REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANTONIO CAMPOS RUEDA, as
Administrator of the Estate
of the deceased Doña Maria
de la Estrella Soriano
Viuda de Cerdeira,
Petitioner,

Oct. 30, 1957

- versus -

C.T.A.
CASE NO. 332

Remanded by the S.C. in G.R. No. L-13250, May 30, 1962.

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is an appeal interposed by petitioner Antonio Campos Rueda, as administrator of the estate of the deceased Doña Maria de la Estrella Soriano Vda. de Cerdeira, from the decision of the respondent Collector of Internal Revenue, assessing against and demanding from the former the sum of ₱161,874.95 as deficiency estate and inheritance taxes, including interests and penalties, on the transfer of intangible personal properties situated in the Philippines and belonging to said Maria de la Estrella Soriano Vda. de Cerdeira.

Maria de la Estrolla Soriano Vda. de Cerdeira (Maria Cerdeira for short) is a Spanish national by reason of her marriage to a Spanish citizen and was a resident of Tangier, Morroco from 1931 up to her death on January 2, 1955. At the time of her demise she left, among others, intangible personal properties in the Philippines.

On September 29, 1955, petitioner filed a provisional estate and inheritance tax return on all the properties of the late Maria Cerdeira. On the same date, respondent, pending investigation, issued on assessment for estate and inheritance taxes in the respective amounts of ₱111,592.48 and ₱157,791.48, or a total of ₱269,383.96, which tax liabilities were paid by petitioner (p. 6, BIR records). On November 17, 1955, an amended return was filed (Exhibit "A", p. 75, BIR records) wherein intangible personal properties with the value of ₱396,308.90 were claimed as exempted from taxes. On November 23, 1955, respondent, pending investigation, issued another assessment for estate and inheritance taxes in the amounts of ₱202,262.40 and ₱267,402.84, respectively, or a total of ₱469,665.24 (p. 15, BIR records). In a letter dated January 11, 1956, respondent denied the request for exemption on the ground that the law of Tangier is not reciprocal to Section 122 of the National Internal Revenue Code. Hence, respondent demanded the payment of the sums of ₱239,439.49 representing deficiency estate and inheritance taxes including ad valorem penalties, surcharges, interests and compromise penalties (Exhibit "F", pp. 94-95, BIR records). In a letter, dated February 8, 1956, and received by respondent on the following day, petitioner requested for the reconsideration of the decision denying the claim for tax exemption of the intangible personal properties and the imposition of the 25% and 5%

ad valorem penalties (Exhibit "G", pp. 96-99, BIR records). However, respondent denied this request, in his letter dated May 5, 1956 (Exhibits "K" and "1", pp. 126-128, BIR records) and received by petitioner on May 21, 1956. Respondent premised the denial on the grounds that there was no reciprocity of Tangier law with Philippine law and that the City of Tangier was a mere principality, not a foreign country. Consequently, respondent demanded the payment of the sums of ₱73,851.21 and ₱88,023.74 respectively, or a total of ₱161,874.95 as deficiency estate and inheritance taxes including surcharges, interests and compromise penalties.

In a letter, dated May 23, 1956, and received by respondent on May 26, 1956, petitioner requested that further action on the case be withheld until the arrival of Atty. Joaquin Ramirez, who was in personal charge of the case (Exhibit "L", p. 129, BIR record). Petitioner's counsel, in a letter of July 12, 1956 and received by respondent on the following day, acknowledged receipt of respondent's letter dated May 5, 1956 and requested reconsideration of the denial regarding the tax exemption (Exhibit "M", pp. 145-172, BIR record). In view of this petition, respondent requested petitioner on August 27, 1956, to submit a certified copy of the inheritance tax laws of the City of Tangier "in order that a verification may be made as to whether or not the same were promulgated by the said city in its capacity as a sovereign state possessing an international personality" (Exhibit "O", p. 175, BIR record). In two communications, dated September 17 and 22, 1956, respectively, petitioner enclosed documents covering Tangier law, in support of his claim for exemption (Exhibits "P" and "Q", pp. 193-194, BIR records).

In a letter dated October 29, 1956 (Exhibits "R" and "2", pp. 203-204, BIR records) and received by petitioner on November 8, 1956 (Petition for Review, paragraph 11), respondent denied the claim for exemption despite the arguments and documents presented in petitioner's last two communications, on the ground that Tangier, not being recognized by our Government, is not a foreign country and that therefore, the exemption under Section 122 of the Tax Code could not be availed of. In view thereof, respondent demanded for the last time the payment of the sum of ₱161,874.95 representing deficiency estate and inheritance taxes including surcharges, interests and compromise penalties.

On November 20, 1956, the instant petition for review was filed with this Court. On November 23, 1956, petitioner filed a petition to enjoin the enforcement of the assessment, which petition was later on withdrawn with leave of court, upon the filing of a bond with respondent himself, which the latter accepted.

There is no dispute between the parties regarding the value of the properties and the mathematical correctness of the deficiency assessment. Hence the issues in this case may be briefly stated as follows:

1. Whether or not the instant petition for review was filed within the 30-day period provided for in Section 11 of Republic Act No. 1125; and

2. Whether or not the intangible personal properties of the estate of the late Maria Vda. de Cerdeira are exempt from the payment of estate and inheritance taxes under Section 122 of the National Internal Revenue Code.

Relative to the first issue, respondent maintains that the assessment and demand of May 5, 1956 (Exhibits "K" and "1") is the appealable decision; that petitioner's request to withhold action did not suspend the running of the prescriptive period; and that as a consequence, the petition for review was filed out of time. On the other hand, it is urged upon us that, in view of respondent's actions or omissions subsequent to the request, said request caused such suspension, and, therefore, the petition for review was seasonably filed.

We agree with the contention that a request to withhold action on a case does not suspend the running of the prescriptive period provided for in Section 11 of Republic Act No. 1125. The fact that such request was granted by the Collector is immaterial. On the other hand it may be conceded that the assessment and demand of May 5, 1956 (Exhibits "K" and "1") should be considered as the decision appealable to this Court.

However, on August 27, 1956, respondent reopened the case and granted petitioner a rehearing by requiring the latter to submit additional evidence as to the inheritance tax laws of Tangier and in order to verify whether or not it was "a sovereign state possessing an international personality". The reopening and rehearing of the case partakes of the nature of a grant of a new trial and pursuant to sections 1 and 5 of Rule 37 of the Rules of Court, had the effect of vacating respondent's judgment or decision of May 5, 1956 (Norton & Harrison Co. vs. Collector, C.T.A. Case No. 254, September 26, 1957). Thus, the running of the thirty-day period prescribed under section 11 of Republic Act No. 1125 after petitioner received respondent's assessment and demand of October 29, 1956 (Exhibits "R" and "2"), the same being a new decision or determination which took into account the additional or new evidence introduced during the rehearing of the case. The fact that the amount of deficiency taxes, surcharges, interests and compromise penalties assessed and demanded therein is the same as that in the original decision is of no consequence, for additional findings of fact and law had to be determined in the new decision of respondent dated October 29, 1956. It appearing that petitioner received the said decision only on November 8, 1956 it becomes obvious that when the instant petition for review was filed on November 20, 1956, only twelve (12) days had elapsed. It follows that the appeal was filed within the reglamentary period provided for in Section 11 of Republic Act No. 1125.

The resolution of the second issue turns upon the last proviso of Section 122 of the National Internal Revenue Code, which reads:

> "x x x And provided, further, That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (2) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

Petitioner avers that the intangible personal properties of the late Maria Vda. de Cerdeira are exempt from the payment of estate and inheritance taxes under the afore-quoted proviso. In support thereto, petitioner presented certificates regarding the Tangier law, separately executed by the Conservateur de la Propiete Foncier at Tangier, Morroco (Exhibit "D-1", BIR records, pp. 62-63), the Acting Administrator and Lands Registrar, respectively (Exhibit "G-1", pp. 100-101, BIR records), the Judge of the International Court at Tangier, Morroco (Exhibit "Q-1", pp. 178-180, BIR records), and the Amel (Governor) at Tangier, Morroco (Exhibit "T", CTA records). All of these certificates were in turn accompanied by certifications of an American Vice Consul (acting in the absence of a Philippine diplomat or consular representative) identifying said officials. These (former) certificates read as follows:

> "CERTIFICA: Que las transmisones hereditarias de bienes muebles situados en Tanger, no estan sujetos a ningun impuesto sucesorio conforme al Dahir del 15 de Mayo de 1925 y Ley del 30 de Enero de 1932 vigentes en la Zona Internacional de Tanger, sea cualquiera la nacionalidad de los interesados en la sucesion." (Exhibit "D-1")

> "CERTIFICA: que conforme a la ley del Enero de 1932, en relacion con el Dahir de 15 de Mayo de 1925, al preceptuarse que 'quedan sujetos al pago del impuesto de derechos reales, establecido para las donaciones entre vivos, las transmisiones de inmuebles por causa de - muerte acontecida a partir del 1 de Enero de 1932' deja como actos no sujetos a ningun impuesto sucesorio, las transmisiones hereditarias de bienes muebles radicantes en Tanger, sea cualquiera la nacionalidad de los interesados en la sucesion." (Exhibit "G-1")

> "Praise be to God. The undersigned do hereby certify that neither Morrocan nor foreign legatees at Tangier and its province, in the Sherifian State, are subject to any tax on movables, with exception of real estate which is liable to inheritance tax by virtue of the law of January 10, 1932 published in Official Bulletin No. 72." (Exhibit "Q-1"; see translation on BIR records, p. 178)

> "The law of January 30, 1932 modifying the Dahir of May 15, 1925 subjecting the transfer of real estate through deaths to the payment of registration taxes, as of January 1, 1932, subjects to no inheritance tax the successional transfers of movable property, whatever may be the nationality of those interested in the succession." (Exhibit "T"; see translation on CTA record.)

On the other hand, respondent contends that petitioner cannot claim exemption from the Philippines estate and inheritance taxes on the following grounds: (1) petitioner failed to prove the law or laws of Tangier which allegedly grant reciprocal tax exemption; (2) the comments on the laws of Tangier in 1925 and 1932 which were about thirty or twenty-three years before January 2, 1955, the date the decedent died, do not prove the laws of said country at the time of the decedent's death; (3) the alleged laws of Tangier do not grant the reciprocal tax exemption required by Section 122 of the National Internal Revenue Code; and (4) the International Zone of Tangier is not recognized as a state by the Philippine Government.

We shall consider the grounds advanced by the respondent in disputation of petitioner's claim for exemption of the intangible personal properties in question in the order they are given above.

Petitioner's claim for exemption hinges upon the existence of a foreign law, the law of Tangier. A foreign law is a matter of fact and not of law (see Dainese v. Hale, 91 U.S. 190, 193). Consequently, it is necessary to prove in a satisfactory manner the existence of such law as a question of fact (see Sy Joc Lieng v. Sy Quia, 16 Phil. 137, 139). Now, the question crops up as to whether or not Exhibits "D-1", "G-1", "Q-1" and "T" constitute sufficient proof of

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the existence of the Tangier law upon which petitioner's claim for exemption is predicated. While a foreign law, and for this matter the Tangier law, may be proved, under the provisions of Section 41, Rule 123 of the Rules of Court, by an official publication thereof or a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate of an officer in the Philippine foreign service stationed in that foreign country in which the record is kept, and authenticated by the seal of his office, said Section 41 of Rule 123 is not all-embracing and exclusive. It does not preclude the presentation of other competent evidence to prove the Tangier law (see Willamette Iron & Steel Works v. Muzzal, 61 Phil. 471) specially in the case of evidence negative in character, i.e. of the absence of a succession or inheritance tax law on movable properties. Any competent evidence, other than those mentioned in Section 41 of Rule 123, is sufficient as long as it satisfactorily establishes the existence or non-existence of the Tangier law as to the imposition of inheritance or succession tax on movables.

We believe that Exhibits "D-1","G-1", "Q-1" and "T", considered together, are wholly competent evidence of the particular law of Tangier. They were executed by officials, who, by reason of their duties, are presumed to be conversant with this particular law of the country of which they are officials. And they satisfactorily establish the law of Tangier on the non-liability of movable property located in Tangier for succession or inheritance taxes purposes.

Respondent also contends that comments on the laws of Tangier in 1925 and 1932, which were about thirty or twenty-three years before the date of the demise of Maria Vda. de Cerdeira do not prove the law of said country at the time of her death. In this connection, we wish to make the observation that Exhibits "D-1", "G-1", "Q-1" and "T" are more than mere comments on the particular law of Tangier. They are categorical statements of what the Tangier law is. And considering the manner of expression in the certificates in question, we believe that they express the law of Tangier as of 1955, the time the certificates had been made which is the same law thirty years before. Moreover, it is a legal truism that a law, foreign or local, subsists until amended or repealed. From this truism flows the presumption that a thing once proved to exist continues as long as is usual with things of that nature. (See Sec. 69 (dd), Rule 123 of the Rules of Court) Consequently, we presume that, in the absence of a showing to the contrary, the law of Tangier of January 30, 1932, modifying the Dahir of May 15, 1925, as proved in Exhibits "D-1", "G-1", "Q-1" and "T", was still in force on January 2, 1955 (see In Re Huss, 27 NE 784).

Respondent likewise argues that the laws of Tangier do not grant the reciprocal tax exemption required by Section 122 of our Tax Code for the reason that the said laws exempt intangible personal properties located in Tangier and owned by Filipino citizens not residing therein only from the payment of inheritance tax. Accordingly, they could not be reciprocal to said Section 122, which provides for the exemption of similar properties situated in the Philippines from estate and inheritance taxes. Obviously, we are urged to accord to the expression "inheritance tax" its meaning in the strict or narrow sense. This, we cannot do without violating a rule of statutory construction. It is to be noted that the law of Tangier of January 30, 1932, modifying the Dahir of May 15, 1925 speaks of succession or inheritance tax in general terms. Logically, by the principle of "Generalia verba sunt generaliter inteligencia" (What is generally spoken shall be generally understood, or general words shall be understood in a general sense), the expression "succession" or "inheritance" tax should be construed generally.

> "An inheritance tax, using the term in its broadest sense, is an excise which may be imposed on either or both, of two entirely different subjects. It may be a tax upon the transmission of property by a deceased person, in which case it will be charged upon the whole estate, regardless of the manner in which it is to be distributed. Such a tax is called a probate duty or estate tax. An inheritance tax in its common form is, however, an excise on the privilege of taking property by will or by in-

> heritance or by succession in any other form upon the death of the owner, and in such case is imposed upon each legacy or distributive share of the estate as it is received. Such a tax is called legacy or succession tax." (26 R. C. L., Sec. 166, pp. 195-196; 28 Am. Jur. 11; see State Tax Commission v. Backman et al., 55 P(2d) 171, 174.)

In its general or broad sense, therefore, the term "inheritance tax" contemplates an exaction on the acts of transmitting and receiving property upon death. It is in this sense that the expression "inheritance tax" found in the Tangier law should be construed and understood. It includes the estate tax, which is levied on the act of transmitting property upon death, and inheritance tax, which is imposed upon the act of receiving said property in consequence of death. Consequently, we believe, and so hold, that the Tangier law of January 30, 1932, modifying the Dahir of May 15, 1925, is reciprocal to Section 122 of our Tax Code.

Finally, it is contended that the term "foreign country" in Section 122 of the Tax Code refers to a country which is recognized by the Philippine Government, through its Executive Department, as one possessing an international personality among the family of nations. On the premise that Tangier has not been so recognized, it is concluded that Tangier is not a foreign country within the contemplation of said codal section.

The U. S. Supreme Court, in concluding that the term "country" in the expression "foreign country" of

Section 238 (e) of the Revenue Act of November 23, 1921, 42 Stat. at L. 227, 258, 259, chap. 136, which permitted tax credit in cases of taxes paid to a foreign country, refers to that of a foreign government competent to levy taxes without any consideration for the international status of that government, interpreted the word "country" thus:

> "The word 'country', in the expression 'foreign country,' is ambiguous. It may be taken to mean foreign territory or a foreign government. In the sense of territory, it may embrace all the territory subject to a foreign sovereign power. When referring more particularly to a foreign government, it may describe a foreign State in the international sense, that is, one that has the status of an international person with the rights and responsibilities under international law of a member of the family of nations; or it may mean a foreign government which has authority over a particular area or subject-matter, although not an international person but only a component part, or a political subdivision, of a larger international unit. The term 'foreign country' is not a technical or artificial one, and the sense in which it is used in the statute must be determined by reference to the purpose of the particular legislation." (Burnet v. Chicago Portrait Co., 285 U. S. 1, 6 and 6.)

In view of the similarity in the nature and purposes of the reciprocity provisions in both the income tax and estate and inheritance tax laws, and equally of the last proviso of Section 122 of our Tax Code and Section 238 (e) of the U. S. Revenue Act of November 23, 1921, we believe that the afore-quoted interpretation of the term "country" in the expression "foreign country" applies with equal force and validity in determining the meaning of the expression "foreign country" found in our Revenue Code. The said proviso states that no estate, inheritance and gift taxes shall be collected on intangible personal properties of a decedent who, at the time of his death, was a resident of a <u>foreign country</u> which at the time of his death <u>did not impose</u> a transfer tax or death tax, or the laws of which (foreign country) <u>allow</u> a similar exemption from transfer taxes or death taxes on intangible personal properties owned by our citizens not residing therein. The expression "foreign country", used in the proviso, is manifestly employed in the sense of government which did not impose a transfer tax or death tax, or the laws of which allow a similar exemption from transfer taxes or death taxes. And to determine to what government it refers, whether that of a foreign power which enjoys the status and stature of an international person, or that of merely a political entity which, although not enjoying such status and stature, does not impose such transfer taxes upon intangible personalty or whose law allows a similar exemption, it now behooves us to ascertain and consider the purpose or purposes behind the enactment of the last proviso of Section 122 of our Tax Code.

The last proviso of Section 122 of the Tax Code was enacted to avoid the evil of double taxation, to avoid the imposition of transfer or death taxes upon intangible personal properties by both the foreign law and the law of the forum. This purpose is similar to that of Section 238 (e) of the U. S. Revenue Act of November 23, 1921. Said proviso was also designed to encourage foreign countries to exempt from transfer or death taxes intangible personal properties owned by our citizens, and thereby provide an incentive to our citizens to acquire such properties therein. These salutary purposes are controlling considerations in determining whether the expression "foreign country" found in the proviso refers to a foreign power enjoying the status and stature of an international person, or the other. While it is a matter of indifference to our Government whether or not such foreign power enjoys the status and stature of an international person as long as these purposes are attained, yet, it must be remembered that said purposes will be more readily and fully achieved if the expression "foreign country" be construed as depicting a foreign power which, although not dignified with international personality, does not impose transfer or death taxes upon intangible personal properties owned by our citizens not residing therein. It would be a frustration of these purposes should we limit the term "foreign country" to mean a foreign power in the international sense.

In fine, we believe, and so hold, that the expression "foreign country", used in the last proviso of Section 122 of the National Internal Revenue Code, refers to a government of that foreign power which, although not an international person in the sense of international law, does not impose transfer or death taxes upon intangible personal properties of our citizens not residing therein, or whose law allows a similar exemption from such taxes. It is, therefore, not necessary that Tangier should have been recognized by our Government in order to entitle the petitioner to the exemption benefits of the last proviso of Section 122 of our Tax Code.

WHEREFORE, the decision of the respondent Collector of Internal Revenue is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, October 30, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge