sanford v. Commissioner*, *supra*). In so far as the gift tax is concerned, releasing the strings means more than the surrender of beneficial enjoyment of property (*Id.*). "The retention or enjoyment of a certain indicia of ownership raises the question whether they negative or harmonize with a definitive transfer" (**Blanche S. Ross,** 28 BTA 39, 67 F 2d 989). Although Estate of Sanford v. Commissioner, *supra*, refers to the gift tax status of transfer in trust, the reasons adopted in the ruling are pertinent to the present case. Thus, xxx the essence of a transfer is the passage of control over the economic benefits of property..."

We take it then that the transfer of property in the form of contributions or expenditures in elections are not gifts within the meaning of the gift tax law also because the contributor has retained some measure of control in the disposition of property transferred. The surrender of control over economic benefits is the test of a completed gift (Paul, Federal Estate and Gift Taxation, *supra*, Vol. II, Section 1707, p. 1146, [1940], citing Burnet v. Guggenheim and Estate of Sanford v. Commissioner, *supra*). In the contributions or expenditures in elections it cannot be said that a total relinquishment of ownership has been made with the imposition by the contributor of the use to which the property should be applied. This element is nowhere more understandable when the contribution or expenditure in the election is in the form of mere use of facilities owned by other persons for the benefit of the candidate. Hence, only the beneficial use of the property is transferred to the candidate during the campaign. Thereafter, use and enjoyment of the property reverts to the owner.

Article 726 of the New Civil Code provides "when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation". Thus, it may be erroneously supposed that contributions or expenditures in elections are donations subject to donor's (gift) tax even assuming there is a burden since such burden is at most less than an adequate and full consideration for the property transferred. It is explained by authorities that any limitation, charge or condition imposed upon the donee must be considered as a burden. The burden may consist in a real or personal charge capable of valuation in money or not capable of valuation in money (**Tolentino, Commentaries and Jurisprudence on the Civil Code**, Vol. II p. 465, [1963] citing other authorities). Gratitude, for example, has no economic value and is not a consideration. *(Pirovano v. Commissioner, L-1965, July 31, 1965; 14 SCRA 832)* But the aspect of consideration is focused only if there is an absence of commercial context in the transfer of the property. (Paul, Federal Estate and Gift Transaction, *supra*, Vol. II Section 16.14, p. 1113).

The exception to the rule that gift tax can be avoided only if the transfer is for a full and adequate consideration is that a sale, exchange or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arms length and free from any donative intent) will be considered as made for an adequate and full consideration in money or money's worth. It was thought that in trying to reach sales and exchanges with comparative disparity in consideration some sort of statutory fiction is being created by treating as gift a sale or exchange transaction. However, a sale, exchange or other transfer of property in the ordinary course of business were eventually excluded from the influence of gift tax provisions. (Paul, Federal Estate and Gift Taxation, *supra*, Sec. 16.14, p. 1111) In the case of Harris v. Commissioner, *supra,* a compromise agreement between husband and wife disposing their property interests guided by a divorce decree was deemed a transaction "in the ordinary course of business". This, even if the transaction was not "in the ordinary course of business" in any conventional sense".

With the same force, electoral contributions or expenditures can be treated for gift tax purposes as one "in the ordinary course of business", that is, bona fide, at arms length , and free from any donative intent. As stated in **Harris** and as well true to the case on hand, "Surely it will not be said that there may not be a genuine business transaction not directly connected with the taxpayer's trade or business or even though the taxpayer be not engaged in 'carrying on any trade or business xxx'" (Citing **Higgins v. Commissioner**, 85 L. Ed. 783, 788, where petitioner in this case was held not carrying on business as he merely kept records and collected interest and dividends from his securities, through managerial attention for his investments).

It may cross people's minds, as it did ours, that this decision may reduce such an important exercise of political rights as elections into a mere business endeavor. This does not appear to be the effect that we foresee will be achieved nor should even result as an incident. The proceedings we had here is a necessary process in the continuing determination of the parts of the equation of the gift tax. "A meticulous sifting of motives and external acts is required to ascertain whether ownership has passed by way of gratuitous transfer." (Paul, Federal Estate and Gift Taxation, *supra*, Section 16.03, p. 1071) One of the constituent elements of a gift, which is the intention to make a gift, is subjective. "In gift tax cases we run against the necessity, frequent in human relations, of ascertaining what goes on in other's minds." (*Id.*, p.1070)

The truth is, and as had been recognized in the **Stern** case (*supra*, p. 1330), transactions like what we have here are "permeated with commercial and economic factors". Not that the candidate when elected would serve the personal or collective interests of his contributor/s at the expense of public interest, but that the candidate would foster conditions more favorable to economic growth. In effect, petitioners here were making an "economic investment" that would have a direct and favorable consequence to their interests. These considerations make their contributions bona fide, at arms length and free from donative intent and therefore, made for an adequate and full consideration.

WHEREFORE, judgment is rendered in favor of petitioners. Respondent is hereby ordered to withdraw his letters dated April 21, 1988 and August 4, 1988 assessing donor's taxes and to desist from collecting donor's taxes from petitioners.

SO ORDERED.

Quezon City, Metro Manila, October 7, 1991.

ERNESTO D. ACOSTA
Associate Judge

DECISION
CTA CASE NO. 4296

WE CONCUR:

Dissents in separate opinion
ALEX Z. REYES
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANUEL G. ABELLO
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C.T.A. CASE NO. 4296

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

11/21/91

DISSENTING OPINION

I take exception to the view that political contribution is not subject to Donor's (Gift) Tax imposed in Section 91 of the Tax Code, that: "There shall be levied, assessed, collected, and paid upon the transfer by any person, resident or non-resident, of the property by gift, a tax, computed as provided in Section 121."

Under the Omnibus Election Code electoral contribution includes, among others, a gift, whether or not legally enforceable made for the purpose of influencing the results of the election. And, a "gift", judicially defined, is a valid transfer of property from one person to another without consideration or compensation therefor

(Prentice-Hall Federal Tax Course), essentially characterized by (1) capacity of the donor; (2) donative intent; (3) acceptance by the donee; and (4) delivery to the donee either actually or constructively (Nolledo's Commentaries). The tax is imposed on the transfer and not on the property transferred.

Without recasting the facts obtaining in the majority's decision, it appears more than sufficient that such gratuitous electoral contribution, hewed close to the requisites thus required, can readily slip into that warm cubby-hole of a "gift", infused valid cognizance, unless petitioners are unwilling to assume liabilities or simply unable to discern what it is. "What's in a name? That which we call a rose, by any other name would smell as sweet."

Settled is the rule that the first and fundamental duty of the court is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. This court cannot deem itself authorized to depart from the plain meaning of the statute so explicit in terms and so searching in extent. In the words of Justice Cardozo, "The court has no power to arrest nor dilute enforcement, however unwise or unjust the law may be. The law must be obeyed. It is not enough that it may seem to us to be impolitic or even oppressive. It is not enough that in its making, great and historical traditions of generosity have been ignored. Our duty is done when we ascertain that it has kept within its power."

I find the decision of my distinguished colleagues a trifle confusing in having portrayed the petitioners-donor in the best possible light as neither fish nor fowl for tax purposes. Neither can I lend currency to an aggravated chutzpah by further fashioning possibilities out of dead ends or grafting flip-flop precipitous ruling beyond the clearly intended meaning of the statute. Ludicrous and expedient piffle indeed to have the compelling import and enforcement of Section 91 of the Tax Code (donor's tax) be simply defused in a cul de sac of impotency. ***Natura vacuum abhoret.***

Let the chips fall where they may.

Quezon City, Metro Manila, November 21, 1991.

ALEX Z. REYES
Presiding Judge