REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANGELA PEREZ Y TUASON
and ANTONIO PEREZ Y
TUASON, through his
father and judicial
guardian, ANTONIO PEREZ,
Petitioner,

Feb. 10/69

versus

C. T. A. CASE NO. 1707

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of respondent, dated September 22, 1965, holding petitioners Angela Perez y Tuason and Antonio Perez y Tuason (donees) liable for both the donor's and donees' gift taxes of ₱40,779.17, ₱23,733.77 and ₱27,733.77 inclusive of penalties.

In 1956, Angela Tuason de Perez, a married woman, was living with her children, Angela and Antonio, in Madrid, Spain. While there, she met a dashing young man named Jose Antonio Campos Boloix with whom she fell in love; later she abandoned her children in Madrid; and thereafter she travelled around the world with her new find. While in Manila, where they resided intermittently, the couple stayed at the Manila Hotel and Hotel Filipinas. (See Exh. E.) While living and travelling with this young man, Angela Tuason de Perez began lavishing on him her personal and family fortunes. In order to stop the scandal caused by an illicit love affair and to prevent the dissipation of the family's assets, petitioners Angela and Antonio Perez y Tuason, represented by their father and judicial guardian, Antonio Perez, filed a complaint against Angela Tuason de Perez in the Court of First Instance of Rizal (Civil Case No. Q-2293) on February 11, 1957 and sought to declare her a spendthrift and to enjoin her from encumbering and/or alienating properties to her paramour. (Exhs. C & D.) Even before the said suit was filed in Court, Angela Tuason de Perez had already instituted a complaint (Civil Case No. Q-2208) in the same court to annul her marriage with Antonio Perez. (See Exh. E.)

Due to the intercession of relatives, both party litigants had agreed to settle amicably their disputes and differences. Angela Tuason de Perez withdrew her case against her husband for annulment of marriage (see Exh. F) and entered into a compromise agreement with petitioners on May 2, 1957, the pertinent portions of which read as follows:

> 1. The parties to this case being guided by their Christian principle of

family harmony have decided to arrive at an amicable settlement of the above entitled case.

2. As a consequence thereof, the parties hereby dismiss with prejudice on all claims and counterclaims that they have filed against each other herein.

3. The parties agreed that Antonio Perez shall remain as guardian of their mutual children Angela and Antonio Perez y Tuason, and the parties shall retain over said children Angela and Antonio Perez y Tuason the right granted to them by law.

4. Angela I. Tuason de Perez, hereby turn over to her children Angela and Antonio Perez y Tuason through their father and guardian Antonio Perez the following properties:

(a) House with its lot. . .

(b) A house and lot . . . .

<u>as settlement in full of this suit, and Antonio Perez hereby agrees to waive any and all claims that may now have or hereafter may have over the properties existing in the name of Angela I. Tuason de Perez, except for the paragraph 5, hereof</u>.

5. Angela I. Tuason de Perez turns over the above-described properties to her aforesaid children Angela and Antonio Perez y Tuason <u>free from all liens and encumbrances</u> whatsoever, and Antonio Perez accepts them on behalf of said children as their father and guardian.

6. When these properties are turned over to Angela and Antonio Perez y Tuason the same shall be valued at their fair market value by Messrs. Hoskins and Company.

7. Antonio and Angela Perez y Tuason through their father and guardian Antonio Perez, hereby bind themselves to return the value of this properties turn over to them as determined by Messrs. Hoskins and Company to their mother Angela I. Tuason de Perez upon the termination of Trusteeship Proceedings Q-73, through the Court of First Instance of Quezon City entitled in the Matter of Trusteeship of Benigno, Angela and Antonio Perez y Tuason.

8. Till such time as Trusteeship Proceedings Q-73 are terminated Antonio Perez shall be vested with full power to administer and encumber and/or sale said properties for the benefit of the aforesaid minors.

x x x x x x x
(See Exh. G; pp. 41-42, BIR rec.; underlining supplied.)

Pursuant to paragraph 7 of the Compromise Agreement, Messrs. Hoskins and Co. appraised the properties in question at ₱275,000.00. (See Exh. L; pp. 35-40, BIR rec.)

On May 2, 1958, the same parties entered into another contract entitled "Deed of Sale and Cession", whereby Angela Tuason de Perez, for and in consideration of the sum of ₱140,000.00, sold to her children (petitioners herein) three (3) lots situated in the City of Manila (covered by Transfer Certificate of Title Nos. 17030, 17031 and 17033) and at the same time, she renounced completely and forever all her rights to the return of the value of the properties mentioned in paragraph 7 of the compromise agreement.

Upon investigation of the transaction in question by Revenue Examiner Arturo S. P. Guevara of the Bureau of Internal Revenue, he reported to respondent that the three lots transferred by Angela Tuason de Perez to her children were worth ₱174,828.50 and not ₱140,000.00. Consequently, the difference of ₱34,828.50 was added to the value of the other two lots and their improvements worth ₱275,000.00, or a total of ₱309,828.50. The said amount was made the basis of respondent's assessments for donor's and donee's gift taxes and penalties, computed as follows:

Value of two lots	₱ 275,000.00
Value of three lots	174,828.50
Total	₱ 449,828.50
Less: Consideration paid	₱ 140,000.00
Excess to be treated as donation	₱ 309,828.50
Donor's gift tax	₱ 22,411.14
25% ad valorem penalty	5,602.79
1% int. fr. 5/15/59 to 1/15/64	12,550.24
Compromise-No notice of donation	15.00
Compromise-late filing	200.00
Total	₱ 40,779.17

Donee's Tax - Angela Perez y Tuazon	
Donee's gift tax	₱ 15,046.28
25% ad valorem penalty	3,761.57
1% int. fr. 5/15/59 to 1/15/64	8,725.92
Compromise-late filing	200.00
Total	₱ 27,733.77

Donee's Tax - Antonio Perez y Tuazon (same as Angela's)	₱ 27,733.77

(See p. 104, CTA rec.; Exh. 9, p. 81 BIR Rec.)

On November 20, 1963, respondent demanded upon petitioners (donees herein) payment of ₱40,779.17, ₱27,733.77 and ₱27,733.77 as donor's and donees' gift taxes and penalties on account of the aforementioned transfers of real properties. (See Exh. 9, p. 84, BIR rec.) On January 15, 1964, petitioners contested and disputed the said gift tax assessments and requested their withdrawal and cancellation. (See Exh. 13, p. 92-102, BIR rec.) On September 22, 1965, respondent denied petitioners' request for cancellation of the said assessments. (See Exh. 14, p. 108, BIR rec.) Hence, this appeal.

The principal issue submitted to the Court for resolution is whether or not the real properties transferred by Angela Tuason de Perez to her children are subject to gift taxes imposed by Section 108 of the National Internal Revenue Code, in relation to Section 111 of the same Code.

Section 108 and 111 of the National Internal Revenue Code provide as follows:

> SEC. 108. Imposition of tax.— (a) There shall be levied, assessed, collected, and paid upon the transfer by any individual, resident or nonresident, of property by gift, a tax, computed as provided in section 109.
>
> (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. 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 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. (Underscoring supplied.)

Petitioners contend that their mother, Angela Tuason de Perez, had no intention of donating the properties in question and, therefore, the transfer thereof to them are not subject to gift taxes imposed by Section 108 of the National Internal Revenue Code, in relation to Sections 109 and 110 of the same Code. Respondent contends, however, that for gift tax purposes donative intent is not an indispensable requisite in determining a taxable gift under Section 111 of the Revenue Code, supra.

Our gift tax law was bodily lifted from the Federal Gift Tax Law of the United States. (St.

Stephen's Ass'n. v. Coll., CTA 173, May 23, 1959, aff'd in G.R. No. L-15562, May 31, 1961; Pirovano v. Coll., G.R. No. L-19865, July 31, 1965.) Consequently, the U. S. Treasury Regulations and the decisions of the U. S. Supreme Court applying and interpreting the federal gift tax law have a strong persuasive effect in our jurisdiction.

Sections 108 and 111 of our Revenue Code, supra, were lifted and copied from Sections 501 and 503 of the U. S. Revenue Act of June 6, 1932. Interpreting the said provisions of law, the U. S. Supreme Court ruled that donative intent should be dispensed with in determining a taxable gift when it held:

> Sections 501 and 503 are not disparate provisions. Congress directed them to the same purpose, and they should not be separated in application. Had Congress taxed "gifts" simpliciter, it would be appropriate to assume that the term was used in its colloquial sense, and a search for "donative intent" would be indicated. But Congress intended to use the term "gifts" in its broadest and most comprehensive sense. H. Rep. No. 708, 72d Cong., 1st Sess., p. 27; S. Rep. No. 665, 72d Cong. 1st Sess., p. 39; cf. Smith v. Shaughnessy, 318 U.S. 176, 63 S. Ct. 545; Robinette v. Helvering, 318 U.S. 63 S. Ct. 540. Congress chose not to require an ascertainment of what too often is an elusive state of mind. For purposes of the gift tax it not only dispensed with the test of "donative intent." It formulated a much more workable external test, that where "property is transferred for less than an adequate and full

consideration in money or money's worth", the excess in such money value "shall, for the purpose of the tax imposed by this title, be deemed a gift. . ." And Treasury Regulations have emphasized that common law considerations were not embodied in the gift tax.

To reinforce the evident desire of Congress to hit all the protean arrangement which the wit of man can devise that are not business transactions within the meaning of ordinary speech, the Treasury Regulations make clear that no genuine business transaction comes within the purport of the gift tax by excluding "a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent.)" Treas. Reg. 79 (1936 ed.) Art. 8. Thus on finding that a transfer in the circumstances of a particular case is not made in the ordinary course of business, the transfer becomes subject to the gift tax to the extent that it is not made "for an adequate and full consideration in money or money's worth." See 2 Paul, Federal Estate and Gift Taxation (1942) p. 1113. (Commissioner v. Wemyss, 324 U.S. 303, 65 S. Ct. 562 [1945]; underscoring supplied.)

It is to be noted that, under Section 108 of the National Internal Revenue Code, supra, the gift tax shall be imposed whether the gift is direct or indirect. In a direct gift, the element of donative intent must be present in the transfer of the property donated following the common law concept and the provisions of Article 125 of our Civil Code declaring that a gift or donation is an act of liberality whereby a person disposes of a thing or right in favor of another, who accepts it. However, the provisions of Section 111 of the National Internal Revenue Code, supra, treating the transfer of property for less than an adequate and full consideration as a gift, are very broad and comprehensive so as to exclude the element of donative intent in a taxable gift. The indirect gift may be a sale, exchange, or other transfer of property.) However, Section 111 of the Revenue Code does not cover the ordinary commercial transactions where there is disparity in consideration because "bad bargains" are made daily in many business enterprises. It is otherwise with family transactions like the case at bar. Here, there is an ordinary transaction with respect to the consideration paid, and a gift insofar as the excess value of the property transferred is concerned.

Where property is therefore transferred for less than an adequate and full consideration in money or money's worth, donative intent is superfluous inasmuch as the excess of the value of the property over the value of consideration is deemed a gift (Paul, Federal Estate and Gift Taxation, Vol. II, p. 1111).

> A donative intention in making a transfer of property possessing value in excess of value of consideration given therefor is unnecessary to render transfer subject to federal gift tax. (Commissioner of Internal Revenue v. Greene, 119 F. 2d 383; 27 AFTR 383; see also Stevenson v. Coll., CTA Case 371, Feb. 28, 1964.)

On the bases of the foregoing discussions we will now determine whether the transfers in question are subject to gift taxes imposed by the Revenue Code.

The evidence shows that petitioners filed a complaint against their mother, Angela Tuason de Perez, praying that she be declared a spendthrift; that she turn over her properties to a banking institution for their administration; that she be enjoined from encumbering and/or alienating her properties; and that she pay damages. (See Exhs. C and D.) To end the said case, Angela Tuason de Perez (wife and mother) entered into a compromise agreement with her minor children, Angela and Antonio Perez y Tuason, represented by their father and judicial guardian, Antonio Perez, whereby she turned over to them two (2) lots with improvements thereon "as settlement in full of this suit, and Antonio Perez (husband and father) hereby agrees to waive any and all claims that he may now have or hereafter may have over the properties existing in the name of Angela I. Tuason de Perez, except for the paragraph 5, hereof." Under paragraph 7 of the said compromise agreement, the children "bind themselves to return the value of this (sic) properties . . . to their mother . . . upon termination of Trusteeship Proceedings Q-73, through the Court of First Instance of Quezon City entitled in the Matter of Trusteeship of Benigno, Angela and Antonio Perez y Tuason." (See Exh. G; p. 16, t.s.n.)

A year later (1958), Angela Tuason de Perez, for and in consideration of ₱140,000.00, conveyed to her children three (3) lots in the City of Manila covered by TCT Nos. 17030, 17031 and 17033 and renounced completely and forever all her rights to the return of the value of the two lots mentioned in paragraph 7 of the compromise agreement. (See Exh. B.) In other words, Angela Tuason de Perez, for and in consideration of the amount of ₱140,000.00, renounced in favor of her children the right to the return of ₱275,000.00 and at the same time transferred to them another three lots. The financial capacity of the children to pay the said amount is not disputed. (See Exh. 1, pp. 63-65, BIR rec.)

Under Section [illegible] of the Revenue Code, *supra*, if the properties [illegible]in involved (value of the right renounced and the three lots) are transferred for less than an adequate and full consideration (₱140,000.00) in money or money's worth, then the amount by which the properties exceeded the value of the consideration shall be deemed a gift.

The two lots valued at ₱275,000.00.

Petitioners claimed that the value of the two lots appraised at ₱275,000.00 by a realtor, Messrs. Hoskins and Company, is not their correct value in May, 1958, since Angela Tuason de Perez was still entitled to their return not earlier than May 3, 1969. It is argued that if she chose to collect a note valued at ₱275,000.00 in 1958 but due ten or eleven years later (1969), the said amount would only be worth ₱70,585.63 because any lender would normally demand a minimum discount of 12% interest per annum. Petitioners then concluded that the said amount of ₱275,000.00 discounted at 12% interest per annum was actually worth only ₱70,505.63 in 1958. (See Exh. X, p. 14, t.s.n.) We cannot subscribe to the theory of petitioners.

Under the compromise agreement dated May 2, 1957, petitioners obligated themselves to return to their mother the amount of ₱275,000.00 upon the termination of the trusteeship proceedings without any provision regarding the payment of interest. It is true, as alleged by petitioners that it is hard to secure a loan without paying any interest therefor; but the obligation assumed by herein petitioners is not subject to the payment of interest and, therefore, it would be improper to read into the agreement something which has not been stipulated upon by the parties. Moreover, petitioners did not actually pay interest on the ₱275,000.00 because under the "Deed of Sale and Cession" dated May 2, 1958, she renounced completely and forever all her rights to the return of the value of said properties appraised at ₱275,000.00.

Petitioners' counsel claimed that Angela Tuason de Perez and her minor children were bitterly litigating against each other and it would be unlikely that she would not collect interest from them. It is significant to note that, when Angela Tuason de Perez renounced her right under the "Deed of Sale and Cession", the suits filed by them against each other (Civil Case Nos. Q-2208 and Q-2293, CFI Rizal) have already been amicably settled (see Exhs. F & G) and, therefore, it could not be said that there still existed hatred and animosity between the said parties at the time the renunciation was made. It is true other cases were filed against Angela Tuason de Perez in court but they cropped up after the amicable settlement. It can be said, therefore, that the renunciation of the right was dictated by the tie of kinship existing between the transferor (mother) and the transferees (children).

Consequently, we hold that the correct value of the two (2) lots transferred by Angela Tuason de Perez to her children in 1958 was ₱275,000.00 and the said amount is subject to gift taxes.

<u>The three lots valued at ₱174,828.50</u>.

Aside from the two (2) lots valued at ₱275,-000.00 which were renounced by Angela Tuason de Perez in favor of her children, she also transferred to them another three (3) lots in consideration of ₱140,000.00.

Petitioners insist that the value in 1958 of the said three (3) lots was only ₱85,915.00 and not ₱174,828.50. The lower amount was arrived at by fixing the value of the properties at 50% of their market price of ₱35.00 per square meter or, ₱17.50 only. Petitioners claim that the expenses, risks and delay involved in the judicial action to recover the titles to the said lots should be considered in determining the correct appraised value of the properties in question.

Revenue Examiner Arturo S. P. Guevara ascertained and reported to respondent that the fair market value of the said lots amounted to ₱174,-828.50. After deducting therefrom the contract price of ₱140,000.00, the resulting difference of ₱34,838.50 was considered a gift under Section 111 of the Revenue Code. The said examiner reported, among others, as follows:

> The price per square meter of the lots sold as per deed of sale and cession was at ₱28.27 per square meter. The comparative sale in the vicinity was at ₱35.00 per square meter which was used in arriving at the fair market value of said lots. The fair market value of the lots which amounted to ₱174,828.50 minus the contract price of ₱140,000.00 resulted into an additional fair market value of ₱34,828.50 which added to the right ceded or renounced resulted into a total gift made in the amount of ₱309,828.50. (Exh. 2, p. 79, BIR rec.)

Both parties are agreed that the fair market value of the three lots was ₱35.00 per square meter. (See pp. 31-32, 40, t.s.n.)

The Deed of Sale and Cession was executed on May 2, 1958 and was approved on May 20, 1958 by the Juvenile & Domestic Relations Court of Manila in Special Proceedings No. 26228. (See Exh. U.) There is no indication whatsoever in the said deed that Angela Tuason de Perez would not deliver the titles of the properties to petitioners.

On the contrary, in transactions involving transfer of real properties, the normal and usual practice is for the vendor to deliver the land titles to the vendee upon payment. It was only on May 23, 1962, or 4 years later, when petitioners instituted an action in court (Civil Case No. 50452) for the delivery of the land titles (see Exh. Q), alleging in the complaint, among others, the following:

> 13. As a consequence of defendant's failure to comply with their obligations under the Deed of Sale as well as in consequence of the pretended ignorance of defendant . . . of the existence of said obligations, . . .
>
> x x x x
>
> 16. By reason of the wanton and fraudulent failure of defendants to comply with their obligations under the Deed of Sale and Cession, . . . (Underlining supplied.)

It is clear from the foregoing allegations that, at the time the deed of sale and cession was executed, Angela Tuason de Perez had voluntarily agreed to deliver the land titles to petitioners. Under the circumstances, petitioners cannot legally deduct from the contract price the expenses and the value of the risks and delay involved in the judicial action to compel delivery of the land titles because our gift tax laws do not provide for said deduction.

It is a cardinal rule in taxation that the "deduction" provisions in the tax statutes are acts of legislative grace. This rule is found and reflected in the deduction provisions of the National Internal Revenue Code dealing on income, estate and inheritance, sales, percentage and mining taxes (Sections 30, 89, 184, 185, 186, 189 and 247 of the Revenue Code). As the deduction claimed by petitioners is not sanctioned by our gift tax laws, the same cannot be authorized by this Court.

Petitioners assail the application of Section 111 of the Revenue Code, supra, and claim that said law has been impliedly modified by Article 1470 of the new Civil Code which provides:

> ART. 1470. - Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. (Underlining supplied.)

Article 1470 of the new Civil Code provides that gross inadequacy of price does not affect a contract of sale although it may indicate, among others, that the parties really intended a donation. On the other hand, Section 111 of the Revenue Code imposes the gift taxes on transfers of properties for less than an adequate and full consideration in money or money's worth.

We find no conflict or inconsistencies between the two codal provisions. In fact, Section 111 of the Tax Code covers the situation presented in Article 1470 of the New Civil Code, that is, where the price in the contract of sale is inadequate, the difference between the value of the property transferred and the value of the consideration is deemed a gift subject to gift taxes regardless of the presence or absence of donative intent where the parties to the transaction are closely related by ties of kinship.

But even assuming arguendo, that the two (2) codal provisions are in conflict with each other, still the provisions of a special law (National Internal Revenue Code) dealing exclusively on tax matters will prevail over the general law (New Civil Code). (See Phil. Railway Co. v. Coll. L-3859, March 25, 1952; Visayan Electric Co. v. David, 49 O.G. 1385.)

The records show that under respondent's letter of demand dated September 22, 1965, petitioners are required to pay the donor's gift tax of ₱40,779.17. (BIR rec., p. 108.) We rule, however, that the petitioners herein are not subject to the donor's gift tax inasmuch as they do not represent the donor, Angela Tuason de Perez, who is not a party to this case.

> That the Internal Revenue Code makes the gift taxes a lien on the donated property aims merely at securing their payment, and <u>does not at all imply that the donor's tax is legally chargeable to the donee</u>. (Coll. of Int. Rev. v. Margarita Soriano de Vicuña, G.R. Nos. L-8499 and L-8514-15, May 21, 1956; underscoring supplied.)

(It may not be amiss to state that the U. S. Internal Revenue Code of 1954 (Sec. 6324/b/) makes the donee personally liable for the donor's gift tax. Such personal liability exists even if the Commissioner of Internal Revenue exerted no effort to collect the tax from the donor, failed to establish the donor's insolvency, and even if the right to collect the gift tax from the donor is barred by the statute of limitations. (See Merten's Law of Federal Gift & Estate Taxation /1959/, Vol. 6, Sec. 43.24, pp. 89-93.) However, our National Internal Revenue Code, in contrast with the U. S. Internal Revenue Code of 1954, does not contain any provision holding the donee personally liable for the donor's gift tax.)

As to the compromise penalties imposed by respondent for failure to file notice of donation and for late filing of the donees' gift tax returns, suffice it to state that a valid compromise penalty presupposes the existence of a binding agreement between respondent and taxpayer to settle extra-judicially the violation of the tax laws. The imposition of the compromise penalty is, therefore, illegal and should be disregarded unless the taxpayer has consented thereto. (U.S.T. v. Coll., G.R. No. L-11274, Nov. 28, 1958.)

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is hereby modified. Petitioners Angela Perez y Tuason and Antonio Perez y Tuason are declared exempt from the donor's gift tax demanded of them in respondent's letter dated September 22, 1965. However, we hereby hold that the said petitioners are both subject to the donees' gift taxes and penalties of ₱27,533.77 per person, plus 5% surcharge and interest at the rate of 1% per month from January 16, 1964 until fully paid. No costs.

SO ORDERED.

Quezon City, February 10, 1969.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge