REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANTONIO PRIETO, BENITO PRIETO
AND MAURO PRIETO,
Petitioners,

Dec. 29, 1956

- versus -

C.T.A.
CASE NO. 77

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - - - -x

# D E C I S I O N

This is an appeal from a decision of respondent dated January 14, 1955, denying petitioners' claim for refund of the sum of ₱62,098.24 representing alleged overpayment of estate and inheritance taxes.

Except for a few documentary exhibits, submitted by the parties, the case was submitted principally on a stipulation of facts agreed to by the parties, as follows:

> 1. That Doña Teresa Tuason y de la Paz died in the City of Manila on March 9, 1951, leaving a will, a copy of which is found on pages 11 to 14, Vol. I, BIR Records;
>
> 2. That the will was duly probated in a special proceedings instituted in the Court of First Instance of Manila, Civil Case No. 13447, on March 13, 1951;
>
> 3. That as provided in the will, with the exception of 5 specific legacies in the total sum of ₱80,800.00, the deceased devised and bequeathed all her property, real or personal, in equal shares among 14 beneficiaries among whom are the petitioners;
>
> 4. That on February 14, 1952, a project of partition dated February 9, 1952, a copy

of which is found on pages 15 to 39, Vol. I, BIR Records, was submitted to the Court for approval;

5. That in its order dated February 14, 1952, a copy of which is found on page 40, Vol. I, BIR Records, the Court of First Instance of Manila approved the said project of partition;

6. That the petitioner Antonio Prieto paid the sum of ₱110,999.98 to the remaining thirteen (13) heirs, as follows:

| Heirs | Amount | Check No. |
|---|---|---|
| To the 6 Valdezes | ₱ 51,230.76 | C-93157 NCBNY |
| To the 5 Legardas | 42,692.30 | C-93158 NCBNY |
| To Benito & Mauro Prieto | 17,076.92 | C-93159 NCBNY |
| TOTAL | ₱110,999.98 | |

in accordance with paragraph A of Clause "VII Adjudicaciones" of the Project of Partition, which reads as follows:

> OBSERVACION IMPORTANTE.- Por convenio entre todos los herederos y como una condicion esencial de las anteriores adjudicaciones, Don Antonio Prieto pagara la suma de CIENTO ONCE MIL PESOS (₱111,000.00) moneda Filipina, que se repartira por igual entre los trece (13) herederos.

7. That the petitioners Benito Prieto and Mauro Prieto paid the total sum of ₱66,999.96 to the remaining twelve (12) heirs, as follows:

| | | |
|---|---|---|
| To Antonio Prieto | ₱ 5,583.33 | B-184965 PBT |
| To the 5 Legardas | 27,916.65 | B-652051 NCBNY |
| To the 6 Valdezes | 33,499.98 | B-652052 NCBNY |
| TOTAL | ₱66,999.96 | |

in accordance with paragraph B of Clause "VII Adjudicaciones" of the Project of Partition which reads as follows:

> OBSERVACION IMPORTANTE.- Por convenio entre todos los herederos y como una condicion esencial de las anteriores, Don Benito Prieto y Don Mauro Prieto pa-

garan la suma de SESENTA Y SIETE MIL PESOS (₱67,000.00), moneda Filipina, que se repartira por igual entre los doce (12) herederos.

8. That on January 17, 1952, the estate and inheritance tax return covering the estate of the deceased, copy of which is found on pages 41 to 42, Vol. I, BIR Records, was filed with the respondent by the executrix of the deceased and that under the said return the executrix appraised the real property at their assessed value;

9. That based on the said return, the estate and inheritance taxes due amounted to ₱447,491.04 and ₱494,224.40, respectively, or a total of ₱941,715.44, as computed on page 43, Vol. I, BIR Records, a transcript of which is attached as Annex "A"; for which an assessment notice was issued on January 19, 1952, copy of which is found on page 44, Vol. I, BIR Records;

10. That in an investigation of the decedent's estate, the respondent appraised the real and personal property at ₱5,855,400.24, as per its report found on pages 84 to 86, Vol. I, BIR Records as against the executrix appraisal of ₱3,513,073.63, and as a consequence of the increased valuation, the estate and inheritance taxes due from the decedent's estate amounted to ₱798,840.04 and ₱1,095,394.19, respectively, or a total of ₱1,894,234.23, as computed on pages 83, Vol. I, BIR Records, a transcript of which is attached as Annex "B"; and that adjusted share of inheritance of each heir was computed by respondent, as shown on pages 121 and 121-A, Vol. I, BIR Records, as a result of which a revised assessment notice was issued by the respondent on January 29, 1952, copy of which is found on pages 87, 128 to 129, Vol. I, BIR Records;

11. That the estate tax, as per assessment notice of January 19, 1952, in the sum of ₱447,491.04 was paid by the executrix on February 8, 1952, under estate tax receipt No. 1954, a copy of which is shown on page 89, Vol. I, BIR Records;

12. That upon receipt of the revised assessment, the heirs of the deceased requested reconsideration of the valuation made by respondent and as a consequence, a reinvestigation was made by respondent, reports and computation sheets of which are found on pages 172 to 175, Vol. I, BIR Records, a transcript of which is attached as Annex "C" and a revised assessment notice was issued on July 18, 1952, copy of which is found on page 176, Vol. I, BIR Records, calling for the sums of ₱681,692.02 as estate

tax and ₱897,154.59, as inheritance tax, or a total of ₱1,578,846.61 less the sums of ₱447,491.04 as estate tax and ₱182,208.80 as inheritance tax or a total of ₱629,698.84 already paid, leaving a balance of ₱234,200.98 as estate tax and ₱714,945.79 as inheritance tax, or a total of ₱949,146.77;

13. That on October 9, 1952, the administratrix of the estate paid the sum of ₱104,178.44 as additional estate tax under Estate Tax Receipt No. 4107, copy of which is found on page 233, Vol. I, BIR Records and that the said amount was allocated by the respondent to the three heirs, apportioned as follows:

| | |
|---|---|
| Antonio Prieto | ₱ 39,188.92 |
| Benito Prieto | 32,494.76 |
| Mauro Prieto | 32,494.76 |
| TOTAL | ₱104,178.44 |

14. That upon further investigation by the respondent at the request of the heirs of the deceased, report and computation sheet of which are found on pages 271, 278 to 279, and 290, Vol. I, BIR Records, a transcript of which is attached as Annex "D", and as a result a revised assessment was issued on December 24, 1952, a copy of which is found on page 291, Vol. I, BIR Records, calling for the unpaid balance of ₱673,193.51;

15. That this case was heard before the Conference Staff of the Bureau of Internal Revenue and the proceedings therein are found on pages 339 to 348 and 449 to 461, Vol. II, BIR Records;

16. That the recommendation of the Conference Staff is found on pages 350 to 356 and 470 to 473, Vol. II, BIR Records;

17. That based on the recommendation of the Conference Staff, the taxes due were reassessed and recomputed, as shown in the computation sheets found on pages 321 to 323, Vol. II, BIR Records, and the final revised assessment notice was issued on February 18, 1953, copy of which is found on page 360, Vol. II, BIR Records, calling for the unpaid balance of ₱594,920.82;

18. That under the final assessment notice recommended by the Conference Staff, the respondent allocated to all the beneficiaries their corresponding shares of the inheritance, as well as their corresponding estate and inheritance taxes, as found on page 350, Vol. II, BIR Records, a transcript of which is attached as Annex "E";

19. That petitioners believe that the estate and inheritance taxes due from the decedent's estate should have been determined and computed as in the attached Annex "F";

20. That the petitioners paid the following amounts as inheritance taxes assessed against them on the date and under official receipts shown below:

ANTONIO PRIETO

| | | |
|---|---|---|
| ₱13,038.54 | March 20, 1952 | Rec. No. 31649 V-2 |
| 30,000.00 | March 11, 1953 | Rec. No. 39289 V-2 |
| ₱43,038.54 | Total | |

BENITO PRIETO

| | | |
|---|---|---|
| ₱13,038.54 | March 19, 1952 | Rec. No. 31644 V-2 |
| 5,000.00 | September 1, 1953 | Rec. No. 42393 V-2 |
| 5,000.00 | January 16, 1954 | Rec. No. 42902 V-2 |
| 10,000.00 | June 9, 1954 | Rec. No. 48928 V-2 |
| 30,592.50 | December 9, 1954 | Rec. No. 49260 V-2 |
| ₱63,631.04 | Total | |

MAURO PRIETO

| | | |
|---|---|---|
| ₱13,038.54 | March 19, 1952 | Rec. No. 31644 V-2 |
| 5,000.00 | September 1, 1953 | Rec. No. 42393 V-2 |
| 5,000.00 | January 16, 1954 | Rec. No. 42902 V-2 |
| 10,000.00 | June 9, 1954 | Rec. No. 48928 V-2 |
| 30,592.50 | December 9, 1954 | Rec. No. 49261 V-2 |
| ₱63,631.04 | Total | |

and that of the sums of ₱447,491.04 and ₱104,178.44 as estate tax paid by the administratrix of the decedent's estate, the following amounts were allocated for the account of the petitioners as follows:

| | |
|---|---|
| ANTONIO PRIETO ---- | ₱31,013.96 |
| | 39,188.92 |
| Total - | ₱70,202.88 |

| | |
|---|---|
| BENITO PRIETO ----- | ₱31,013.96 |
| | 32,494.76 |
| Total - | ₱63,508.72 |

| | |
|---|---|
| MAURO PRIETO ------ | ₱31,013.96 |
| | 32,494.76 |
| Total - | ₱63,508.72 |

21. That respondent believes that the total estate and inheritance taxes collected from all the heirs of the deceased including the petitioners are in accordance with law;

22. That petitioners alleged that the total estate and inheritance taxes collected from them were in excess of the taxes together with the penalties due from them by the sum of ₱13,249.26 in the case of petitioner Antonio Prieto and by the sums of ₱24,424.49 and ₱24,424.49, respectively, in the case of Benito Prieto and Mauro Prieto, as computed by them below:

ANTONIO PRIETO

| | |
|---|---|
| Total amount paid for his account | ₱113,241.42 |
| Total estate and inheritance tax due as computed in Annex "F" | 99,992.16 |
| Amount allegedly Refundable | - ₱ 13,249.26 |

BENITO PRIETO AND MAURO PRIETO, INDIVIDUALLY

| | | |
|---|---|---|
| Estate tax due each from Benito and Mauro Prieto ....... | | ₱42,891.22 |
| Less amount paid: | | |
| Feb. 8, 1952 ....... | ₱31,013.96 | |
| Oct. 9, 1952 ....... | 32,494.76 | 63,508.72 |
| Overpayment .................... | | ₱20,617.50 |

| | |
|---|---|
| Inheritance tax due each from Benito and Mauro Prieto ........ | ₱57,100.94 |
| Less: Overpayment stated above paid by each ............. | 20,617.50 |
| Balance of inheritance tax due from each ...................... | ₱36,483.44 |
| Less: Amount paid by each on March 19, 1952 ................. | 13,038.54 |
| Balance of inheritance tax due from each ...................... | ₱23,444.90 |
| Plus: 5% surcharge on ₱23,444.90.. | 1,172.22 |
| 1/2% monthly interest on ₱23,444.90 from March 9, 1953 to Sept. 1, 1953 ........ | 672.09 |
| Total amount due on Sept. 1, 1953 from each .................. | ₱25,289.21 |
| Less: Amount paid by each on Sept. 1, 1953 .................. | 5,000.00 |
| Balance as of Sept. 1, 1953 due from each ...................... | ₱20,289.21 |
| Plus: 1/2% monthly interest on ₱18,444.90 from Sept. 1, 1953 to Jan. 16, 1954 ............... | 415.01 |
| Total amount due on Jan. 16, 1954 from each .................. | ₱20,704.22 |
| Less: Amount paid by each on Jan. 16, 1954 .................. | 5,000.00 |
| Balance as of Jan. 16, 1954 due from each ...................... | ₱15,704.22 |
| Plus: 1/2% monthly interest on ₱13,444.90 from Jan. 16, 1954 to June 9, 1954 ............... | 320.44 |
| Total amount as of June 9, 1954 due from each .................. | ₱16,024.66 |
| Less: Amount paid by each on June 9, 1954 ................... | 10,000.00 |
| Balance due as of June 9, 1954 from each ...................... | ₱ 6,024.66 |
| Plus: 1/2% monthly interest on ₱3,444.90 from June 9, 1954 to Dec. 9, 1954 ............... | 103.35 |
| Total amount due as of Dec. 9, 1954 from each .................. | ₱ 6,128.01 |
| Compromise for late payment due from each ...................... | 40.00 |
| Total amount due on Dec. 9, 1954 from each .................. | ₱ 6,168.01 |
| Less: Amount paid by each on Dec. 9, 1954 .................. | 30,592.50 |
| AMOUNT ALLEGEDLY REFUNDABLE in favor of each .............. | (₱24,424.49) |

23. That on November 2, 1953, the attorney for the administratrix and the petitioners wrote a letter to the respondent, a copy of which is found on page 514, Vol. II, BIR Records;

24. That on December 15, 1953, the respondent answered the letter, a copy of which is found on page 535, Vol. II, BIR Records;

25. That on January 13, 1954, the administratrix and the petitioners, thru their counsel, wrote another letter to the Collector of Internal Revenue, a copy of which is found on pages 541 to 543, Vol. II, BIR Records;

26. That on February 12, 1954, the Collector of Internal Revenue answered this said letter, a copy of which is found on pages 556 to 558, Vol. II, BIR Records;

27. That on February 25, 1954, the administratrix and the petitioners, thru their counsel, wrote another letter to the Collector of Internal Revenue, a copy of which is found on page 560, Vol. II, BIR Records;

28. That the Collector of Internal Revenue reiterated his demand for the collection of the taxes assessed against the petitioners, as shown by his letter dated March 12, 1954, a copy of which is found on pages 564 to 565, Vol. II, BIR Records;

29. That on March 16, 1954, the administratrix and the petitioners, thru their counsel, wrote another letter requesting extension within which to pay the taxes assessed, as evidenced by their letter, a copy of which is found on page 566, Vol. II, BIR Records;

30. That the respondent answered the attorneys for the petitioners as shown in his letter dated March 20, 1954, a copy of which is found on pages 570 to 571, Vol. II, BIR Records.

31. That on January 12, 1955, petitioners requested respondent to refund the amounts paid by them allegedly in excess of what were legally due from each of them, as shown in their letter, a copy of which is found on page 596, Vol. II, BIR Records, but that the request was denied by respondent on January 14,

1955 as shown by its letter on the said date, a copy of which is found on page 598, Vol. II, BIR Records; and

32. That both petitioners and respondent reserve the right to submit additional evidence not covered by this Stipulation of Facts.

(Annexes "A" to "F" are omitted)

In brief the following are the issues raised by the parties:

(a) Whether or not this Court has jurisdiction to determine the present claim for refund of taxes alleged to have been illegally or erroneously paid;

(b) Whether or not petitioners have a sufficient cause of action with respect to the refund of the alleged overpayment of taxes; and

(c) Whether or not the inheritance taxes due from petitioners was erroneously determined by respondent.

In connection with the first issue, we quote hereunder section 306 of the National Internal Revenue Code which prescribes the requisites to claims for refund of taxes paid:

"Sec. 306. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

Respondent contends that the petitioners' claim for refund filed with the Bureau of Internal Revenue is not sufficient in form because it does not state exactly the amount sought to be refunded, the number of the receipt under which it was paid and the ground upon which the claim is based (par. 2, p. 10, respondent's memorandum). We find this view untenable. A careful analysis and examination of petitioner's letter dated January 12, 1955 to the respondent (p. 596, Vol. II, BIR Records) will show that it complies substantially with the requirements provided in said section 306. The penultimate paragraph of said letter which is quoted below, incorporates by reference the previous communications of petitioners wherein specific mention is made of the amount claimed:

> "In order to establish the legal basis for an appeal; we do hereby make a formal demand for the refund of all taxes, together with penalties and interests paid by our clients in excess of the amounts stated in our two communications dated March 4 and March 25, 1953, respectively."

In one of the letters referred to, that dated March 4, 1953 (p. 381, Vol. II, BIR Records) petitioner's protested the new assessment against them in the total sum of ₱594,920.82 as inheritance tax, of which amounts the share corresponding to Antonio Prieto, Benito and Mauro Prieto were respectively

₱66,353.96, ₱71,022.93 and ₱71,022.73. The letter further pointed out the alleged mistake of respondent in not deducting the ₱111,000.00 paid by Antonio Prieto and the sum of ₱67,000.00 paid by Benito and Mauro Prieto to the other heirs. The letter of March 25, 1953 (p. 413, Vol. II, BIR Records) further explains the contentions of petitioners. In effect therefore, by reference to the last two mentioned letters the claim for refund dated January 12, 1955, filed with respondent adequately indicates the amount so claimed.

In the case of Asiatic Petroleum Co. vs. Posadas (52 Phil. 723) our Supreme Court in passing upon the sufficiency of the letter dated April 1, 1927, which contained the following paragraph:

> "Under the circumstances we shall be glad if favorable consideration of our application and, when liquidation of the entries on which we have already paid duties and taxes are made, we shall be glad to receive refunds for the amount shipped out."

held that the same was a sufficient compliance of the requirements for tax refunds.

Comparatively, the letter of the petitioners' in the instant case is more formal and specific than the one involved in the Asiatic Petroleum Co. case, and we therefore hold that petitioners have substantially complied, in this respect, with the requirements on claims filed for the refund of taxes allegedly overpaid.

Respondent also contends that petitioners failed to comply with requirement of filing their claim for refund of the taxes alleged to have been erroneously paid, within the two-year period prescribed in said section 306. It is to be noted that the estate tax was paid by the administratrix of decedent's estate on October 9, 1952. Upon redetermination of the estate tax it was found that there was an overpayment thereof, hence the excess was credited by the respondent to the unpaid balance of the inheritance tax as is indicated in the last and final assessment notice dated February 18,1953 (p. 360, Vol. II, BIR Records; par. 17, Stipulation of Facts). The amount credited was in the sum of ₱68,018.02 which represents the difference between the estate tax under the assessment notice dated July 18, 1952, amounting to ₱681,692.06 and paid by the administratrix and the revised amount of ₱613,674.04 as the estate tax properly due to the government. (See computation sheets pp. 321-323, Vol. II, BIR Records). The corresponding claim for credit thereof was both made within two years from payment of the tax and in fact the application of the overpayment by credit to the inheritance tax was made by respondent himself within that period. (See p. 360, BIR Records). Be that as it may, the defense of prescription, that the claim for refund of the excess estate tax would be of no import now, for the reason that the amount sought to be refunded in this case refers to the excess payment of the inheritance tax made by petitioners and not the estate tax.

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In connection with the statute of limitations as to the inheritance tax, the evidence show, that considering the amount involved, the entire tax liability of the petitioner for both estate tax and inheritance tax were settled thru periodical payments or installments, approved by respondent until the total amount was satisfied. In fact, the last payment of the inheritance tax pertaining to Antonio Prieto was made on March 11, 1953 and as regards Benito Prieto and Mauro Prieto on December 9, 1954 (par. 20, Stipulation of Facts). On January 12, 1955 petitioners filed their claim for refund of the taxes allegedly overpaid and on January 14, 1955 respondent rendered his decision thereon from which petitioners interposed the present appeal.

The defunct Board of Tax Appeals in the case of RCA Communications, Inc. vs. David (B.T.A. Case No. 116, Resolution, June 18, 1953) held that when the tax is paid in installments, the prescriptive period of two years provided in section 306 of the Revenue Code should be counted from the date of the final payment. We agree with this view as being reasonable and which appears to be the uniform doctrine in American jurisdictions. This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof, can not operate to start the commencement of the statute of limitations. In this regard the word "tax", or words "the tax" in statutory provisions comparable to section 306 of our Revenue Code have been uniformly held to refer to the entire tax and not a portion thereof (Clark vs. U.S. 69 F 2d 748; A.S. Krieder Co. vs. U.S. 30 F. Supp. 724; Mills vs. U.S. 50 F 2d 302, 55 F 2d 1001), and the vocables "payment of tax" within statutes requiring refund claim, refer to the date when all the tax was paid, not when a portion was paid (Braun vs. U.S. 8 F Supp. 860, 863). Hence, applying the foregoing rule to the instance case, the filing of the claim for refund of the inheritance tax on January 12, 1955 and the filing of the instant petition for review on February 14, 1955 were well within the two-year period counted from March 11, 1953 and December 9, 1954 when the final payment of the tax liability was made. We are therefore of the opinion and so hold that the present action was filed seasonably within the purview of section 306 of the Tax Code.

Respondent also contends that petitioners have no capacity to claim for refund of the alleged excess payment of the estate tax. As earlier stated the excess payment of the estate tax was already credited and applied to the unpaid balance of the inheritance tax. Hence, this objection has become academic and requires no further discussion. Moreover the present claim is one for the refund of inheritance taxes which is imposed upon the privilege of the herein petitioners to succeed (Lorenzo vs. Posadas, 64 Phil. 353) and certainly the petitioners have every right to contest the decision of respondent with respect to such inheritance taxes, when they believe the same is not in accord with law.

We now proceed to consider the last issue which involves the determination of the proper base upon which the inheritance tax liability of petitioners is to be determined.

Petitioners, together with eleven others, are heirs of the late Doña Teresa Tuason y de la Paz. Her will, which was duly probated, contained the following provision, distributing her properties among the heirs in equal proportions:

> "SEPTIMO.- Instituyo por mis unicos y universales herederos en el remanente de todos mis bienes despues de cumplidos los legados antedichos, y despues de pagados todos los gastos de la testamentaria, pues en lo que respecta al 'estate and inheritance tax' cada uno pagare de lo que reciba, a los siguentes:
> (names omitted)
> quienes participaren en la forma siguiente. Todos los bienes de mi herencia seran divididos en catorce (14) partes iguales y cada parte se adjudicare a cada uno de los herederos antes nombrados, sin distincion alguna; pero entendiendose que los nombrados en el No. 6, que son los hijos de Manuel Valdes y Legarda, heredaran una sola unidad, o sea, que una catorce ava (1/14) parte de mi herencia se dividira por igual entre los seis nombrados en dicho No. 6" (par.

6 p. 2-3, Will of Teresa Tuason, pp. 11-14, Vol. I, BIR Records).

In connection with the probate proceedings, the heirs (including the petitioners herein) entered into a project of partition which was approved by the probate court. Clause VI thereof entitled "Participaciones" which is pertinent to this case and under which the heirs have agreed to divide the remanent of the estate in equal proportions, states in part as follows:

| | |
|---|---|
| "Ascendiendo los bienes inventariados a la cantidad total de .................................. | ₱3,513,073.63 |
| "De los cuales deben descontarse los pagos por legados que ascienden al total de ....... | 80,800.00 |
| "Queda remanente un caudal repartible de .................. | ₱3,432,273.63 |
| "Que divididos en catorce (14) partes dan .................. | ₱ 245,162.40-3 |

"Por consiguiente, a cada uno herederos corresponde una participacion hereditaria de DOSCIENTOS CUARENTA Y CINCO MILL CIENTO SESENTA Y DOS PESOS CON CUARENTA CENTIMOS (₱245,162.40) con 3 centimos de remanente." (p. 32, Vol. I, BIR Records).

Under Clause VII entitled "ADJUDICACIONES" of the same project of partition, and for the purposes of effecting the equal division as provided above, the properties of the estate were correspondingly adjudicated to each of the heirs named therein. Paragraph "A" thereof enumerates the properties assigned to petitioner Antonio Prieto, but contains the following clause:

> "OBSERVACION IMPORTANTE.- Por convenio entre todos los herederos y como una condicion esencial de las anteriores adjudicaciones, don Antonio Prieto pagara la suma de CIENTO ONCE MIL PESOS ₱111,000.00) moneda Filipina, que se repartira por igual entre los trece (13) herederos restantes." (p. 29, Vol. I, BIR Records)

Paragraph "B" of the said Clause VII lists the properties adjudicated to petitioners Benito Prieto and Mauro Prieto and likewise contains the following clause:

> "OBSERVACION IMPORTANTE.- Por convenio entre todos los herederos y como una condicion esencial de las anteriores adjudicaciones, don Benito Prieto y Don Mauro Prieto pagaran la suma de SESENTA Y SIETE MIL PESOS (₱67,000.00) moneda filipina, que se repartira por igual entro lòs doce (12) herederos restantes." (p. 25, Vol. I, BIR Records)

It is to be particularly noted that the allocation of properties to the other heirs as contained in paragraphs "C" and "D" of said Clause VII of the project of partition do not contain clauses or conditions similar to those imposed upon petitioners herein. Significant, too, in the project of partition is paragraph five of Clause IX "Observaciones Finales", which states:

> "Quinta.- Todos los herederos obrando de mutuo acuerdo e interpretando la verdadera intencion de la Testadora, han entendido la segunda parte del parafo Septimo del Testamento exhibit "A", que aparece en la pagina tercera de dicho testamento, x x x x."

The reference made in the above paragraph is to the testamentary disposition contained in the seventh paragraph of decedent's will recited above.

For purposes of estate and inheritance taxes, however, the net estate adjudicated to the heirs was determined by respondent in the total sum of ₱3,757,286.22 which after deducting the legacies in the amount of ₱80,800.00 would give a residue of ₱3,676,486.22 which was apportioned among the residuary and universal heirs, including petitioners. (par. 18, and Annex E, Stip. of Facts; pp. 350, Vol. II, BIR Records).

In determining the inheritance tax due from petitioners, respondent computed the same on the value of the properties allocated to them under the partition without crediting the amount actually paid to the other heirs by Antonio Prieto in the amount of ₱110,999.98 (roughly ₱111,000.00) and by Benito and Mauro Prieto in the sum of ₱66,999.96 (roughly ₱67,000.00). Petitioners contend that these sums were paid by them to the other heirs to equalize their shares, considering that the values of the properties allocated to the former were very much higher than those to their co-heirs. It is further contended that the taxable base for inheritance tax purposes should be the equal and proportionate share that corresponds to each heir, inasmuch as decedent's will as well as the partition agreed upon emphasizes this equality.

We find this contention well taken. The circumstances detailed above, and which we briefly summarize herein, clearly indicate that the distributive shares corresponding to the residuary heirs, including the petitioners, are equal: (1) the will of decedent gives the heirs equal shares of one-fourteenth (1/14) in the estate; (2) Clause VI of the project of partition (quoted above) adopted by the heirs recites that the residuary estate after providing for the legacies are divided equally between them; and (3) the fifth paragraph of Clause IX of the project of partition contains a stipulation of the heirs to the effect that the adjudication contained in their partition is to give effect to the equal division among them as required by the will.

It is significant to note that the conditions imposed by paragraphs "A" and "B" of Clause "VII Adjudicaciones" of the Project of Partition requiring petitioners to pay ₱111,000.00 and ₱67,000.00 were required as essential conditions to the adjudication of properties in their favor ("como una condicion esencial de las anteriores adjudicaciones"). The use of the phrase clearly indicates that said payments are not to be treated apart and independent of the apportionment of the estate among the heirs. It indicates and confirms the theory that said payments were necessary to equalize the distributive shares of the heirs, in obedience to the mandate of the decedent as stated in her will that "todos los bienes de mi herencia seran divididos en catorce (14) <u>partes iguales y cada parte se adjudicara' a cada uno de los herederos, sin distincion alguna</u>." This is but fair, reasonable, and practical because it would be well nigh impossible to comply with the mandate of the testatrix to distribute her estate equally without any distinction among the heirs. To secure such equality among co-heirs, it would be necessary to divide the property into lots or assign to each of them things of the same nature, quality and kind (Art. 1085, New Civil Code). But if the same cannot be divided without prejudice to the interests of the parties or where the properties involved are indivisible or would be impaired by their being divided, the only legal and practical recourse would be to assign or adjudicate to some of the heirs those properties, provided that they pay the others the excess in cash (Art. 1086, New Civil Code; Sec. 5, Rule 71, Rules of Court). Hence, as in the present case, where petitioner Antonio Prieto was assigned the so-called Rosario property which could not be divided and petitioners Benito and Mauro Prieto given larger interests in other real properties such that they all received properties greater in value than those allocated to the others co-heirs, the petitioners were required to pay the others the excess in cash, which payment was in effect merely to maintain their equal rights of inheritance to decedent's estate. In fine, all heirs succeed in equal proportions to the estate and the corresponding inheritance is accordingly due on the value of that which is received (par. C, sec. 95, Nat. Int. Rev. Code) as is also ordained in decedent's will.

Taking together all the circumstances recited above, we are led to the conclusion and so hold that the amount of properties ordained to be transmitted to and in effect received by each of the petitioners herein is equal only to one-fourteenth (1/14) of the residuary estate of the decedent Doña Teresa Tuason y de la Paz and that therefore, the amount of ₱110,999.98 paid by Antonio Prieto to his thirteen (13) co-heirs, and the sum of ₱66,999.96 paid by Benito and Mauro Prieto to their twelve (12) co-heirs, should be deducted from the value of the properties respectively received by them by way of inheritance for the purpose of computing the estate and inheritance taxes in relation therewith.

FOR ALL THE FOREGOING CONSIDERATIONS, the decision of the respondent is hereby reversed, and the latter is required to refund to petitioners Antonio Prieto, Benito Prieto and Mauro Prieto the sums of ₱13,249.26, ₱24,424.49 and ₱24,424.49 respectively with interest from March 11, 1953, as to the first and from December 9, 1954 as to the latter two, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, December 29, 1956.

MARIANO NABLE
Presiding Judge



WE CON-

DECISION -
C.T.A. CASE NO. 22 -



CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge