REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SPS. HORDON H. EVONO and MARIBEL C. EVONO, ***Petitioners,***	**C.T.A. EB NO. 705** **(C.T.A. CASE NO. 7573)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
DEPARTMENT OF FINANCE, COMMISSIONER OF INTERNAL REVENUE and THE REPUBLIC OF THE PHILIPPINES, ET AL., ***Respondents.***	**Promulgated:** JUN 04 2012 10:10 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by sps. Hordon H. Evono and Maribel C. Evono (hereafter "petitioners") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Revised Rules of Civil Procedure, as* *amended,* which seeks to set aside the Decision dated June 3, 2010 and Resolution dated November 11, 2010, rendered by the Special First Division of this Court in C.T.A. Case No. 7573, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the "Appeal and Petition for Review" is hereby **DENIED** for petitioner's failure to comply with the statutory period provided under Section 228 of the National Internal Revenue Code of 1997.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, finding no cogent reason to disturb, reverse or modify the Decision dated June 3, 2010, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts, as found by the Special First Division, are as follows:

> "On March 12, 2001, petitioner MARIBEL C. EVONO acting in her own capacity and in behalf of her minor children, Mariangeli, Hordon Herberto II and Hordon Herberto III, all surnamed Evono, and a certain Vicenta F. Diores, married to Luis V. Diores (SPS. DIORES) executed a "Deed of Conditional Sale" involving a parcel of land located in Barrio Gon-ob, Lapu-lapu City covered by TCT No. 3085 for a consideration of PhP4,117,500.00.
>
> On February 19, 2003, petitioner-MARIBEL C. EVONO and Spouses Olympio Credo and Clara Credo (SPS. CREDO) executed a "Deed of Absolute Sale" wherein the latter sold to the former two parcels of lands with areas of 328 square meters

and 350 square meters, respectively, covered by TCT No. 18185 and TCT No. 3085, for a consideration of P1,356,000.00.

On April 16, 2004, MARIBEL C. EVONO and SPS. DIORES executed a "Deed of Absolute Sale." In said Deed, SPS. DIORES sold, ceded, transferred and conveyed to MARIBEL C. EVONO the same parcel of land located in Barrio Gun-ob, Lapu-Lapu City covered by TCT No. 3085 for a consideration of PhP4,117,500.00.

On May 27, 2004 and July 12, 2004, then Revenue Officer Ramer D. Narvaez of BIR, RR No. 13, RDO 80-Mandaue City issued Certificates of Authority to Register (CARs) Nos. 00234066 and 00234306, in the name of MARIBEL C. EVONO.

On September 11, 2004, Ms. CLARA CREDO executed an "Amendment to Deed of Absolute Sale (to coincide the same with the Deed of Conditional Sale)" wherein she acknowledged having received the amount of PhP1,356,000.00 as full payment after she sold parcels of land covered by TCT Nos. 3085 and 18185.

On September 14, 2004, SPS. DIORES executed an "Amendment to Deed of Absolute Sale (to co[in]cide the same with the Deed of Conditional Sale)" wherein they acknowledged having received the amount of P4,117,500.00 as full payment after they sold parcels of land covered by TCT Nos. 3085 and 18185 to MARIBEL C. EVONO, in behalf of her minor legitimate children, namely: Mariangeli C. Evono, Hordon Herberto C. Evono II, and Hordon Herberto C. Evono III.

On September 15, 2004, MARIBEL C. EVONO wrote Revenue District Officer Ramer D. Narvaez of BIR Cebu, requesting that the names of her children be added in the CARs so that their names be affixed in the titles of the property they bought.

On September 24, 2004, MARIBEL C. EVONO wrote the BIR Cebu a "Letter of Ratification" stating that she was submitting a certified true copy of the original Conditional Deed of Sale so that "the properties be Titled in the names of Maribel C. Evono; Mariangeli C. Evono, Hordon H. Evono II, and Hordon H. Evono III."

On June 3, 2005, MARIBEL C. EVONO received a Computation of Donor's Tax, which reads:

I. Property purchased from Clara C. Credo & Olympio Credo:
Date of Donation: February 19, 2003 (date of execution of absolute sale)

Kind	Area (sq.m.)	Location	OCT/TCT	Tax Dec. No.	MarketValue	Selling Price
Land	350	Gun-ob, Lapu-lapu City	3085	03999	280,000.00	
Land	328	Gun-ob, Lapu-lapu City	18185	04664	262,400.00	
					P542,400.00	P1,356,000.00
VALUE of the Donation (3/4 of the value of the property)						P1,017,000.00
				Husband	Wife	
Value of Donation/spouse				P508,500.00	P508,500.00	1,017,000.00
Donor's Tax				14,510.00	14,510.00	
Add:	25% Surcharge (Sec. 248 (A) NIRC)			3,627.50	3,627.50	
	20% Interest (3/19/03 to 06/19/05) - Sec. 249 (B) NIRC			6,529.50	6,529.50	
	Compromise Penalty (RMO 1-90)			3,000.00	3,000.00	
				13,157.00	13,157.00	
TOTAL AMOUNT DUE & PAYABLE				27,667.00	27,667.00	P55,334.00

II. Property purchased from Atty. Diores & Vicenta Diores:
Date of Donation: April 23, 2004 (date of execution of absolute sale)

Kind	Area (sq.m.)	Location	OCT/TCT	Tax Dec. No.	Market Value	Selling Price
Land	7,885	Gun-ob, Lapu-lapu City	3085	03999	4,533,875.00	
Land	103	Gun-ob, Lapu-lapu City	18185	04664	59,225.00	
					P4,593,100.00	P4,117,500.00
VALUE of the Donation (3/4 of the value of the property)						P3,088,125.00
				Husband	Wife	
Value of Donation/spouse				1,544,062.50	1,544,062.50	3,088,125.00
Donor's Tax				87,525.00	87,525.00	

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Add:	25% Surcharge (Sec. 248 (A) NIRC)	21,881.25	21,881.25	
	20% Interest (5/23/04 to 06/19/05) - Sec. 249 (B) NIRC	18,963.75	18,963.75	
	Compromise Penalty (RMO 1-90)	12,000.00	12,000.00	
		52,845.00	52,845.00	
TOTAL AMOUNT DUE & PAYABLE		140,370.00	140,370.00	280,740.00
GRAND TOTAL (Three Hundred Thirty Six Thousand Seventy Four Pesos)				P336,074.00

On June 20, 2005, petitioners-SPS. HORDON H. EVONO and MARIBEL C. EVONO (SPS. EVONO) paid the Donor's Tax in the amount of PhP55,334.00 and PhP280,740.00 under protest, and surrendered the original CAR Nos. 00234252 and 00234306 for cancellation.

On July 18, 2005, Revenue District Officer Ramer D. Narvaez of the BIR, Revenue District No. 81, Cebu City-North, informed the SPS. EVONO that CAR Nos. 00234252 and 00234306 have been amended by including the names of the latter's three minor children. Further, the Office of the Revenue District Officer has considered the transactions completed, closed and terminated since the CARs had been issued.

On August 9, 2005, SPS. EVONO wrote respondent-Commissioner of Internal Revenue (CIR) to rescind the assessment for Donor's Tax. As a follow up, petitioner-HORDON H. EVONO wrote respondent a letter dated December 12, 2006, regarding their previous request and informed the latter that petitioners intend to file an action in the appropriate court if the request remained unacted upon."

Alleging inaction, on February 13, 2007, petitioners filed a Petition for Review with this Court, docketed as C.T.A. Case No. 7573.

Ob

In her Answer, respondent CIR alleged by way of special and affirmative defenses that the amount of P336,074.00 being claimed by petitioner as alleged erroneously paid donor's tax was not properly documented; that the original Deeds of Absolute Sale were executed by the sellers only in favor of Maribel C. Evono, married to Hordon Evono; that on September 15, 2004, petitioners requested for the amendment of the Certificate Authorizing Registration (CAR) to include the names of all her three (3) minor children as transferees of the lots and alleged that the funds used to purchase the properties are not exclusively hers, but included those of her minor children; that the said allegations of petitioner Maribel C. Evono are mere afterthoughts and that the intent of the parties to the transaction is that petitioner is the buyer of the properties, thus, the request for adding the minor children in the CAR as transferees is in effect a donation equivalent to ¾ of the property; that the admission by petitioners that the funds used to purchase the properties came from the allowances given by them to their children is the best proof that the monies used were donated by the parents to their children; that excessive allowances from parents which enable them to save substantial amount to purchase properties are deemed donations within the realms of taxation law; that the inclusion of petitioner's minor children in the CAR is subject to donor's tax; and claims for refund are construed strictly against the claimant.

After trial on the merits, on June 3, 2010, the Special First Division rendered a Decision denying petitioners' claim on the ground of prescription.

On July 27, 2010, petitioners filed a "Motion for Reconsideration" to which respondent filed her "Opposition (Re: Motion for Reconsideration)" on August 12, 2010.

On November 11, 2010, the Special First Division denied petitioners' "Motion for Reconsideration" for lack of merit.

Not satisfied, on December 23, 2010, petitioners filed the instant Petition for Review raising the following:

ISSUES

I

DID THE 1st DIVISION, COURT OF TAX APPEALS ERROR (SIC) IN ASSUMING THAT THERE WAS PROPERTY GIVEN TO THE SPOUSES PETITIONERS MINOR CHILDREN WHERE IN FACT THE TRANSFER OF PROPERTIES BY DEED OF CONDITIONAL SALE AND DEED OF ABSOLUTE SALE WAS BY THE ORIGINAL OWNERS TO THE SPOUSES PETITIONER AND THEIR MINOR CHILDREN (LOTS 1427;5B).

II

DID THE 1ST DIVISION, COURT OF TAX APPEALS ERROR (SIC) IN QUESTIONING JURISDICTION SOLELY BASING THEIR DECISION UNDER SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 AND ERRONEOUSLY FAILED AND DISREGARDED THE APPLICATION OF SECTION 229 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 WHICH IS ALSO THE GOVERNING LAW OR RULES IN THE CASE AT HAND.

III

DID THE 1ST DIVISION, COURT OF TAX APPEALS MAKE AN ERROR IN QUESTIONING JURISDICTION AND REVIEW SUCH WHEN IT HAD BEEN STIPULATED BY THE PARTIES THAT THE COURT OF TAX APPEALS HAD JURISDICTION.

IV

DID THE 1ST DIVISION, COURT OF TAX APPEALS MAKE AN ERROR IN ITS REVIEW OF ISSUES OTHER THAN THAT WHICH WAS PRESENTED IN THE JOINT STIPULATION OF FACTS AND ISSUES FOR RESOLUTION, DATED 26 JULY 2007.

V

WAS THIS PETITION TO THE COURT OF TAX APPEALS FILED ON TIME (SIC).

VI

WAS THERE JURISDICTION OF THE COURT OF TAX APPEALS AT THE TIME OF FILING (SIC).

Principal Issues

The foregoing issues boil down to two (2) principal issues, to wit:

1) whether or not the Petition for Review in C.T.A. Case No. 7573 was timely filed; and

2) whether the inclusion of petitioners' children in the CAR and transfer certificate of titles maybe deemed a donation from their parents, and maybe subject to donor's tax under *Section 98 of the NIRC of 1997, as amended.*

On March 29, 2011, without necessarily giving due course to the petition, respondent was ordered to file her comment, within ten (10) days from notice. In compliance thereto, on April 18, 2011, respondent filed her "Comment to Petition for Review (Re: Resolution dated 29 March 2011)".

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

On June 13, 2011, respondent filed her "Manifestation" stating that she is adopting her "Comment to the Petition for Review" filed on April 18, 2011. On the other hand, on July 6, 2011, petitioners filed a "Manifestation" stating that they are adopting a number of documents as part of their memorandum. On July 10, 2011, petitioners filed their

"Memorandu(m) Addressing Disputed Issues Presented to Court of Tax Appeals En Banc".

On September 6, 2011, this case was deemed submitted for decision.

THE COURT EN BANC'S RULING

The petition has no merit.

Petitioners argue that there was no transfer of property from petitioner spouses to their children since they do not own the subject properties, hence, the inclusion of the names of the children in the Certificate Authorizing Registration (CAR) is not subject to donor's tax; and that the CTA has jurisdiction over their claim since they are appealing under *Section 229 of the NIRC of 1997, as amended*, or within two-years from payment of the tax.

On the other hand, respondent counter-argues that the instant petition was filed beyond the 30-day period prescribed under *Section 228 of the NIRC of 1997, as amended,* hence, the CTA has no jurisdiction over the case; the intent to donate was clearly established; the inclusion of the children's name in the CAR is a mere afterthought since the original transaction shows that petitioner is the sole buyer of the properties; the children have no income, and the alleged monies given by the parents are considered donations since these monies are excessive allowances, which enabled them to save substantial amounts to purchase real properties.

After a careful consideration of the arguments of both parties, and the applicable law and jurisprudence, we rule for the respondents.

Timeliness of the Filing of the Petition For Review in C.T.A. Case No. 7573

We deem it necessary to first resolve the procedural issue of whether the Petition for Review in C.T.A. Case No. 7573 was filed within the prescribed 30-day period.

To resolve this issue, We must first determine the nature of petitioner's claim, whether it is a claim for refund or a protest on the assessment. The period to appeal a disputed assessment under *Section 228 of the NIRC of 1997, as amended*, is distinct from the period to file a claim for refund under *Section 229* of the same Code.

In this case, a careful perusal of the records shows that petitioners first disputed the assessment on January 11, 2005 prior to their payment under protest on June 20, 2005. Thus, the present petition involves a *disputed assessment* considering that from the time petitioners received the assessments for the payment of donor's tax, they already protested and refused to pay the same, questioning the legality and correctness of said assessments. Petitioner spouses concededly questioned the legality and validity of the assessments on the ground that there was no intent to donate and the children had their own savings used to purchase the property. Petitioners paid the disputed assessments under protest in order not to delay the issuance of the Certificates Authorizing Registration and the eventual registration of the titles in the name of petitioner Maribel Evono and her children. In other words, the payment under protest of the donor's tax is only to expedite the transfer of the title in the names of petitioner Maribel C. Evono and her children, and not to avoid any penalty resulting from non-payment.

Clearly, petitioners' claim for refund is necessarily dependent upon and is a mere incident of the action contesting the assessment for donor's tax. The main action to be resolved is the disputed assessment, regardless of whether it has been paid under protest, since the resolution of the claim for refund is dependent on the outcome of the resolution of petitioners' protest. Therefore, we agree with the Special First Division that *Section 228 of the NIRC of 1997, as amended*, is the applicable law to petitioners' present action. Petitioners cannot base their claim on *Section 229* of the same Code considering that they are still questioning the validity or legality of said assessments.

Having resolved that petitioners' action on the disputed donor's tax assessments falls under *Section 228 of the NIRC of 1997, as amended*, we now proceed to determine the timeliness of the filing of the Petition For Review in C.T.A. Case no. 7573.

In this regard, *Section 228 of the NIRC of 1997, as amended,* provides:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on exciseable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to the above provision, when the protest is not acted upon by the Commissioner after the expiration of the 180-day period, the taxpayer adversely affected by the inaction may appeal to the CTA within thirty (30) days from the lapse of the 180-day period; otherwise, the assessment shall become final, executory and demandable. Thus, if there is no appeal within thirty (30) days from the lapse of the 180-day period, the matter under protest and/or decision shall become final, executory and demandable.

In this case, records show that petitioners filed their administrative protest with the CIR on August 9, 2005. Counting 180-days from August 9, 2005, the Commissioner had until February 6, 2006 within which to act on petitioners' protest. Within thirty (30) days from the lapse of the 180-day period, or until March 8, 2006, petitioners should have appealed their claim for refund to this Court. However, as aptly ruled by the Special First Division, petitioners filed their appeal only on February 12, 2007, or more than one year way beyond the 30-day prescribed period.

As to petitioners' contention that the CIR failed to render a decision until March 1, 2010, it must be emphasized that in both *Section 228 and RA 9282 (An Act Expanding the Jurisdiction of the CTA)*, the jurisdiction of the CTA has been expanded to include not only decisions or rulings, but inaction as well of the Commissioner of Internal Revenue. In fact, *Section 228* specifically provides a period where "inaction" will arise, which may be subject to appeal and the corresponding consequence of failure to elevate the matter to the CTA.

Thus, in the case of *RCBC vs. CIR (491 SCRA 221)*, the Supreme Court ruled:

"***As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.***

In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.

In fine, ***the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment***." (Emphasis ours)

Furthermore, petitioners' receipt on June 28, 2010 of the Decision of the CIR dated March 1, 2010 denying their protest on the assessments for donor's tax, cannot be made as the reckoning point of the 30-day period to appeal to the CTA, since petitioners had already availed of the first option to file a Petition For Review with this Court on February 12, 2007, without waiting for the decision of the CIR. Thus, in the resolution of the Motion for Reconsideration filed in the RCBC case *(522 SCRA 153),* the Supreme Court categorically ruled:

"***In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for***

> ***review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.***
>
> In the instant case, the Commissioner failed to act on the disputed assessment within 180 days from date of submission of documents. Thus, petitioner opted to file a petition for review before the Court of Tax Appeals. Unfortunately, the petition for review was filed out of time, i.e., it was filed more than 30 days after the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Petitioner did not file a motion for reconsideration or make an appeal; hence, the disputed assessment became final, demandable and executory.
>
> Based on the foregoing, petitioner cannot now claim that the disputed assessment is not yet final as it remained unacted upon by the Commissioner; that it can still await the final decision of the Commissioner and thereafter appeal the same to the Court of Tax Appeals. This legal maneuver cannot be countenanced. After availing the first option, i.e., filing a petition for review which was however filed out of time, petitioner can not successfully resort to the second option, i.e., awaiting the final decision of the Commissioner and appealing the same to the Court of Tax Appeals, on the pretext that there is yet no final decision on the disputed assessment because of the Commissioner's inaction." (Emphasis Ours)

Clearly, the present petition was filed more than one (1) year way beyond the prescribed 30-day period. Consequently, the donor's tax assessments had already become final, executory and demandable. Hence, we hold that the Special First Division correctly dismissed the

Ob

Petition for Review for having been filed way beyond the prescribed 30-day period.

<u>Validity of Donor's Tax Assessment</u>

Assuming, for the sake of argument that petitioners' judicial claim was filed on time, still, the present petition must necessarily fail, as aptly ruled by the Special First Division there is clearly an *animus donandi* on the part of petitioners.

Donation (*donatio*) is defined as "a gift; a transfer of the title to property to one who receives it without paying for it; the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration." *(Black's Law Dictionary, 6th Edition, p.487)*

In this regard, *Section 98 of the NIRC of 1997, as amended*, provides:

"SEC. 98. 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 99.

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and

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(C)whether the property is real or personal, tangible or intangible."

Pursuant to the above provision, the transfer of property by gift is taxable, whether the same is direct or indirect, real or personal, tangible or intangible.

In this case, to determine whether or not there is a donation, the true intention of the parties must be ascertained. Records show that petitioners presented various contracts to prove that their children were also buyers in the sale of the subject properties. However, in order to determine the tax liability for any transaction, not only the legal documents will be considered, but also some other external factors surrounding the transaction, such as the capacity of the buyer in cases of transfer of properties. This is a preventive measure imposed to prevent avoidance of the legal tax due.

In this case, petitioners admitted that their children are not earning income, but are financially capable to purchase the subject properties from their own savings from allowances given by their parents. True, children can save money from their allowances and would be able to purchase properties from their savings, however, in this case, records show that petitioners' children were only 11, 10 and 5 years old at the time of the sale of the subject properties, the consideration of which amounted to the total amount of P5,473,500.00 (P4,117,500.00 for the purchase of Diores' property and P1,356,000.00 for the purchase of Credo's property). Logically, at such young ages, the three minor children would not be able to save such substantial amount, even if they were receiving enormous allowances from their parents. As a consequence thereof, the inclusion of the children's names in the transfer of the titles/properties shall be deemed a donation or gift from their parents. To own a real property at an early age without a source of income, said property is deemed to be a donation, within the meaning of the law. There is a clear *animus donandi,* as evidenced by petitioners' request to include the names of their minor children in the CARs and certificates of title of the properties. Thus, We agree with then Commissioner Joel Tan- Torres in his Final Decision dated March 1, 2010, citing the ruling of Regional Director Jaime B. Santiago, CESO V, Revenue Region No. 13, Cebu City, dated November 17, 2004, to wit:

> "It is noteworthy that, "The gift tax was enacted mainly to prevent the loss of revenue due to the practice of wealthy individuals of donating inter vivos or otherwise gratuitously disposing of their properties during their lifetime for the purpose of reducing their estate and thus, avoid payment of the estate tax upon their death. A gift tax is imposed to prevent

avoidance of estate tax." (BIR Ruling No. 261-87 dated September 2, 1987)

The admission of Maribel C. Evono that the funds used to purchase the properties were sourced from the allowances given by the parents, established the fact that these minor children are not earning income. Excessive allowances from parents that have enabled the children to save substantial amounts to purchase properties is deemed a donation within the meaning of the law. Otherwise, taxpayers can easily skirt transfer taxation in the guise of allowances by the parents to their children.

Hence, in the absence of clear showing that these minor children are or have been earning income of their own, the inclusion of their names in the title to the properties is tantamount to gratuitous acquisitions falling within the purview of the definition of donation as provided in the foregoing provision."

Therefore, without a source of income or acceptable form of acquisition of substantial amount to purchase the subject properties, the inclusion of the names of petitioners' minor children in the CARs is deemed a gratuitous transaction, which is subject to donor's tax. The inclusion of the names of petitioners' minor children in the certificates of title of the subject properties shall be deemed an implied donation within the purview of the law. Therefore, respondent's imposition of donor's tax in the inclusion of the names of the children in the CARs and transfer titles is in accordance with *Section 98 of the NIRC of 1997, as amended.*

Finding no reversible error, we affirm the assailed Decision dated June 3, 2010 and Resolution dated November 11, 2010 rendered by the Special First Division of this Court in C.T.A. Case No. 7573.

WHEREFORE, premises considered, the instant petition is hereby **DENIED,** and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice