102 Phil. 813

[G. R. Nos. L-9456 & L-9481. January 06, 1958]

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. DOMINGO DE LARA, AS ANCILLIARY ADMINISTRATOR OF THE ESTATE OF HUGO H. MILLER (DECEASED), AND THE COURT OF TAX APPEALS, RESPONDENTS.

D E C I S I O N

MONTEMAYOR, J.:

These are two separate appeals, one by the Collector of Internal Revenue, later on referred to as the Collector, and the other by Domingo de Lara as Ancilliary Administrator of the estate of Hugo H. Miller, from the decision of the Court of Tax Appeals of June 25, 1955, with the following dispositive part:

> "WHEREFORE, respondent's assessment for estate and inheritance taxes upon the estate of the decedent Hugo H. Miller is hereby modified in accordance with the computation attached as Annex "A" of this decision. Petitioner is hereby ordered to pay respondent the amount of P2,047.22 representing estate taxes due, together with the interests and other increments. In case of failure to pay the amount of P2,047.22 within thirty (30) days from the time this decision has become final, the 5 per cent surcharge and the corresponding interest due thereon shall be paid as part of the tax."

The facts in the case gathered from the record and as found by the Court of Tax Appeals may be briefly stated as follows: Hugo H. Miller, an American citizen, was born in Santa Cruz, California, U.S.A., in 1883. In 1905, he came to the Philippines. From 1906 to 1917, he was connected with the public school system, first as a teacher and later as a division superintendent of schools, later retiring under the Osmeña Retirement Act. After his retirement, Miller accepted an executive position in the local branch of Ginn & Co., book publishers with principal offices in New York and Boston, U.S.A., up to the outbreak of the

Pacific War. From 1922 up to December 7, 1941, he was stationed in the Philippines as Oriental representative of Ginn & Co., covering not only the Philippines, but also China and Japan. His principal work was selling books specially written for Philippine schools. In or about the year 1922, Miller lived at the Manila Hotel. His wife remained at their home in Ben-Lomond, Santa Cruz, California, but she used to come to the Philippines for brief visits with Miller, staying three or four months. Miller also used to visit his wife in California. He never lived in any residential house in the Philippines. After the death of his wife in 1931, he transferred from the Manila Hotel to the Army and Navy Club, where he was staying at the outbreak of the Pacific War. On January 17, 1941, Miller executed his last will and testament in Santa Cruz, California, in which he declared that he was "of Santa Cruz, California". On December 7, 1941, because of the Pacific War, the office of Ginn & Co. was closed, and Miller joined the Board of Censors of the United States Navy. During the war, he was taken prisoner by the Japanese forces in Leyte, and in January, 1944, he was transferred to Catbalogan, Samar, where he was reported to have been executed by said forces on March 11, 1944, and since then, nothing has been heard from him. At the time of his death in 1944, Miller owned the following properties:

"Real property situated in Ben-Lomond, Santa Cruz, California valued at…….	P5,000.00
Real property situated in Burlingame, San Mateo, California valued at…….	16,200.00
Tangible Personal Property, worth…….	2,140.00
Cash in the banks in the United States…….	21,178.20
Accounts Receivable from various persons in the United States including notes…….	36,062.74
Stocks in U. S. Corporations and U. S. Savings Bonds, valued at…….	123,637.16
Shares of stock in Philippine Corporations, valued at…….	51,906.45″

Testate proceedings were instituted before the Superior Court of California in Santa Cruz County, in the course of which Miller's will of January 17, 1941 was admitted to probate on May 10, 1946. Said court subsequently issued an order and decree of settlement of final account and final distribution, wherein it found that Miller was a "resident of the County of Santa Cruz, State of California" at the time of his death in 1944. Thereafter, ancilliary proceedings were filed by the executors of the will before the Court of First Instance of Manila, which court by order of November 21, 1946, admitted to probate the will of Miller

as probated in the California court, and also found that Miller was a resident of Santa Cruz, California, at the time of his death. On July 29, 1949, the Bank of America, National Trust and Savings Association of San Francisco, California, co-executor named in Miller's will, filed an estate and inheritance tax return with the Collector, covering only the shares of stock issued by Philippine corporations, reporting a liability of P269.43 for estate taxes and P230.27 for inheritance taxes. After due investigation, the Collector assessed estate and inheritance taxes, which was received by the said executor on April 3, 1950. The estate of Miller protested the assessment, but the Collector maintained his stand and made the assessment of the liability for estate and inheritance taxes, including penalties and other increments at P77,300.92, as of January 16, 1954. This assessment was appealed by De Lara as Ancilliary Administrator before the Board of Tax Appeals, which appeal was later heard and decided by the Court of Tax Appeals.

In determining the "gross estate" of a decedent, under Section 122 in relation to section 88 of our Tax Code, it is first necessary to decide whether the decedent was a resident or a non-resident of the Philippines at the time of his death. The Collector maintains that under the tax laws, residence and domicile have different meanings; that tax laws on estate and inheritance taxes only mention resident and non-resident, and no reference whatsoever is made to domicile except in Section 93 (d) of the Tax Code; that Miller during his long stay in the Philippines had acquired a "residence" in this country, and was a resident thereof at the time of his death, and consequently, his intangible personal properties situated here as well as in the United States were subject to said taxes. The Ancilliary Administrator, however, equally maintains that for estate and inheritance tax purposes, the term "residence" is synonymous with the term domicile.

We agree with the Court of Tax Appeals that at the time that the National Internal Revenue Code was promulgated in 1939, the prevailing construction given by the courts to the term "residence" was synonymous with domicile, and that the two were used interchangeably. Cases were cited in support of this view, particularly that of Velilla *vs.* Posadas, 62 Phil. 624, wherein this Tribunal used the terms "residence" and "domicile" interchangeably and without distinction, the case involving the application of the term residence employed in the inheritance tax law at the time (sections 1536-1548 of the Revised Administrative Code), and that consequently, it will be presumed that in using the term residence or resident in the Tax Code of 1939, the Legislature was giving it the meaning as construed and interpreted by the Court. Moreover, there is reason to believe that the Legislature adopted the American (Federal and State) estate and inheritance tax system (see e.g. Report to the Tax Commission of the Philippines, Vol. II, pages 122-124, cited in I Dalupan, National

Internal Revenue Code Annotated, p. 469-470).

In the United States, for estate tax purposes, a resident is considered one who at the time of his death had his domicile in the United States, and in American jurisprudence, for purposes of estate and inheritance taxation, "residence" is interpreted as synonymous with domicile, and that—

> "The incidence of estate and succession taxes has historically been determined by domicile and situs and not by the fact of actual residence". (Bowring vs. Bowers, (1928) 24 F 2d 918, at 921, 6 AFTR 7498, cert, den (1928) 272 U.S. 608).

We also agree with the Court of Tax Appeals that at the time of his death, Miller had his residence or domicile in Santa Cruz, California. During his long stay in this country, Miller never acquired a house for residential purposes for he stayed at the Manila Hotel and later on at the Army and Navy Club. Except for occasional visits, his wife never stayed in the Philippines. The bulk of his savings and properties were in the United States. To his home in California, he had been sending souvenirs, such as carvings, curios and other similar collections from the Philippines and the Far East. In November, 1940, Miller took out a property insurance policy and indicated therein his address as Santa Cruz, California, this aside from the fact that Miller, as already stated, executed his will in Santa Cruz, California, wherein he stated that he was "of Santa Cruz, California". From the foregoing, it is clear that as a non-resident of the Philippines, the only properties of his estate subject to estate and inheritance taxes are those shares of stock issued by Philippine corporations, valued at P51,906.45. It is true, as stated by the Tax Court, that while it may be the general rule that personal property, like shares of stock in the Philippines, is taxable at the domicile of the owner (Miller) under the doctrine of *mobilia secuuntur persona*, nevertheless, when he during his life time,

> * * * "extended his activities with respect to his intangibles, so as to avail himself of the protection and benefits of the laws of the Philippines, in such a way as to bring his person or property within the reach of the Philippines, the reason for a single place of taxation no longer obtains-protection, benefit, and power over the subject matter are no longer confined to California, but also to the Philippines (Wells Fargo Bank & Union Trust Co. *vs.* Collector (1940), 70 Phil. 325). In the

> instant case, the actual situs of the shares of stock is in the Philippines, the corporation being domiciled herein: and besides, the right to vote the certificates at stockholders' meetings, the right to collect dividends, and the right to dispose of the shares including the transmission and acquisition thereof by succession, all enjoy the protection of the Philippines, so that the right to collect the estate and inheritance taxes cannot be questioned (Wells Fargo Bank & Union Trust Co. *vs*. Collector, *supra*). It is recognized that the state may, consistently with due process, impose a tax upon transfer by death of shares of stock in a domestic corporation owned by a decedent whose domicile was outside of the state (Burnett *vs*. Brooks, 288 U.S. 378; State Commission vs. Aldrich, (1942) 316 U.S. 174, 86 L. Ed. 1358, 62 ALR 1008)." (Brief for the Petitioner, p.79-80).

The Ancilliary Administrator for purposes of exemption invokes the proviso in Section 122 of the Tax Code, which provides as follows:

> * * * "*And Provided, however*, That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that country, or (b) if the laws of the foreign country of which the decedent was resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

The Ancilliary Administrator bases his claim of exemption on (*a*) the exemption of non-residents from the California inheritance taxes with respect to intangibles, and (*b*) the exemption by way of reduction of P4,000 from the estates of non-residents, under the United States Federal Estate Tax Law. Section 6 of the California Inheritance Tax Act of 1935, now reenacted as Section 13851, California Revenue and Taxation Code, reads as follows:

> "Sec. 6. The following exemption from the tax are hereby allowed:

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> "(7) The tax imposed by this act in respect of intangible personal property shall not be payable if decedent is a resident of a State or Territory of the United States or a foreign state or country which at the time of his death imposed a legacy, succession of death tax in respect of intangible personal property within the State or Territory or foreign state or country of residents of the States or Territory or foreign state country, but did not impose a legacy or succession or a death tax or a death tax of any character in respect of intangible personal property within the State or Territory or foreign state or country of residence of the decedent at the time of his death contained a reciprocal provision under which non-residents were exempted from legacy or succession taxes or death taxes of every character in respect of intangible personal property providing the State or Territory or foreign state or country of residence of such non-residents allowed a similar exemption to residents of the State, Territory or foreign state or country of residence of such decedent."

Considering the State of California as a foreign country in relation to section 122 of Our Tax Code we believe and hold, as did the Tax Court, that the Ancilliary Administrator is entitled to exemption from the inheritance tax on the intangible personal property found in the Philippines. Incidentally, this exemption granted to non-residents under the provision of Section 122 of our Tax Code, was to reduce the burden of multiple taxation, which otherwise would subject a decedent's intangible personal property to the inheritance tax, both in his place of residence and domicile and the place where those properties are found. As regards the exemption or reduction of P4,000 based on the reduction under the Federal State Tax Law in the amount of $2,000, we agree with the Tax Court that the amount of $2,000 allowed under the Federal Estate Tax Law is in the nature of deduction and not of an exemption. Besides, as the Tax Court observes—

> * * * "this exemption is allowed on all gross estates of non-residents of the United States, who are not citizens thereof, irrespective of whether there is a corresponding or similar exemption from transfer or death taxes of non-residents of the Philippines, who are citizens of the United States; and thirdly, because this

> exemption is allowed on all gross estates of non-residents irrespective of whether it involves tangible or intangible, real or personal property; so that for these reasons petitioner cannot claim a reciprocity." * * *

Furthermore, in the Philippines, there is already a reduction on the gross estate for purposes of the inheritance or estate tax in the amount of P3,000 under section 85 of the Tax Code, before it was amended, which in part provides as follows:

> "Sec. 85. *Rates of estate tax.*-There shall be levied, assessed, collected, and paid upon the transfer of the net estate of every decedent, whether a resident or non-resident of the Philippines, a tax equal to the sum of the following percentages of the value of the net estate determined as provided in sections 88 and 89:
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> "One per centum of the amount by which the net estate exceeds three thousand pesos and does not exceed ten thousand pesos;" * * *

It will be noticed from the dispositive part of the appealed decision of the Tax Court that the Ancilliary Administrator was ordered to pay the amount of P2,047.22, representing estate taxes due, together with interest and other increments. Said Ancilliary Administrator invokes the provisions of Republic Act No. 1253, which was passed for the benefit of veterans, guerrillas or victims of Japanese atrocities who died during the Japanese occupation. The provisions of this Act could not be invoked during the hearing before the Tax Court for the reason that said Republic Act was approved only on June 10, 1955. We are satisfied that inasmuch as Miller not only suffered deprivation of the war, but was killed by the Japanese military forces, his estate is entitled to the benefits of this Act. Consequently, the interests and other increments provided in the appealed judgment should not be paid by his estate.

With the above modification, the appealed decision of the Court of Tax Appeals is hereby affirmed. We deem it unnecessary to pass upon the other points raised in the appeal. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A. Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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