

**TANG HO, WILLIAM LEE, HENRI LEE, SOFIA LEE TEEHANKEE,
THOMAS LEE, ANTHONY LEE, JULIA LEE KAW, CHARLES LEE,
VALERIANA LEE YU, VICTOR LEE, SILVINO LEE, MARY LEE, JOHN
LEE, AND PET...**

G.R. No. L-5949. November 19, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for the review of the decision of the defunct Board of Tax Appeals holding petitioners Li Seng Giap, et al. liable for gift taxes in accordance with the assessments made by the respondent Collector of Internal Revenue.

Petitioners Li Seng Giap (who died during the pendency of this appeal) and his wife Tang Ho and their thirteen children appear to be the stockholders of two close family corporations named Li Seng Giap & Sons, Inc. and Li Seng Giap & Co. On or about May, 1951, examiners of the Bureau of Internal Revenue, then detailed to the Alias Committee of the Congress of the Philippines, made an examination of the books of the two corporations aforementioned and found that each of Li Seng Giap's 13 children had a total investment therein of approximately P63,195.00, in shares issued to them by their father Li Seng Giap (who was the manager and controlling stockholder of the two corporations) in the years 1940, 1942, 1948, 1949, and 1950 in the following amounts:

Donees

1940

1942

1948

1949

1950

William Lee

7,500

12,500

6,750

27,940

7,500

Henry Lee

7,500

12,500

6,750

27,940

7,500

Sofia Lee

7,500

12,500

16,500

26,690

Thomas Lee

7,500

12,500

7,500

28,190

7,500

Anthony Lee

18,000

7,500

28,190

7,500

Julia Lee.....

20,000

15,000

25,690

2,500

Charles Lee.....

20,000

7,500

28,190

7,500

Valeriana Lee

60,690

2,500

Victor Lee

63,190

Silvino Lee.....

63,190

Mary Lee

63,190

John Lee

63,190

Peter Lee

63,190

The Collector of Internal Revenue regarded these transfers as undeclared gifts made in the respective years, and assessed against Li Seng Giap and his children donor's and donee's taxes in the total amount of P76,985.31, including penalties, surcharges, interests, and compromise fee due to the delayed payment of the taxes. The petitioners paid the sum of P53,434.50, representing the amount of the basic taxes, and put up a surety bond to guarantee payment of the balance demanded. And on June 25, 1951, they requested the Collector of Internal Revenue for a revision of their tax assessments, and submitted donor's and donee's gift tax returns showing that

each child received by way of gift inter vivos, every year from 1939 to 1950 (except in 1947 and 1948) P4,000 in cash; that each of the eight children who married during the period aforesaid, were given an additional P20,000 as dowry or gift propter nuptias; that the unmarried children received roughly equivalent amounts in 1949, also by way of gifts inter vivos, so that the total donations made to each and every child, as of 1950, stood at P63,190. Appellants admit that these gifts were not reported; but contend that as the cash donated came from the conjugal funds, they constituted individual donations by each of the spouses Li Seng Giap and Tang Ho, of one-half of the amount received by the donees in each instance, up to a total of P31,505 to each of the thirteen children from each parent. They further alleged that the children's stockholdings in the two family corporations were purchased by them with savings from the aforesaid cash donations received from their parents.

Claiming the benefit of gift tax exemptions (under sections 110 and 112 of the Internal Revenue Code) at the rate of P2,000 a year for each donation, plus P10,000 for each gift propter nuptias made by either parent, the appellants' aggregate tax liability, according to their returns, would only be P4,599.94 for the year 1949, and P228.28 for the year 1950, or a total of P4,838.22, computed as follows:

DONORS

1939-44

1945-46

1949

1950

TOTAL

Li Seng Giap.....

Exempt

Exempt

P1,110.72

P74.14

P1,184.86

Tan Ho

Exempt

Exempt

1,110.72

74.14

1,184.86

Total

None

None

P2,221.44

P148.28

P2,369.72

William Lee

Exempt

Exempt

P253.80

P30.00

P283.80

Henry Lee

Exempt

Exempt

Exempt

15.00

15.00

Sofia Lee

Exempt

Exempt

P51.90

None

51.90

Thomas Lee

Exempt

Exempt

Exempt

15.00

15.00

Anthony Lee

Exempt

Exempt

Exempt

15.00

15.00

Julia Lee

Exempt

Exempt

26.90

Exempt

26.90

Charles Lee

Exempt

Exempt

Exempt

15.00

15.00

Valeriana Lee

Exempt

Exempt

26.90

Exempt

26.90

Victor Lee

Exempt

Exempt

403.80

None

403.80

Silvino Lee

Exempt

Exempt

403.80

None

403.80

Mary Lee.....

Exempt

Exempt

403.80

None

403.80

John Lee

Exempt

Exempt

403.80

None

403.80

Peter Lee

Exempt

Exempt

403.80

None

403.80

Total

None

None

P2378.50

P90.00

2,468.50

Grand total liability of Donors and Donees.....

P4,599.94

P238.28

P4,838.22

The Collector refused to revise his original assessments; and the petitioners appealed to the then Board of Tax Appeals (created by Executive Order 401-A, in 1951) insisting that the entries in the books of the corporation do not prove donations; that the true amount and date of the donation were those appearing in their tax returns; and

that the donees merely bought stocks in the corporation out of savings made from the money received from their parents. The Board of Tax Appeals upheld the decision of the respondent Collector of Internal Revenue; hence, this petition for review.

The questions in this appeal may be summarized as follows:

- (1) Whether or not the dates and amounts of the donations taxable against petitioners were as found by the Collector of Internal Revenue from the books of the corporations Li Seng Giap & Sons, Inc. and Li Seng Giap & Co., or as set forth in petitioners' gift tax returns;
- (2) Whether or not the donations made by petitioner Li Seng Giap to his children from the conjugal property should be taxed against the husband alone, or against husband and wife; and
- (3) Whether or not petitioners should be allowed the tax deductions claimed by them.

On the first question, which is of fact, the appellants take the preliminary stand that because the Collector failed to specifically deny the allegations of their petition in the Tax Board, he must be deemed to have admitted the annual and proper nuptial donations alleged by them, and that he is estopped from denying their existence. As the proceedings before the Tax Board were administrative in character, not governed by the Rules of Court (see Sec. 10, Executive Order 401-A), and as the Collector actually submitted his own version of the transactions, we do not consider that the Collector's failure to make specific denials should be given the same binding effect as in strict court pleadings.

Going now to the merits of the issue. The appealed findings of the Board of Tax Appeals and of the Collector of Internal Revenue (that the stock transfers from Li Seng Giap to his children were donations) appear supported by the following circumstances:

- (1) That the transferor Li Seng Giap (now deceased) had in fact conveyed shares of stock to his 13 children on the dates and in the amounts shown in the table on page 2 of this decision.
- (2) That none of the transferees appeared to possess adequate independent means to buy the shares, so much so that they claim now to have purchased the shares with the cash donations made to them from time to time.
- (3) That the total of the alleged cash donations to each child is practically identical to the value of the shares supposedly purchased by each donee.
- (4) That there is no evidence other than the belated sworn gift tax returns of the spouses Li Seng Giap and Ang Tang Ho, and their children, appellants herein, to support their contention that the shares were acquired by purchase. No contracts of sale or other documents were presented, nor any witnesses introduced; not even the claimants themselves have testified.
- (5) The claim that the shares were acquired by the children by purchase was first advanced only after the assessment of gift taxes and penalties due thereon (in the sum of P76,995.31) had been made, and after the appellants had paid P53,434.50 on account, and had filed a bond to guarantee the balance.
- (6) That for a parent to donate cash to enable the donee to buy from him shares of equivalent value is, for all intents and purposes, a donation of such shares to the purchaser donee.

We cannot say, under the circumstances, that there is no sufficient evidence on record to support the findings of the Tax Board that the stock transfers above indicated were made by way of donation, as would entitle us to disregard or reverse the Board's findings.

The filing of the gift tax returns only after assessment and part payment of the taxes demanded by the Collector,

and the lack of corroboration of the alleged donations in cash, amply justify the Tax Board's distrust of the veracity of the appellants' belated tax returns. The Internal Revenue Code (C. A. 466 as amended) requires donors and donees to file gift tax returns "on or before the first of March following the close of the calendar year" when the gifts were made (Sec. 115, par. [c]; and besides the return a written notice to the Collector of each donation of P10,000 or more, must be given within thirty days after the donation, Sec. 114). These yearly returns and notices are evidently designed to enable the Collector to verify promptly their truth and correctness, while the gifts are still recent and proof of the circumstances surrounding the making thereof is still fresh and accessible. On their own admission, appellants failed to file for ten successive years, the corresponding returns for the alleged yearly gifts of P4,000 to each child, and likewise failed to give the notices for the P20,000 marriage gifts to each married child. Hence, they are now scarcely in a position to complain if their contentions are not accepted as truthful without satisfactory corroboration. Any other view would leave the collection of taxes at the mercy of explanations concocted ex post facto by evading taxpayers, drafted to suit any facts disclosed upon investigation, and safe from contradiction because the passing years have erased all trace of the truth.

The second and third issues in this appeal revolve around appellants' thesis that inasmuch as the property donated was community property (gananciales), and such property is jointly owned by their parents, the total amount of the gifts made in each year should be divided between the father and the mother, as separate donors, and should be taxed separately to each one of them.

In assessing the worth of this contention, it must be ever borne in mind that appellants have not only failed to prove that the donations were actually made by both spouses, Li Seng Giap and Tang Ho, but that precisely the contrary appears from their own evidence. In the original claim for tax refund, filed with the Collector of Internal Revenue, under date of June 25, 1951 (copied in pages 6 and 7 of the appellants' petition for review addressed to the Board of Tax Appeals), the father, Li Seng Giap, describes himself as "the undersigned donor" (par. 1) and speaks of "cash donations made by the undersigned" (par. 3), without in any way mentioning his wife as a co-participant in the donation. The issue is thus reduced to the following: Is a donation of community property by the father alone equivalent in law to a donation of one-half of its value by the father and one-half by the mother? Appellants submit that all such donations of community property are to be regarded, for tax purposes, as donations by both spouses, for which two separate exemptions may be claimed in each instance, one for each spouse.

This pretension should be viewed in the light of the provisions of the Spanish Civil Code of 1889, which was the governing law in the years herein involved, 1939 to 1950. The determinative rule is that of Arts. 1409 and 1415, reading as follows:

"Art. 1409. The conjugal partnership shall also be chargeable with anything which may have been given or promised by the husband to the children born of the marriage solely in order to obtain employment for them or give them a profession, or by both spouses by common consent, should they not have stipulated that such expenditures should be borne in whole or in part by the separate property of one of them."

"Art. 1415, p. 1.—The husband may dispose of the property of the conjugal partnership for the purposes mentioned in Art. 1409."

In effect, these Articles clearly refute the appellants' theory that because the property donated is community property, the donations should be viewed as made by both spouses. First, because the law clearly differentiates the donations of such property "by the husband" from the "donations by both spouses by common consent" ("por el marido ... o por ambos conyuges de coimin acuerdo," in the Spanish text).

Next, the wording of Arts. 1409 and 1415 indicates that the lawful donations by the husband to the common

children are valid and are chargeable to the community property, irrespective of whether the wife agrees or objects thereto. Obviously, should the wife object to the donation, she can not be regarded as a donor at all.

Even more: Suppose that the husband should make a donation of some community property to a concubine or paramour. Undeniably, the wife cannot be regarded as joining in any such donation. Yet under the old Civil Code, the donation would stand, with the only limitation that the wife should not be prejudiced in the division of the profits after the conjugal partnership affairs are liquidated. So that if the value of the donation should be found to fit within the limits of the husband's ultimate share in the conjugal partnership profits, the donation by the husband would remain unassailable, over and against the nonparticipation of the wife therein. This Court has so ruled in *Baello vs. Villanueva* (54 Phil. 213, 214) :

"According to article 1413 of the Civil Code, any transfer or agreement upon conjugal property made by the husband in contravention of its provisions, shall not prejudice his wife or her heirs. As the conjugal property belongs equally to husband and wife, the donation of this property made by the husband prejudices the wife in so far as it includes a part or the whole of the wife's half, and is to that extent invalid. Hence article 1419, in providing for the liquidation of the conjugal partnership, directs that all illegal donations made by the husband be charged against his estates and deducted from his capital. But it is only then, when the conjugal partnership is in the process of liquidation, that it can be discovered whether or not an illegal donation made by the husband prejudices the wife. And inasmuch as these gifts are only to be held invalid in so far as they prejudice the wife, their nullity cannot be decided until after the liquidation of the conjugal partnership and it is found that they encroach upon the wife's portion."

Appellants herein are therefore in error when they contend that it is enough that the property donated should belong to the conjugal partnership in order that the donation be considered and taxed as a donation of both husband and wife, even if the husband should appear as the sole donor. There is no blinking the fact that, under the old Civil Code, to be a donation by both spouses, taxable to both, the wife must expressly join the husband in making the gift; her participation therein cannot be implied.

It is true, as appellants stress, that in *Gibbs vs. Government of the Philippines*, 59 Phil., 293, this Court ruled that "the wife, upon acquisition of any conjugal property, becomes immediately vested with an interest and title equal to that of the husband"; but this Court was careful to immediately add, "subject to the power of management and disposition which the law vests on the husband." As has been shown, this power of disposition may, within the legal limits, override the objections of the wife and render the donation of the husband fully effective without need of the wife's joining therein. (Civil Code of 1889, Arts 1409, 1415.)

It becomes unnecessary to discuss the nature of a conjugal partnership, there being specific rules on donations of property belonging to it. The consequence of the husband's legal power to donate community property is that, where made by the husband alone, the donation is taxable as his own exclusive act. Hence, only one exemption or deduction can be claimed for every such gift, and not two, as claimed by appellants herein. In thus holding, the Board of Tax Appeals committed no error.

Premises considered, we are of the opinion and so declare:

(a) That the finding of the defunct Board of Tax Appeals to the effect that shares transferred from Li Seng Giap to his children were conveyed to them by way of donation inter vivos is supported by adequate evidence, and therefore cannot be reviewed by this Court (*Comm. of Internal Revenue vs. Court Holding Co.*, L. Ed. 981; *Comm. of Internal Revenue vs. Scottish American Investment Co.*, 89 L. Ed. 113; *Comm. of Internal Revenue vs. Tower*, 90 L. Ed. 670; *Helvering vs. Tax Penn. Oil Co.*, 81 L. Ed. 755).

(b) That under the old Civil Code, a donation by the husband alone does not become, in law a donation by both

spouses merely because it involves property of the conjugal partnership;

(c) That such a donation of property belonging to the conjugal partnership, made during its existence, by the husband alone in favor of the common children, is taxable to him exclusively as sole donor.

Wherefore, the decision appealed from is affirmed with costs to the appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Jugo, Labrador, and Concepcion, JJ., concur.

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