REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VICTOR Z. MANLAPAZ AND MARIA CZARINA OLIVEROS MANLAPAZ,
Petitioners,

CTA Case No. 9765

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MINDARO-GRULLA, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 14 2019 4:24 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Before this Court is the *Motion for Reconsideration*[1] filed by petitioners Victor Z. Manlapaz and Maria Czarina Oliveros Manlapaz on December 11, 2018 with respondent Commissioner of Internal Revenue's (CIR) *Opposition/Comment to Petitioner's Motion for Reconsideration*[2] filed on December 19, 2018.

[1] Docket, pp. 145-147.
[2] *Id.*, pp. 149-151.

Petitioners assail the Decision dated November 23, 2018,[3] (the "Assailed Decision") of this Court denying their Petition for Review for lack of merit.

In praying for the reconsideration of the Assailed Decision, petitioners maintain that: (1) there was no donative intent which could subject the transfer to donor's tax because the supposed donation was the resulting effect of the dissolution of the absolute community which was adopted and approved by the court;[4] (2) there was no voluntary transfer of the property to the common child of the petitioners because the transfer did not result from a free and unrestrained choice, not subject to control of the will;[5] (3) the petitioners were compelled by law to transfer the property to their common child which is considered as part of the presumptive legitime;[6] and (4) the transfer is not in consequence of a donation but by operation of law.[7]

On the other hand, respondent CIR, in his *Opposition/Comment*, avers that petitioners' *Motion for Reconsideration* is a mere reiteration of the arguments sufficiently passed upon and decided by this Court in the Assailed Decision.[8] As such, the same is considered *pro forma* and should be denied.[9]

This Court resolves to deny petitioners' *Motion for Reconsideration* for lack of merit.

A careful evaluation of the case records and the arguments raised by petitioners in their *Motion for Reconsideration* reveals that the arguments relied upon are, indeed, mere rehash of the matters which had been thoroughly discussed and passed upon by this Court in the Assailed Decision. Petitioners evidently failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of this Court's findings.

This Court maintains its position that donation was actually made by the parties because all of the elements of a valid donation are

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[3] *Id.*, pp. 134-144.
[4] *Id*, p. 146.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*, p. 150.
[9] *Id.*

present. The petitioners have executed a Deed of Donation transferring the ownership of the subject property to their common child. In so doing, the patrimonies of the petitioners were reduced by the amount commensurate to the value of the subject property while the patrimony of their common child correspondingly increased by the same amount. Given that petitioners gave the subject property to their common child without any material consideration, accordingly, there arises an implication of intent to do an act of liberality or *animus donandi*.

It bears emphasis that in the present case, the ownership over the subject property was transferred under the name of petitioners' common child neither by virtue of the Agreement between the former spouses, which merely provides that the subject property "shall be donated to" petitioners' common child,[10] nor even by virtue of Decision of the RTC approving the Agreement and dissolving the property relations between the parties.[11] On the contrary, it is the execution and completion of the donation by the petitioners that legally transferred the ownership of the subject property to their common child.

It is incorrect for petitioners to claim that the subject property was transferred to their common child by operation of law. As this Court had already explained in the Assailed Decision, while it is true that Articles 51 and 102(5) of the Family Code mandate the delivery of the presumptive legitime of the common children upon dissolution of the absolute community regime and the partition of the properties of the spouses, the same do not *ipso jure* cause the transfer of title or ownership over the properties comprising the presumptive legitime from either or both of the spouses to their common children. Indeed, nothing in these provisions would indicate that the presumptive legitimes of the common children are *ipso jure* transferred upon dissolution of the absolute community regime. At most, these provisions merely prescribe a specific executory obligation that the spouses have to comply with. And in the present case, petitioners have actually complied with the foregoing Family Code provisions through the execution of the Deed of Donation over the subject property in favor of their common child, Bea Liana Oliveros Manlapaz. The said transfer of property by way of gift was made during petitioners' lifetime. The transfer is fully consummated as the title over the subject property was already issued under the name of the donee.

[10] Joint Stipulation of Facts and Issues, Docket, p. 94.
[11] *Id.*

Consequently, the said transfer falls within the ambit of Section 98 of the 1997 NIRC. On the other hand, the subject donation is not one of those enumerated under Section 101 of the 1997 NIRC as exempt from donor's tax.

WHEREFORE, petitioners' *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice