LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RAFAEL ARSENIO S. DIZON as Administrator of the Estate of Jose P. Fernandez,
Petitioner,

- versus -

C.T.A. CASE NO. 5116

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUN 17 1997

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DECISION

This case refers to a deficiency estate tax assessment in the amount of P66,973,985.40, issued against the Estate of the late Jose P. Fernandez (herein after called the "estate") who died on November 7, 1987.

Petitioner, Atty. Rafael Arsenio S. Dizon, is the duly appointed Administrator of the estate, as evidenced by the Letters of Administration (Exh. "L", Pet.; p. 102, CTA rec.) issued by the Regional Trial Court, Branch 51, of Manila, in Special Proceedings No. 87-42980 entitled "In The Matter Of The Petition To Approve The Will Of Jose P. Fernandez, Deceased, Carlos P. Fernandez, Petitioner."

In a letter, dated March 14, 1990 (Exh. "I", Pet.; p. 184, BIR rec.), Special Administrator, Arsenio P.

Dizon, authorized Atty. Jesus M. Gonzales to sign and file on behalf of the estate the required estate tax return and to represent the estate with the Bureau of Internal Revenue (BIR) for the issuance of a Certificate of Tax Clearance.

Pursuant to said authority, through a letter, dated April 17, 1990 (Exh. "J", Pet.; p. 183, BIR rec.) addressed to the Regional Director of the BIR Regional Office in San Pablo City, Atty. J.M. Gonzales filed an estate tax return (Exh. "K", Pet.; p. 182, BIR rec.) for and in behalf of the estate, showing therein a NIL estate tax liability, computed as follows:

"COMPUTATION OF TAX

Conjugal Real Property (Sch. 1)	₱ 10,855,020.00
Conjugal Personal Property (Sch. 2)	3,460,591.34
Taxable Transfer (Sch. 3)	
Gross Conjugal Estate	14,315,611.34
Less: Deductions (Sch. 4)	187,822,576.06
Net Conjugal Estate	NIL
Less: Share of Surviving Spouse	NIL .
Net Share in Conjugal Estate	NIL
x x x	
Net Taxable Estate	NIL .
Estate Tax Due	NIL .

As a result of the filing of the above-mentioned estate tax return, Certification Nos. 2052 and 2053, both dated April 27, 1990 (Exhs. "M" and "M-1", respectively, Pet.; pp. 103 and 104, CTA rec.) were issued by Osmundo G. Umali, then Regional Director of the BIR in San Pablo City. Stated in said certifications was the statement that the taxes due on the transfer of the real properties of the late Jose P. Fernandez who died on November 7, 1987 have been fully paid and the same may be transferred to the heirs of the deceased.

Notwithstanding the filing of the estate tax return and the issuance of certificates of tax clearance, the Assistant Commissioner for Collection Mr. Themistocles Montalban, of the BIR, National Office, still issued on November 26, 1991, an Estate Tax Assessment Notice No. FAS-E-87-91-003269 (Exh. "4-a", Resp.; p. 169, BIR rec.) demanding from the estate payment of the amount of ₱66,973,985.40, details of which are itemized hereunder:

"Deficiency Estate Tax-1987

Estate tax	P31,868,414.48
25% surcharge-late filing	7,967,103.62
late payment	7,967,103.62
interest	19,121,048.68
compromise-non filing	25,000.00
non payment	25,000.00
no notice of death	15.00
no CPA Certificate	300.00
Total amount due & collectible	₱66,973,985.40

In a letter, dated December 12, 1991 (p. 171, BIR rec.), Atty. Jesus M. Gonzales, as counsel for the Administrator of the estate, requested that the estate tax assessment of the late Jose P. Fernandez be recalled and the same be referred back for re-investigation and/or re-verification.

In her letter, dated April 12, 1994 [UN-136-94] (pp. 277-278, BIR rec.) addressed to Atty. Jesus M. Gonzales, the Commissioner of Internal Revenue, herein respondent, denied the former's request and reiterated the payment of the amount of P66,973,985.40 as deficiency estate tax liability of the subject estate.

The letter denial of the BIR was received by petitioner on May 3, 1994 (par. 15, Pet. for Review, pp.5-6, CTA rec.). On June 2, 1994, the instant petition for review was filed with this Court.

Respondent's Answer was filed on August 29, 1994 (pp. 49-54, CTA rec.) alleging several specific and affirmative defenses, summarized as follows:

> 1. The estate tax liability in the amount of P66,973,985.40 was determined after proper investigation;
>
> 2. Only the amounts of P20,000,000.00 and P4,000,000.00 paid by the estate to Banque De Indochine Et de Suez and Equitable Banking Corporation, respectively, should be allowed as deductible claims for they are the actual and existing claims against the estate;
>
> 3. The estate failed to file the required estate tax return for the year 1987, hence, it is liable not only for the basic tax of P31,868,414.48, but also for the 25% surcharge for late filing and late payment, for the interest and compromise penalty for non-filing, for non-payment of tax, for not filing any notice of death and for no CPA certificate, or a total amount of P66,973,985.40;

4. Petitioner, despite several opportunities granted, failed to refute the findings of respondent's examiners; and

5. All presumptions are in favor of the correctness of tax assessments and the burden of proof is on the taxpayer.

In the hearings conducted, petitioner did not present testimonial evidence but merely documentary evidence consisting of the following:

	Nature of Document	**Exhibits**
1.	Letter dated October 13, 1988 from Arsenio P. Dizon addressed to the Commissioner of Internal Revenue informing the latter of the special proceedings for the settlement of the estate (p. 126, BIR records);	"A"
2.	Petition for the probate of the will and issuance of letter of administration filed with the Regional Trial Court (RTC) of Manila, docketed as Sp. Proc. No. 87-42980 (pp. 107-108, BIR records);	"B" & "B-1"
3.	Pleading entitled "Compliance" filed with the probate Court submitting the final inventory of all the properties of the deceased (p. 106, BIR records);	"C"
4.	Attachment to Exh. "C" which is the detailed and complete listing of the properties of the deceased (pp. 89-105, BIR rec.);	"C-1" to "C-17"
5.	Claims against the estate filed by Equitable Banking Corp. with the probate Court in the amount of P19,756,428.31 as of March 31, 1988, together with the Annexes to the claim (pp. 64-88, BIR records);	"D" to "D-24"

6.	Claim filed by Banque de L' Indochine et de Suez with the probate Court in the amount of US $4,828,905.90 as of January 31, 1988 (pp. 262-265, BIR records);	"E" to "E-3"
7.	Claim of the Manila Banking Corporation (MBC) which as of November 7, 1987 amounts to ₱65,158,023.54, but recomputed as of February 28, 1989 at a total amount of ₱84,199,160.46; together with the demand letter from MBC's lawyer (pp. 194-197, BIR records);	"F" to "F-3"
8.	Demand letter of Manila Banking Corporation prepared by Asedillo, Ramos and Associates Law Offices addressed to Fernandez Hermanos, Inc., represented by Jose P. Fernandez, as mortgagors, in the total amount of ₱240,479,693.17 as of February 28, 1989 (pp.186-187, BIR records);	"G" & "G-1"
9.	Claim of State Investment House, Inc. filed with the RTC, Branch VII of Manila, docketed as Civil Case No. 86-38599 entitled "State Investment House, Inc., Plaintiff, versus Maritime Company Overseas, Inc. and/or Jose P. Fernandez, Defendants," (pp. 200-215, BIR records);	"H" to "H-16"
10.	Letter dated March 14, 1990 of Arsenio P. Dizon addressed to Atty. Jesus M. Gonzales, (p. 184, BIR records);	"I"
11.	Letter dated April 17, 1990 from J.M. Gonzales addressed to the Regional Director of BIR in San Pablo City (p. 183, BIR records);	"J"
12.	Estate Tax Return filed by the estate of the late Jose P.	

Fernandez through its authorized representative, Atty. Jesus M. Gonzales, for Arsenio P. Dizon, with attachments (pp. 177-182, BIR records);	"K" to "K-5"
13. Certified true copy of the Letter of Administration issued by RTC Manila, Branch 51, in Sp. Proc. No. 87-42980 appointing Atty. Rafael S. Dizon as Judicial Administrator of the estate of Jose P. Fernandez; (p. 102, CTA records) and	"L"
14. Certification of Payment of estate taxes Nos. 2052 and 2053, both dated April 27, 1990, issued by the Office of the Regional Director, Revenue Region No. 4-C, San Pablo City, with attachments (pp. 103-104, CTA records.).	"M" to "M-5"

Respondent's counsel presented on June 26, 1995 one witness in the person of Alberto Enriquez, who was one of the revenue examiners who conducted the investigation on the estate tax case of the late Jose P. Fernandez. In the course of the direct examination of the witness, he identified the following:

<u>Documents/ Signatures</u>	<u>BIR Record</u>
1. Estate Tax Return prepared by the BIR;	p. 138
2. Signatures of Ma. Anabella Abuloc and Alberto Enriquez, Jr. appearing at the lower portion of Exh. "1";	- do -
3. Memorandum for the Commissioner, dated July 19, 1991, prepared by	

	revenue examiners, Ma. Anabella A. Abuloc, Alberto S. Enriquez and Raymund S. Gallardo; Reviewed by Maximino V. Tagle	pp. 143-144
4.	Signature of Alberto S. Enriquez appearing at the lower portion on p. 2 of Exh. "2";	- do -
5.	Signature of Ma. Anabella A. Abuloc appearing at the lower portion on p. 2 of Exh. "2";	- do -
6.	Signature of Raymund S. Gallardo appearing at the lower portion on p. 2 of Exh. "2";	- do -
7.	Signature of Maximino V. Tagle also appearing on p. 2 of Exh. "2";	- do -
8.	Summary of revenue Enforcement Officers Audit Report, dated July 19, 1991;	p. 139
9.	Signature of Alberto Enriquez at the lower portion of Exh. "3";	- do -
10.	Signature of Ma. Anabella A. Abuloc at the lower portion of Exh. "3";	- do -
11.	Signature of Raymond S. Gallardo at the lower portion of Exh. "3";	- do -
12.	Signature of Maximino V. Tagle at the lower portion of Exh. "3";	- do -
13.	Demand letter (FAS-E-87-91-00), signed by the Asst. Commissioner for Collection for the Commissioner of Internal Revenue, demanding payment of the amount of P66,973,985.40; and	p. 169
14.	Assessment Notice FAS-E-87-91-00	pp. 169-170

Although the above-mentioned documents were not formally offered as evidence for respondent, considering that respondent has been declared to have waived the presentation thereof during the hearing on March 20, 1996, still they could be considered as evidence for respondent since they were properly identified during the presentation of respondent's witness, whose testimony was duly recorded as part of the records of this case. Besides, the documents marked as respondent's exhibits formed part of the BIR records of the case. This was the ruling laid down in the case of **Vda. Oñate vs. Court of Appeals and Taguba, G.R. No. 116149**, promulgated on **November 23, 1995, 250 SCRA 283**, where the Supreme Court, citing the cases of **People vs. Napat-a** and **People vs. Mate; 103 SCRA 484 (1981)**, relaxed the rule on evidence to be considered that should be formally offered and "allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case."

The sole issue to be resolved in this case is whether or not the respondent had basis to assess the estate for deficiency estate tax.

Petitioner argues that respondent had no basis to file an Estate Tax Return for the estate of the late Jose P. Fernandez as there was already an Estate Tax Return filed by Arsenio P. Dizon (c/o Jesus M. Gonzales) the Special Administrator of the subject estate (Exhs. "K" to "K-5", Pet.; pp. 177-182, BIR rec.).

Respondent, on the contrary, denies that there was such Estate Tax Return filed by petitioner (par. 9, Answer; p. 52, CTA rec.). Precisely, this is the reason why in assessing the estate, surcharge and compromise penalty were imposed in addition to the basic estate tax due.

The Court brushes aside the issue and/or argument raised by petitioner. It is of no moment whether or not there was an estate tax return filed by the respondent's investigating examiners. For even if respondent did not make any estate tax return, and it is to be admitted that there was an estate tax return allegedly filed by Mr. Jesus M. Gonzales, such estate tax return is still subject to audit by respondent's examiners. Thus, considering that respondent's computation of the estate tax due did not tally with petitioner's computation, the Court deems it more proper to tackle the causes of the discrepancy in the estate tax due. Obviously, the discrepancy lies in the use of different valuations on the properties of the estate and the amounts of claims allowable as a deduction from the gross conjugal estate.

Therefore, the more appropriate and vital questions to consider in the case at bar, are the following:

1. What is the correct valuation of the properties of the estate and why?

2. What are the claims allowable as deductions from the gross conjugal estate and why?

3. Is the estate liable for surcharge, interest and other compromise penalties and why?

The Court firmly believes that it is only after settling the above-mentioned ancillary issues, before it can determined, whether or not the subject estate is liable for any deficiency estate tax, if any. If in the affirmative, what is the correct amount of estate tax liability?

To have a clearer view of the estate tax liability as presented by both parties, we have summarized their declaration as embodied in the Estate Tax Returns filed by both parties, to wit:

	Estate Tax Return filed by petitioner (Exh. "K", Pet.; p. 182, BIR rec.)	Estate Tax Return filed by the revenue examiners (p. 138, BIR rec.)
Conjugal Real Property (SCH. 1)	P 10,855,020.00	P 5,062,016.00
Conjugal Personal Property (SCH. 2)	3,460,591.34	33,021,999.93

Taxable Transfer (SCH. 3)		
Gross Conjugal Estate	P 14,315,611.34	P 38,084,015.93
Less: Deductions (SCH. 4)	187,822,576.06	19,806,428.31
Net Conjugal Estate	NIL	P 18,277,587.62
Less: Share of Surviving Spouse	NIL	9,138,793.81
Net Share in Conjugal Estate	NIL	P 9,138,793.81
Add: Capital Properties		44,652,813.66
Less: Capital Deductions		
Net Taxable Estate	NIL	P 53,791,607.47
Estate Tax Due	NIL	P 31,868,414.48
Add: Surcharge		15,934,207.24
Interest from 8-19-89 to 8-19-91		19,121,048.68
Compromise		50,315.00
TOTAL AMOUNT DUE AND PAYABLE	NIL	P 66,973,985.40

In petitioner's Estate Tax Return, the total value of the conjugal real property is P10,855,020.00, itemized as follows: (Exh. "K-4", Pet.; p. 178, BIR rec.)

1.	Baguio	P 2,114,720.00
2.	San Juan	1,239,370.00
3.	Quezon City	2,597,240.00
4.	Tagaytay	4,903,690.00
	Total	P10,855,020.00

NOTE: Above valuations are per TAX DECLARATIONS

In the estate tax return prepared by respondent's examiners, the total value of the conjugal real property is only P5,062,016.00, which refers only to the total value of real properties located in Asisan, Tagaytay City. Details of the Computation are the following:

	Transfer Certificate Title (TCT) No.	Fair Market Value Per Tax Declaration and Court record	Value Per Investigation
1.	127770 (p. 129, BIR rec.)	₱ 174,560.00	₱ 192,016.00
2.	7066 to 7069 (p. 132 BIR rec.)	1,527,670.00	4,870,000.00*
		TOTAL	₱5,062,016.00

* (Mortgaged Value)

The valuation of P192,016.00 for the property covered by TCT No. 127770 was based on the value given in its Tax Declaration plus 10% increase as mandated by Revenue Audit Memorandum Order (RAMO) No. 3-86, pertinent provision of which states:

> 2. Sole basis for real property valuation during transitory period.
>
> Pending final determination of zonal values and as a short-run measure to establish more realistic basis for real property valuation, this Office hereby orders that the <u>market value of real properties</u> (land and/or improvement) appearing <u>in the latest declaration</u> of real property filed in the Provincial/City Assessor's Office, be <u>increased by ten percent (10%)</u> thereof to cover inflationary value, shall be the sole basis in assessing the following internal revenue taxes:
>
> 2.1 Capital gains tax;
>
> x x x
>
> 2.2 <u>Estate tax;</u>
>
> 2.3 Donor's tax; and

> 2.4 Documentary stamp tax and other applicable taxes." (Underlining supplied)

The amount of P4,870,000.00 representing the mortgaged value of the properties covered by TCT Nos. 7066 to 7069, inclusive, was adopted by respondent's examiners it being higher than the value per tax declaration on the aforesaid properties amounting to P1,527,670.00 (Exh. C-17, Pet.; p. 89, BIR rec.).

The computation and/or valuation for conjugal real property in the total amount of P5,062,016.00 should prevail. It was made by respondent's examiners pursuant to paragraph 2 of RAMO 3-86 and also Section 91(b)(1) of the Tax Code of 1987, as amended by P.D. No. 1994, which provides:

> "**Sec. 91.** ***Determination of value of the estate.*** - (a) Usufruct - x x x.
>
> (b) *Properties.* - The estate shall be appraised at its fair market value as of the time of death. However, the appraised value of real property as of the time of death shall be whichever is higher of -
>
> (1) The fair market value as determined by the Commissioner, or
>
> (2) The fair market value as shown in the schedule of values fixed by the Provincial and City Assessors." (Underlining supplied)

The mortgage value used by respondent in appraising the conjugal real property of the estate is considered to be the fair market value of the properties. "Fair market value" has a relative meaning, thus:

> "In a case involving expropriation of property, the Supreme Court said that the market value may be fixed at the price which it will bring when it is offered for sale by one who desires but is not obliged to sell it, and is bought by one who is under no imperative necessity of having it.' (The Manila Railroad Co. vs. Anastacio Alano, et al., 36 Phil. 500; see also City of Manila vs. Estrada, 25 Phil. 200)
>
> In the case of real property, the fair market value is in accordance with the schedule of values approved by the Department of Finance in accordance with the provisions of Sections 15 and 17 of the Real Property Tax Code (PD No. 464) or that fair market value determined by the BIR Commissioner whichever is higher.
>
> The Real Property Code defines 'market value' as 'the highest price estimated in terms of money which the property will buy if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adopted and for which it is capable of being used.' The same Code likewise defines 'market value', adopting the Supreme Court ruling (supra), as 'the price at which a willing seller would sell and a willing buyer would buy neither being under abnormal pressure.' (See Sec. 4(n), PD No. 464) If the valuation is fixed by the Commissioners appointed by the Court and approved by the latter, then such valuation, said the Supreme Court, shall prevail. (Collector of Internal Revenue vs. Lim de Bautista, 64 Phil. 21; Suy Chong Key vs. Collector of Internal Revenue, 69 Phil. 493)" [NOLLEDO, 1988 NIRC, 12th ed., pp. 432-433)

From all of the above, fair market value is the price at which any seller will sell and any buyer will buy, both willingly without any force or intimidation. Mortgage value is an acceptable price to use in the valuation of the conjugal real properties located in Asisan, Tagaytay City, more particularly those covered by TCT Nos. 7066-7069, inclusive. The amounts of loan obtained from the Manila Banking Corporation was secured by a mortgage on these properties (see Exh. "C-17", Pet.; p. 89, BIR rec.).

In the light of the aforementioned definition of "fair market value" is the mortgage value or the value more acceptable to the heirs when sold in satisfaction of the mortgaged debt.

On the observation why respondent's valuation of the conjugal real properties (P5,062,016.00) seemed to be much lower than petitioner's valuation (P10,855,020.00), the Court noted that respondent segregated the conjugal real properties from the capital properties of the deceased. Petitioner made no such segregation in his computation. He consolidated or put together all the conjugal and capital real properties of the deceased. Consequently, in the petitioner's computation, the value of the conjugal real property is almost double the amount as declared in respondent's computation. The Court considers respondent's computation of the conjugal real property as proper and legal.

The second figure to consider in respondent's computation is P33,021,999.93, which is the value of conjugal personal properties. Summary of the details of the amount are shown hereunder as lifted from the worksheets of respondent's examiners (see pp. 131-135, BIR rec.), thus:

Investments in Shares of Stocks	P32,585,936.07
Gold Coins	10,000.00
Cash in Bank	426,063.86
	P33,021,999.93

It was explained in respondent's memorandum report (Exh. "2") page 2 thereof (p. 143, BIR rec.), that:

> "The personal properties consisting of mostly of shares of stocks were valued according to the stock quotation as of the time of death and for those not traded according to its (sic) book value. For shares and other personal properties were (sic) no value could be ascertained, the valuation of the taxpayer as filed in Court was taken. (Please refer to worksheet Schedule II)."

Again, the Court finds the valuation given to the shares of stocks in order. A review of respondent's pertinent worksheet reveals that most of the values were taken from taxpayer's (meaning, petitioner's) valuation as submitted in Court. Only a few of them were obtained from the Manila Stock Exchange (MSE) quotation and the rest were based on the shares' book value as of 1987. Petitioner presented no evidence to rebut the valuations done by respondent. Hence, the figure of P33,021,999.93 must be accepted as valid valuation or total amount of the estate's conjugal personal properties.

There is no quarrel that if P5,062,016.00 (value of conjugal real property) is added to P33,021,999.93 (amount of conjugal personal property), the resulting sum is P38,084,015.93 which is now the gross conjugal estate.

The Court now comes to a discussion of the second issue which relates to the allowable deductions from the gross estate.

Petitioner declared in his computation the sizeable amount of P187,822,576.06 as deduction from the estate's gross conjugal estate amounting only to P14,315,611.34. Obviously, the result was a "NIL" net taxable estate and likewise, a "NIL" estate tax due, as the deductions far exceeded the gross conjugal estate.

On the contrary, in respondent's computation, the deduction appeared to be much lower as the amount was only P19,806,428.31. Naturally, if this amount is deducted from P38,084,015.93, the result would be entirely different from petitioner's computation, considering that there are still capital properties that must be added to the net share of the deceased in the conjugal estate, in order to arrive at the net taxable estate.

To resolve the issue as to which of the two computations is right, the Court has to take the tedious task of analyzing individually the claims as declared by petitioner in his estate tax return. The claims were listed in Exhibit "K-5" of petitioner (p. 177, BIR rec.), namely:

"Jose P. Fernandez-Decedent

Claim Against the Estate

Banque Indosuez	₱ 96,578,118.00
State Investment House, Inc.	6,280,006.21
Equitable Banking Corporation	19,756,428.31
The Manila Banking Corporation	65,158,023.54
	₱187,772,576.06
Funeral expenses	50,000.00
	₱187,822,576.06"

To prove the first claim, petitioner presented Exhibit "E", which was the Claim filed against the estate by Atty. Rainier L. Madrid, as counsel for claimant Banque Indosuez, in the amount of US$4,828,905.90.

The total amount of ₱96,578,118.00 cannot be allowed as deduction. Pursuant to a Memorandum of Agreement (pp. 254-260, BIR rec.) executed on April 18, 1989 by Banque Indosuez, the heirs of Jose P. Fernandez and Fernandez Hermanos, Inc. (FHI), the bank agreed to accept the amount of ₱20,000,000.00 as full and final settlement of all its claims against the estate of Jose P. Fernandez. FHI agreed to advance the amount of ₱20,000,000.00, and this was fully complied with on June 15, 1989 as evidenced by a Deed of Assignment (pp. 251-253, BIR rec.) executed by Banque Indosuez and FHI. In effect therefore, there was a partial condonation of P76,578,118.00 (P96,578,118.00 - 20,000,000.00) in the estate's obligation to Banque Indosuez. Hence, such condoned amount is not deductible, but only the sum of P20,000,000.00 which was the amount actually paid to and accepted by Banque Indosuez, as full and final settlement of all its claims against the estate of Jose P. Fernandez. In one of its previous decisions, this Court held that:

> "x x x The 'claims against the estate' which the law allows as deduction from the gross estate are existing claims against the estate. An indebtedness that has been condoned is in legal effect no indebtedness at all. If there is no more indebtedness by reason of the condonation, there is no claim against the estate which may be allowed as deduction. Whether or not the condonation resulted in a taxable gift need here be decided. x x x" (Bocanegra, et al. vs. Collector of Internal Revenue C.T.A. Case No. 420, Oct. 12, 1959)

As evidence of the claim of State Investment House, Inc. (SIHI), petitioner presented Exhibits "H" to "H-16" (pp. 200-216, BIR rec.) which referred to the computation of the claims of SIHI in the total amount of P6,280,006.21, and the Amended Complaint filed with the

RTC, Manila Branch VII, captioned as "State Investment House, Inc. vs. Maritime Company Overseas, Inc. and/or Jose P. Fernandez," and docketed as Civil Case No. 86-38599. This claim was also settled thru a Memorandum of Agreement dated May 30, 1989 (pp. 188-189, BIR rec.) wherein parties agreed to settle the liability at a reduced amount of P2,200,000.00. That this amount was already paid is evidenced by Official Receipt No. 17025 A appearing on page 185, found in between pages 192 and 193 of the BIR records. Similar to the first claim, the second claim was also partly condoned and so, deductible only to the extent of P2,200,000.00 which was the amount actually paid by the estate.

In proving the third claim of Equitable Banking Corporation (EBC) in the amount of P19,756,428.31, petitioner presented Exhibits "D" to "D-24" which was the claim filed by EBC against the estate of Jose P. Fernandez. Just like the first two claims, this claim was also settled thru a Memorandum of Agreement, dated June 6, 1989 (pp. 240-244, BIR rec.) wherein EBC agreed to accept the payment of the sum of P4,000,000.00 as full and final settlement of its claim. Details of payment of this amount are shown hereunder:

Official Receipt No.	Date	Amount	Location Page in BIR records

569258	6- 7-89	P 200,000.00	p. 232
569522	6-30-89	2,000,000.00	p. 239
575395	7- 8-89	1,700,000.00	p. 237
575392	7-31-89	100,000.00	p. 234
	TOTAL	P4,000,000.00	

Again, as there was partial condonation in the estate's liability to EBC, the only amount of P4,000,000. will be allowed as valid deduction for similar reason previously mentioned.

The claim of Manila Banking Corp. (MBC) against the estate in the amount of P65,158,023.54 was not clearly established by petitioner through presentation of Exhibits "F" to "F-3" (pp. 194-197, BIR rec.). Exh. "F" is the computation of MBC's claim. Exhs. "F-1" to "F-3" refer to the demand letter of MBC's counsel addressed to the administrator of the estate Jose P. Fernandez. This claim was disallowed in its totality by the respondent as there was no claim filed in Court (see respondent's remarks stated in worksheet, pp. 129 and 132, BIR rec.).

The Court recognizes the disallowances of MBC's claim against the estate of Jose P. Fernandez as proper and legal. It is expressly provided under Section 1 of Rule 86, Rules of Court, that all money claims against the estate must be filed in court. Besides, in a letter, dated March 14, 1989 (Exh. "G", Pet.; pp. 186-187, BIR rec.), the counsel of Manila Banking Corp. stated that the property of the deceased Jose P. Fernandez, covered by TCT No. 47222 and located in Manila, which was mortgaged to MBC as security of the indebtedness of Maritime Company and Fernandez Hermanos, Inc., will be sold at public auction to the highest bidder on March 31, 1989, to satisfy the indebtedness in the grand total of P240,420,693.17 as of February 28, 1989. It is the Court's belief that the said sale pushed through. For, aside from the fact that MBC did not anymore file a claim in Court, the aforesaid real property in Manila covered by TCT No. 47222 was no longer included in the inventory of real properties submitted to the probate Court by the petitioner/administrator of the estate (see p. 221, BIR rec.).

By way of summary, this court allows only the following claims as valid deductions from the estate of Jose P. Fernandez, to wit:

	Claimant	Amount Allowed
1.	Banque Indosuez	P20,000,000.00
2.	State Investment House, Inc.,	2,200,000.00
3.	Equitable Banking Corp.	4,000,000.00
4.	Funeral Expenses*	50,000.00
	TOTAL-	P26,250,000.00

*amount claimed by petitioner and was allowed by respondent as this is the maximum amount allowed by law (see worksheet, p. 135, BIR rec.)

The capital properties of the deceased were valued by respondent at the total amount of P44,652,813.66, breakdown of which as found on page 135, BIR records, is as follows:

Real Properties		P22,410,006.12
Jewelries/Personal Items		40,000.00
Cash in Bank		22,202,807.54
	TOTAL	P44,652,813.66

It was already explained earlier, how respondent arrived at the valuations used for real properties, and the personal items which consisted mostly of shares of stocks. The details of the cash in bank are found on page 133, BIR records.

The third issue relates to the surcharges and penalties imposed by respondent. As shown in respondent's Summary (p. 135, BIR rec.) the basic estate tax was subjected to 25% surcharge for late filing and another 25% surcharge for late payment.

The Court agrees with the imposition of 25% surcharge for late filing. The estate tax return of subject estate was filed only on April 17, 1990 (see Exhs. "J" and "K") or more than two (2) years from November 7, 1987, date of death of Jose P. Fernandez. Section 93 (b) of the Tax Code provides:

> "Sec. 93. ***Return.***-(a) Requirements xxx xxx xxx (b) Time for filing.-For the purpose

of determining the estate tax provided for in Section 87 of this Code, the estate tax return required under the preceding subsection (a) shall be filed within ninety days from the decedent's death." (Underscoring supplied)

Clearly, the estate tax return was filed late or beyond the required 90-day period. Hence, the imposition of surcharge for late filing is valid.

Respondent's computation showed also that 20% interest was imposed for the period from August 19, 1989 to August 19, 1991, or for a period of two years only. The Court does not agree. The interest should be assessed from the date prescribed for its payment until the full payment thereof as provided for under Section 283(b) which states:

"**Sec. 283.** ***Interest.*** (a) In general.- There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid.

(b) Deficiency interest.-Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(c) x x x

(d) x x x." (Underscoring supplied)

Compromise penalties for non-filing and non-payment should not be imposed as there was an estate tax return filed with the BIR Regional Office in Laguna. There was no payment made as the petitioner's estate tax return indicated a "NIL" estate tax due.

However, the compromise penalties for "no notice of death" and "no CPA certificate" may be imposed as these are required under Sections 92 and 93, respectively, of the 1987 Tax Code. Thus:

> "Sec. 92. ***Notice of death to be filed.*** - In all cases of transfers subject to tax, or where, though exempt from tax, the gross value of the estate exceeds three thousand pesos, <u>the executor</u>, <u>administrator, or any of the legal heirs</u> as the case may be, <u>within two months after the decedent's death, or within a like period after qualifying as such executor or administrator, shall give a written notice thereof to the Commissioner of Internal Revenue."</u> (Underscoring supplied)
>
> "Sec. 93. ***Return.*** - (a) Requirements - xxx
>
> (1) xxx
>
> (2) xxx
>
> (3) such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct taxes; Provided, however, that estate returns showing a gross value of fifty thousand pesos or more shall be accompanied with a statement of
>
> (1) itemized assets of the decedent with their corresponding gross value at the time of his death, or in the case of a non-resident not a citizen of the Philippines, of that part of

> his gross estate situated in the Philippines;
>
> (2) itemized deductions from gross estate allowed in Section 89; and
>
> (3) the amount of tax due and outstanding duly certified to by a certified public accountant.
>
> (b) x x x
>
> (c) x x x
>
> (d) x x x." (Underscoring supplied)

At this juncture, the Court is now ready to present its recomputation of the deficiency estate tax due against the estate and/or heirs of the deceased Jose P. Fernandez.

Conjugal Real Property	P 5,062,016.00
Conjugal Personal Prop.	33,021,999.93
Gross Conjugal Estate	38,084,015.93
Less: Deductions	26,250,000.00
Net Conjugal Estate	P11,834,015.93
Less: Share of Surviving Spouse	5,917,007.96
Net Share in Conjugal Estate	P 5,917,007.96
Add: Capital/Paraphernal Properties-P44,652,813.66	
Less: Capital/Paraphernal Deductions	44,652,813.66
Net Taxable Estate	P50,569,821.62

Estate Tax Due	P29,935,342.97
Add: 25% Surcharge for Late Filing	7,483,835.74
Add: Penalties for-	
No notice of death	15.00
No CPA certificate	300.00
Total deficiency estate tax	P37,419,493.71

exclusive of 20%
interest from
due date of
its payment until
full payment thereof.
[Sec. 283(b), Tax Code of 1987]

WHEREFORE, viewed from all the foregoing, the Court finds the petition unmeritorious and denies the same. Petitioner and/or the heirs of Jose P. Fernandez are hereby ordered to pay to respondent the amount of P37,419,493.71 plus 20% interest from the due date of its payment until full payment thereof as estate tax liability of the estate of Jose P. Fernandez who died on November 7, 1987.

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 among 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