

**MISAEAL P. VERA, AS COMMISSIONER OF INTERNAL REVENUE,
PETITIONER, VS. HON. JUDGE PEDRO C. NAVARRO, IN HIS CAPACITY
AS JUDGE OF THE COURT OF FIRST INSTANCE OF PASIG, RIZAL
(BRANCH...**

G.R. No. L-27745. October 18, 1977

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

This is a petition for certiorari, mandamus, prohibition and injunction filed by the herein petitioner Misael P. Vera, in his capacity as Commissioner of Internal Revenue (hereinafter referred to as "Commissioner"), against the Honorable Judge Pedro C. Navarro, in his capacity as Judge of the Court of First Instance of Pasig, Rizal (hereinafter referred to as "respondent Judge"), on account of three orders dated June 5, 8 and 9, 1967, which the latter issued in Special Proceedings No. 5249 entitled "In the Matter of the Testate Estate of Elsie M. Gaches -- Bienvenido Tan, Executor," which the Commissioner maintains were issued without or in excess of jurisdiction or with grave abuse of discretion.

It appears that one Elsie M. Gaches died on March 9, 1966 without a child. The deceased, however, left a last will and testament in which she made the following relevant disposition of her estate, to wit:

"3. After payment of my just debts and funeral expenses I direct that the balance of my property, both real and personal in the Philippines, be distributed as follows:

"a) to my driver, PACITO TROCIO -- Ten Thousand Pesos (P10,000.00);

"b) to my lavandero, VICENTE JERODIAS -- One Thousand Pesos (P1,000.00);

"c) to my gardener, CRISANTO SALIPOT, JR. -- Five Hundred Pesos (P500.00);

"d) the balance of my estate in the Philippines shall then be divided in half; One-half (1/2) to be given to CAMILO ERIBAL and the other half to MISS MAGDALENA ABANTO;

"e) to MISS CONSUELO L. TAN -- My office table and chair now in the library of my house; and one of the carpets in my house to be selected by her;

"4. All my property in the United States consisting of furs, jewelry and stocks I leave to my sister BESS LAUER, widow, and at present a resident of San Francisco, California."

On March 11, 1966, the herein respondent Judge Bienvenido Tan, Sr. (hereinafter referred to as "Judge Tan") filed with the Court of First Instance of Pasig, Rizal a petition for the probate of the aforesaid will. On April 21, Judge Tan was appointed as executor of the testate estate of Elsie M. Gaches without a bond.

In a letter, dated June 3, 1966, Judge Tan informed the Commissioner that the testate estate was worth about ten million (P10 million) pesos and that the estate and inheritance taxes due thereon were about P9.5 million.

On June 11, 1966, the herein respondent Atty. Delia P. Medina (hereinafter referred to as "Atty. Medina"), representing herself as the attorney-in-fact of the herein respondents Camilo Eribal and Magdalena Abanto, filed with the probate court a motion praying that the executor of the estate be authorized to give a monthly allowance to the voluntary heirs Abanto and Eribal from the month of May, 1966 until "the receipt of the recommended advance of inheritance of P100,000.00 each recommended by the Executor in his motion of June 6, 1966 and/or final distribution has been made to said heirs of their respective shares in the estate." This prayer was granted by the probate court in an order dated June 25, 1966 (subsequently clarified in an order dated August 11, 1966).

On July 9, 1966, the Commissioner filed with the probate court a proof of claim for the sum "of P192,364.00 as income tax for 1965 and 1% monthly interest due from the deceased Elsie M. Gaches."

On July 19, 1966, Judge Tan filed with the probate court a motion praying for authority to make the following additional advance payments -- (1) To Abanto and Eribal, P150,000.00; (2) To Bess Lauer, \$75,000.00; (3) To Judge Tan as advance executor's fees, P50,000.00; and (4) To Attys. Medina and Bienvenido Tan, Jr., P75,000.00 each as advance attorney's fees. In this motion, Judge Tan claimed that the estate was very liquid and that "any claims whatsoever against the Estate and the Government shall be amply protected since over P7,000,000.00 worth of shares shall still remain to answer therefor (Sec. 1, Rule 90, Rules of Court)." The respondent Judge granted Judge Tan's prayer in an order dated July 23, 1966.

In a letter, dated November 4, 1966, the Commissioner advised Judge Tan to pay to the Bureau of Internal Revenue the sum of P1,398,436.30 as estate tax and P7,140,060.69 as inheritance tax, the investigation of his office having allegedly disclosed that the net value of the testate estate was P10,212,899.20.[1] Judge Tan disputed the correctness of the assessment in a letter sent to the Commissioner.

On November 26, 1966, the Commissioner filed with the probate court a proof of claim for the death taxes stated in the assessment notice sent to Judge Tan. On the same date, the Commissioner also submitted to the probate court for its resolution a motion praying: (1) for the revocation of the court's orders dated June 25, July 6, July 23 and August 11, 1966 and all other orders granting the payment of advance inheritance, allowances and fees; (2) for the appointment of a co-administrator of the estate to represent the Government; and (3) for the non-disbursement of funds of the estate without prior notice to the Commissioner. Although the records do not disclose that the probate court specifically disposed of this motion, the said court, from its subsequent actuations, may be considered to have impliedly denied the Commissioner's prayers for the appointment of a co-administrator and the non-payment of advance allowances and fees.

On January 19, 1967, the probate court authorized the conversion of the amount of P75,000.00 previously ruled to be paid to Atty. Medina as advance attorney's fees in its order of July 23, 1966 into allowances for Eribal and Abanto.

On April 14, 1967, with the probate court's approval, Judge Tan paid to the Bureau of Internal Revenue the amount of P185,286.93 as estate tax and, on April 24, 1967, the amount of P1,055,776.00 as inheritance tax. These payments were based on a tax return filed by Atty. Medina on March 8, 1967 with the Bureau of Internal Revenue.

On June 3, 1967, Judge Tan submitted to the probate court for approval a final accounting and project of partition of the testate estate. Acting thereon, the respondent Judge issued an order, dated June 5, 1967, for the partial distribution of the estate as follows:

"Submitted for resolution of this Court is the Amended Final Accounting and Project of Partition dated May 27, 1967, presented by the executor.

"Atty. Paredes manifested that he has no objection to the approval thereof provided that certain items enumerated therein be corrected or modified, as follows: the amount of shares in the Lepanto Consolidated Mining Co. should be 6,105,429 instead of 6,015,429, as reported; the amount of P11,537.60 reported as expenses made on January 30, 1967 should be cancelled or excluded ... and that the item appearing as expenses made on May 10, 1967 payable to Apolonio Villegas should be only P114,000.00 instead of P135,000.00 ... which manifestations were also adopted by Atty. Virgilio Saldajeno of the Bureau of Internal Revenue, and in addition, he objected in principle to the Executor Fees and to the Attorney's Fees as excessive but left the matter to the discretion of the Court.

"Considering, further, the manifestations of Atty. Saldajeno that he has no objection to the partial distribution of the estate as long as it can be shown that the rights and interests of the government can be fully protected, and it appearing from the subsequent manifestation of Atty. Paredes, counsel for the heirs, that sufficient assets with a current market value of at least P8,000,000.00 will be left to the estate even if a partial distribution in the amount of P3,000,000.00 is made, for which reason the rights of the government to collect whatever deficiency taxes, if any, may be assessed in the future the heirs have already paid in good faith even ahead of its due dates transfer taxes in the total amount of P1,241,062.93, the Amended Final Accounting and Project of Partition dated May 27, 1967 may be approved, subject to the following terms and conditions:

"1. The Executor is hereby discharged from any and all responsibilities that he has pertaining to the estate;

"2. The voluntary heirs Magdalena Abanto and Camilo Eribal shall be responsible for all taxes of any nature whatsoever which may be due the government arising out of the transaction of the properties of the estate, and the government can, if it so desires, register its tax lien on the remaining assets after a partial distribution of the estate;

"3. Bess Lauer, sister and heir of the deceased shall be fully responsible for all United States taxes pertaining to her share in the estate.

"WHEREFORE, subject to the above terms and conditions, Amended Final Accounting and Project of Partition dated May 27, 1967 submitted by the Executor, as modified in the manifestation of Attys. Paredes and Saldajeno, is hereby approved.

"1. To Pacita Trocio ---

P 10,000.00

"2. To Vicente Jerodias -

1,000.00

"3. To Crisanto Salipot, Jr. --

500.00

"4. To Magdalena Abanto

and Camilo Eribal,

share and share

alike, thru their

attorney-in-fact

Delia P. Medina,

cash in the amount

of -----

2,330,000.00

"5. To Judge Bienvenido

A. Tan, Sr. -----

120,000.00

"6. To Atty. Bienvenido

A. Tan, Jr. -----

150,000.00

"The aforesaid amount is hereby ordered to be taken from the funds of the estate deposited with the Philippine National Bank.

"As to the other properties remaining after this partial distribution, consist-ing of the following:

"A. BANK DEPOSITS:

"1. Philippine Banking

Corporation -----

559,147.41

"2. Philippine National

Bank -----

238,500.00

"3. Overseas Bank of

Manila -----

700,000.00

"4. Banco Filipino Savings

& Mortgage Bank -----

581.00

"5. Refund from expenses -

32,537.60

"B. HOUSE AND LOT LOCATED AT NO. 50 TAMARIND ROAD, FORBES PARK, MAKATI, RIZAL;

"C. SHARES OF STOCK IN THE FOLLOWING:

"1. Lepanto Consoli?

dated Mining Co. -----

1,105,429

shares

"2. San Miguel Corp. -----

16,692

shares (common)

"3. San Miguel Corp. -----

500

shares (preferred)

"4. Central Azucarera de

Pilar -----

17,755

shares

"5. Manufacturas Textiles

Industriales de

Filipinas, Inc. -----

10,368

shares

"6. Consolidated Mines,
Inc. -----

85,858

shares

"7. Mayon Metal
Corporation -----

5,000

shares

"8. Soliangco & Co., Inc. ---

25

shares

"9. San Juan Heights -----

5

shares

"10. Metropolitan Insurance
Co. -----

443

shares

"11. Realty Investment
Inc. -----

652

shares

"The same shall be turned over and delivered to the attorney-in-fact of the voluntary heirs, Atty. Delia P. Medina, to be held by her to answer for whatever deficiency estate and inheritance taxes may still be due from the estate and the heirs in favor of the government.

"SO ORDERED.

"Pasig, Rizal, June 5, 1967.

"(Sgd.) PEDRO C. NAVARRO

Judge"

On the same day (that is, June 5, 1967), the Commissioner, having been informed in advance about the foregoing order by certain undisclosed sources, issued warrants of garnishment against the funds of the estate deposited with the Philippine National Bank, the Overseas Bank of Manila, and the Philip-pine Banking Corporation, on the strength of sections 315-330 of the National Internal Revenue Code.

On June 7, 1967, Atty. Medina filed in the probate court a petition for the discharge of the writs of garnishment issued by the Commissioner. On June 8, 1967, the respondent Judge issued an order lifting the writs in question.

On June 9, 1967, the Philippine National Bank filed a motion in the probate court praying that it be authorized to deposit with the said court the money in its hands in view of the conflicting claims of the parties over the funds in dispute. On the same day (that is, June 9, 1967), the respondent Judge issued an order denying the said motion and threatening the bank officials who refuse to implement its orders of June 5 and 8, 1967 with contempt. Atty. Medina was consequently able to withdraw the sum of P2,330,000.00 from the PNB. A copy of this order of June 9, 1967 as well as the orders of June 5 and 8, 1967 were received by the Commissioner on June 13, 1967.

On June 16, 1967, the Commissioner filed a motion for reconsideration (supplemented on June 22, 1967) of the orders of the probate court dated June 5, 8 and 9, 1967. On July 6, 1967, however, the Commissioner, on the belief that the probate court's resolution on its motion was not legally necessary, filed with this Court the instant petition for certiorari, mandamus, prohibition and injunction against the aforesaid orders of the respondent Judge. The petition at bar is based on the following propositions:

- (1) That the distributive shares of an heir can only be paid after full payment of the death taxes. As this case subsequently progressed before this Court, the position of the Commissioner would seem to be that the deficiency income taxes due and payable during the lifetime of the deceased should also be paid first.
- (2) While partial distribution of the estate of a deceased may be allowed, a bond must be filed by the distributees to secure the payment of the transfer taxes. Subsequently, however, the Commissioner changed his position, stating that such distribution may be made so long as the payment of the taxes due the government is "provided for," citing section 1, Rule 90 of the Rules of Court in relation to sections 95(c), 97, 103, 106 and 107(c) of the National Internal Revenue Code.
- (3) That the executor of an estate cannot be discharged without the payment of estate and inheritance taxes. The Commissioner later modified his stand on this proposition in line with the view that it is sufficient if the payment of the said taxes is "provided for."
- (4) That the delivery of properties of the estate to a stranger [that is, to the voluntary heirs herein] is not sanctioned by law. Later, as the case at bar progressed, and in view of a compromise offer made by the respondents Abanto and Eribal to pay the taxes being claimed by the Bureau of Internal Revenue, the Commissioner advanced the view that this proposition is already moot and academic.

(5) That the respondent Judge has no authority to quash or dissolve writs of garnishment issued by the Commissioner. Subsequently, however, the Commissioner reversed his stand on this point and stated that the probate court may so dissolve said writs of garnishment as the assets in question were then in custodia legis, citing *Collector vs. Vda. de Codiñera*, L-9675, Sept. 28, 1957.

Taking stock of the Commissioner's complaint that the disputed orders were issued without or in excess of jurisdiction or with grave abuse of discretion, the herein respondents Atty. Medina and Judge Tan put up a number of factual and legal arguments, the material ones of which may be stated, in sum, as follows:

- (1) The Commissioner's notice of assessment, dated November 10, 1966, was based on wrong premises and valuation of the assets in question; in fact, the Commissioner had agreed during the pre-trial conference in the probate court to reconsider certain items therein;
- (2) The allowance granted to Abanto and Eribal were taken solely from the income of the estate, a fact admitted by Atty. Saldajeno of the Bureau of Internal Revenues it is claimed that in 1965 the estate had an income of P411,000.00 and over P750,000.00 in 1966, which could more than cover the questioned allowances;
- (3) Eribal and Abanto are willing and bound themselves to assume the responsibility for the payment of the taxes due against the estate except for the properties located in the United States which should be charged against Bess Lauer;
- (4) The Commissioner does not object to the partition of the estate in question provided that enough assets are left to pay the taxes against the estate;
- (5) The estate has sufficient assets with which to pay the taxes being claimed by the government;
- (6) There was nothing unusual in the institution of Abanto and Eribal as residual heirs of the deceased; Abanto was the testator's special nurse, companion, secretary and cook from 1945 until Elsie M. Gaches' death in March, 1966; Eribal, on the other hand, was the deceased's cook, caretaker, companion and driver since 1929;
- (7) The grant of allowances was never contested below and cannot now be raised in the instant proceedings;
- (8) Adequate safeguards were specified in the probate court's order of June 5, 1967 to cover the tax claims; and
- (9) There had been no full distribution of the estate in question without payment of the transfer taxes since the said taxes are being disputed by the heirs.

In a reply filed on September 7, 1967, the Commissioner stated that he had issued a revised assessment dated August 24, 1967 and that, further-more, there were due from the estate deficiency income taxes for the years 1961 to 1965 in the total sum of P1,182,296.16, for which reason the estate should not be ordered distributed until the same is fully satisfied. In a rejoinder, Judge Tan claimed that the August 24, 1967 assessment could still be reduced considerably. The contents of the mentioned revised assessment which was addressed to Atty. Medina are, inter alia, as follows:

"Madam:

"x x x I have the honor to advise that in a reinvestigation conducted by this Office, for transfer tax purposes, it was ascertained that she left real and personal properties in the sums of P377,912.50 and P8,963,822.31 respectively, or a gross estate of P9,341,734.81. The amounts of P193,392.38, P462,022.83 and P1,226,783.53, representing accrued household and medical expenses, funeral expenses and income taxes (1961-1965) payable, respectively, or a total of P1,882,198.74, were allowed as deductions resulting in a net taxable estate in the sum of P7,459,536.07 subject to estate and inheritance taxes.

"In view thereof, there are hereby further assessed the sums of P891,673.68 and P4,353,972.87 as deficiency estate and inheritance taxes and penalty still due on the transmission of the decedent's estate, after crediting the sums of P185,286.73 and P1,055,776.00, which were paid on April 4, 1967 and April 24, 1967, ... details of which are shown hereunder:

"Estate tax -----

P1,076,960.41

"Less : Amount Paid -----

185,286.73

"Total -----

P 891,673.68

"Inheritance tax -----

P5,409,448.87

"Comp. No CPA Certificate ----

300.00

"Total -----

P5,409,748.87

"Less: Amount Paid -----

1,055,776.00

"Deficiency Inheritance Tax & Penalty -----

P4,35,973.87

"x x x"

The deadlines for the payment of the aforementioned transfer taxes without penalty were December 9, 1967 for the estate tax and March 9, 1968 for the inheritance tax.

On September 9, 1967, Atty. Medina filed with this Court a pleading captioned "Compliance and Offer of Compromise to Terminate this Case" in which she stated the following:

"x x x x

"4. Although respondents voluntarily heirs intend to assail and question the correctness of said assessment only insofar as the same has disallowed the deductions claimed by them for personal services rendered by various persons in the total sum of P366,800.00, foregoing thereby other possible objections to the other items just so this case can be earlier disposed of, said respondents, nevertheless, are willing to pay even before these due

dates the entire amount specified in said assessment, but under protest insofar as the oft-cited disallowance is concerned, in order to already terminate and dispose of this case before this Honorable Court."

To pay the taxes in question, Atty. Medina prayed in her offer of compromise that she and Abanto and Eribal be authorized to make use of the funds of the estate on deposit with the Philippine National Bank (P238,500.00), the Philippine Banking Corporation (P559,147.41), the Banco Filipino Savings and Mortgage Bank (P581.00), and the Overseas Bank of Manila (P700,000.00), and to gradually dispose of and sell the shares of stock representing investments in several corporations of the estate with an estimated market value of P2,154,026.36. Also included among the assets for which authority to sell was being procured in the said offer of compromise were 2,442,000 Lepanto Consolidated Mining Co. shares which Abanto and Eribal deposited with the probate court after this Court issued a preliminary injunction in the case at bar on July 10, 1967 ordering, among others, Atty. Medina, Abanto and Eribal to restore to the court a quo the amount of P2,330,000.00 withdrawn from the Philippine National Bank pursuant to the questioned orders of the probate court, and every other money or property received by them by virtue of said questioned orders. The mentioned Lepanto shares had then an estimated market value of P2,588,520.00. It should bear mention, at this point, that the money withdrawn from the Philippine National Bank was not returned by Atty. Medina, Abanto or Eribal to the probate court, these respondents having prayed this Court that the deposit of the mentioned stocks be considered as full compliance by them with the writ of preliminary injunction issued by this Court.

On September 19, 1967, this Court issued a resolution requiring the Commissioner to submit a memorandum on how he arrived at his original assessment of more than P8.53 million and the revised assessment of only about P6.48 million, showing a reduced difference of more than P2 million. The Commissioner submitted to this Court the required memorandum on May 25, 1968, the important items and figures described in which may be summed up comparatively as follows:

ESTATE OF ELSIE M. GACHES

ASSETS

ORIGINAL ASSESSMENT

REVISED ASSESSMENT

Cash in bank-Philippine

Foreign (US\$=P3.95)

P 1,172,635.62

559,335.00

P1,172,635.62

559,335.00

Cars –

Lincoln -- P18,000.00 Volkswagen 7,000.00 (Vauxhall)

25,000.00

12,000.00

Furnitures

30,000.00

30,000.00

Shares of stock

7,923,576.23

7,189,851.69

Forbes Park lot -

(at P144.73/sq.m.)

(at P97.50/sq.m.)

383,202.35

258,862.50

House --- P111,850.00 Swimming Pool - 5,000.00 Fence - - - - - 2,200.00

119,050.00

119,050.00

TOTAL ASSETS

P10,212,899.20

P9,341,734.81

LIABILITIES AND DEDUCTIONS

Estimated Income Tax

Payable (1965)

(1961-1965)

P 192,364.00

P1,882,783.53

Accrued medical expenses

13,480.00)

Funeral expenses

73,320.00)

193,392.38

Judicial expenses

331,026.40

462,022.83

TOTAL LIABS. & DEDUCTIONS

P 610,190.60

P1,882,198.74

TRANSFER TAXES PAYABLE

Gross Estate

P10,212,899.20

P9,341,734.81

Less: Liabs. & Deductions

610,190.60

1,882,198.74

Net Taxable Estate

P 9,602,708.60

P7,459,536.07

Less: Estate Tax Due

P 1,398,436.30

P1,076,960.41

Estate Subj. to Inh. Tax

P 8,204,272.30

P6,382,575.66

Distribution of

Hereditary Estate

C. Salipot, Jr.

P 500.00

P 500.00

V. Jerodias

1,000.00

1,000.00

P. Trocio

10,000.00

10,000.00

Bess Laucer

672,305.00

672,305.00

M. Abanto

3,760,233.65

2,849,385.33

C. Eribal

3,760,233.65

2,849,385.33

Inheritance Tax Due

C. Salipot, Jr.

P 10.00

P 10.00

V. Jerodias

20.00

20.00

P. Trocio

600.00

600.00

Bess Laucer

192,186.75

192,186.75

M. Abanto

3,473,621.97

2,608,316.06

C. Eribal

3,473,621.97

2,608,316.06

Total Inheritance

Tax Due

P7,140,060.69

P5,409,448.87

Add: Estate Tax Due

P1,398,436.30

P1,076,960.41

TOTAL TRANSFER TAXES DUE - - - - -

P8,538,496.99

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P6,486,409.28

On November 17, 1967, this Court authorized the herein respondents Abanto, Eribal and Atty. Medina to withdraw funds of the estate deposited with the Philip-pine Banking Corporation (P191,673.68) and the Overseas Bank of Manila (P700,000.00) in the form of cashier's checks payable to the Commissioner for the payment of the estate tax still unpaid under the terms of the revised assessment.

On November 23, 1967, the Solicitor General filed with this Court a manifestation expressing his conformity, in behalf of the Commissioner, to the offer of compromise dated September 9, 1967 made by Atty. Medina, subject to certain conditions, such as, that the cash in the banks of the estate as well as the proceeds to be realized from the sale of the shares of stock should be turned over to the Commissioner for the payment of the taxes due against the estate and the heirs thereof. This manifestation was first opposed by the Acting Commissioner of Internal Revenue on the ground that the Commissioner (who was then abroad) had actually requested the Solicitor General not to agree to the mentioned offer of compromise; however, the Solicitor General subsequently said that the Commissioner's conformity was given to him orally.

On December 5, 1967, Atty. Medina filed with this Court a petition to declare the Overseas Bank of Manila in contempt for allowing the renewal, with-out court authority, of the time deposit of P700,000.00 with the said bank for another year. In a supplemental motion filed on December 8, 1967, Atty. Medina also prayed that the said bank and those responsible for extending the maturity date of said time deposit be held liable for the payment of whatever surcharges, interest and penalties may be imposed as a consequence of the late payment of the balance of the estate tax assessed against the estate. It appears that the time deposit in question was held by the said bank under two certificates, one for P100,000.00 to mature on May 12, 1967, and the other, for P600,000.00 to mature on June 16, 1967. Judge Tan, however, extended the maturity date of said time deposits to May 12, 1968. The certificates of time deposit covering the said funds had been endorsed in favor of the Commis-sioner in payment of the unpaid balance of the estate which then (December 7, 1967) amounted to P700,000.00. The Commissioner, however, informed the respondents Eribal and Abanto through their counsel that his Office -?

"x x x regrets that the same cannot be accepted as payment of the defi-ciency estate tax in this case since they cannot, at present or on or before December 9, 1967, be con-verted into cash. However, we are holding said certificates of time deposit for possible application in payment of the unpaid balance of the deficiency estate tax in this case as soon as said certification can be the balance of the deficiency estate tax in this case is not paid on or before December 9, 1967, the same shall be subject to the interest on deficiency, 5% sur-charge and 1% monthly interest for delinquency."

According to Judge Tan, he caused the extension of the maturity date of the said deposit but that in doing so he acted in good faith in that the testate estate then had ample funds and assets and the said time deposit earned a higher interest than a savings deposit; that he needed no specific court authority for the purpose; and that he had a gentleman's agree-ment with the officials of the bank that said deposit could be withdrawn in advance, such being the custom in banking circles. The Overseas Bank of Manila, on the other hand, in answer to Atty. Medina's mentioned petition, claimed that the deposit in question was renewed before the bank received any letter demanding its release. In view of this impasse and the fast approaching deadline for the payment of the estate tax, Atty. Medina requested the Commissioner to credit P700,000.00 to the amount previously paid as inheritance tax; but, apparently, this request was not honored by the Commissioner.

On January 26, 1968, Atty. Medina filed with this Court a manifestation in which she alleged that even as the proposed joint manifestation between the parties which was supposed to describe the matters agreed upon

between them and the Commissioner during a conference hearing held on January 24, 1968 had not yet been shown to her, she already wished to express her principals' conformity to pay, but under protest, the deficiency estate tax of P700,000.00 plus sur-charges, interest and penalties due thereon and the inheritance tax in the amount of P4,161,986.12 appearing, according to Atty. Medina, in the mentioned assessment notice dated August 24, 1967; that she was likewise agreeable to pay, under protest however, the income taxes for 1961 to 1965 assessed against the estate in the demand letter of the Com-missioner dated August 29, 1967 in the amount of P1,175,974.51 plus whatever interest, surcharges and penalties were due thereon; and that she was also agreeable to being authorized to sell such properties of the estate as may be necessary for the mentioned purposes.

On the following day, however, that is, January 27, 1968, the herein respondents Eribal, Abanto and Atty. Medina, on the one hand, and the Commissioner and the Solicitor General, on the other, filed with this Court a joint manifestation which, inter alia, reads as follows:

"1. That the respondent tax-payers will pay the estate, inheritance and deficiency income taxes covered by existing assessments, which are due and collectible from the estate of Elsie M. Gaches, including the delinquency penalties thereon, but without prejudice to any right of the taxpayer to contest or protest the said assess-ments at the proper time and in the proper court;

"2. That the respondents Delia P. Medina, Magdalena Abanto and Camilo Eribal shall submit to this Honorable Court an inventory of all the properties and assets of the estate ...;

"3. That in order to generate the necessary funds for the purpose of paying the said taxes and delinquency penalties, so much of the assets of the estate ... shall be sold ...;

"4. That respondent Delia P. Medina, ... and Mr. Rodolfo U. Serrano, Supervising Revenue Examiner of the Bureau of Internal Revenue ... are hereby proposed to be constituted as the authorized agents of the parties herein to effect the sale ...;

"5. That the said agents shall be directed to sell the assets of the estate ...;

"6. That all negotiations and transactions for the sale of the assets of the estate shall be made jointly by the authorized agents ...;

"7. That no disposition of any property or assets of the estate shall be effected except for the foregoing purpose;

"8. That this case shall not be terminated until ... the above-mentioned ... taxes and delinquency penalties are fully paid and liquidated;

"9. That the parties pray for the approval of the foregoing propositions"

On February 6, 1968, this Court, acting on the above-mentioned manifestation of Atty. Medina and the joint manifestation of the parties, issued a reso-lution authorizing Atty. Medina to pay, albeit, under protest, the transfer and income taxes collectible from the estate, including the accompanying delin-quency penalties. Atty. Medina was given the necessary authority to collect and receive all funds payable to the estate in question and to sell such assets thereof as may be necessary.

On February 10, 1968, a motion to declare in contempt the Lepanto Consolidated Mining Co. was filed by Atty. Medina on the ground that the said corporation refused to turn over to her dividends payable to the testate estate unless the Commissioner first lifted his garnishment order on said dividends.

On February 16, 1968, this Court issued a resolution suspending the writs of preliminary injunction issued by this Court on July 10 and 17, 1967 and all warrants of garnishment issued by the Commissioner relative to the estate

of Elsie M. Gaches, said suspension to be effective until such time that Atty. Medina, Eribal and Abanto shall have fully paid the transfer and income taxes, including the penalties thereon, covered by existing assessments. Atty. Medina thereafter submitted to this Court performance reports on her activities relative to the authority given her.

On March 9, 1968, Atty. Medina filed with this Court a manifestation stating that she received a demand letter dated March 7, 1968 from the Commissioner for the payment of the following: (1) P756,000.00 as estate tax, including penalties; (2) P192,186.75 as inheritance tax corresponding to the share of Bess Lauer; and (3) P451,435.91 as balance of the income tax for the years 1961 to 1965. Atty. Medina claimed the said demands to be erroneous for the following reasons: (1) as to the estate tax, the time deposit in the Overseas Bank of Manila of P700,000.00 plus interest earned of P60,000.00 as of March 9, 1968 would more than cover the said tax and the certificates of time deposits were already endorsed to the Commissioner on December 6, 1967; (2) as to the inheritance tax, she (that is, her principals Abanto and Eribal) was not responsible therefor as the resolution of this Court dated February 6, 1968 required her "to pay only the estate, inheritance and income taxes, under protest, covered by existing assessments, against the Estate, and against the heirs Magdalena Abanto and Camilo Eribal;" in a supplemental motion, Atty. Medina further argued that Bess Lauer alone was solely responsible for the payment of the inheritance tax on her share and not the decedent's estate in the Philippines, and that the properties of the testate estate in the United States of America which consisted of shares of stock and deposits in banks, being personal properties, were to be excluded from the computation of the gross estate of the deceased in the Philippines and the computation of the Philippine estate and inheritance taxes because, under Philippine law, the situs of those properties is the place where they are located, citing Article 16 of the new Civil Code which, she argued, abandoned the doctrine of *mobilia sequuntur personam* embodied in Article 10 of the old Civil Code; and (3) as to the deficiency income tax for 1961-1965, she had paid the same in the total amount of P1,182,296.16 as of March 9, 1968, which was the amount stated in the assessment letter of the Commissioner dated August 9, 1967. According to Atty. Medina, the payment of those taxes was made in the following manner: on February 27, 1968, she paid a total of P838,518.62 as follows: the income tax proper (P715,619.46) in full; interest (P106,855.29) in full; compromise penalty (P5,000.00) in full; and surcharges P11,052.07) in part only; and, on March 8, 1968, the amount of P343,773.54 as payment of the remaining surcharges. Consequently, she argued that the surcharges and interest, if any were still due, could legally accrue only from September 29, 1967 up to February 27, 1968 and only on the tax proper.

On April 16, 1968, a counter-manifestation was filed with this Court by the Commissioner to the above-mentioned manifestation. According to the Commissioner, under existing assessments (that is, under the letter of demand of August 24 and 29, 1967), the estate, inheritance and deficiency income (1961-1965) taxes due and collectible from the testate estate as of February 6, 1968 were as follows:

"Estate tax (Balance - P 700,000.00 (x)
 Inheritance tax 4,353,972.87 (xx)
 Total Estate and
 Inheritance taxes P5,053,972.87
 Deficiency income
 taxes for 1961 to - P1,175,974.51 (xxx)
 1965
 Delinquency penalties

for late filing of
income tax return
and late payment of
income tax for 1965
per return filed - 6,321.65 (xxxx)
Total deficiency
income taxes for
1961 to 1965 and
the delinquency
penalties of income
tax for 1965 per
return P1,182,296.16
GRAND TOTAL. P6,236,269.03

"(x) plus 5% surcharge and 1% monthly interest thereon from December 9, 1967 until full payment thereof;
(xx) plus 5% surcharge and 1% monthly interest thereon, if the same is not paid in full on or before March 9,
1968; (xxx) plus 5% surcharge and 1% monthly interest thereon from August 29, 1967 until full payment
thereof; and (xxxx) plus additional 1% monthly interest from September 29, 1967 until full payment thereof."

Further, the Commissioner alleged that after taking into consideration the payments made by Atty. Medina, the balances as of March 9, 1968 of the death and income taxes still collectible were as follows:

"Estate Tax

Balance of the estate tax - P 700,000.00
5% surcharge - 35,000.00
1% monthly interest from
12/9/67 to 3/9/68 - 21,000.00
Total P 756,000.00
plus additional 1% monthly interest
from March 9, 1968 until full
payment thereof.

"Inheritance Tax

Inheritance tax due and
collectible per letter - P4,353,972.87
of demand dated
August 24, 1967

(Annex "A")

Less: Payments of inheritance

tax on March 1 and

March 6, 1968 per

O.R. 2519938 and 2520026,

respectively - 4,161,986.12

Inheritance tax still due

and collectible. P 191,986.75

plus 5% surcharge and 1%

monthly interest thereon

from March 8, 1968 until

full payment.

"Deficiency Income Taxes

Deficiency income taxes

from 1961 to 1965 per

letter of demand dated

August 29, 1967 plus 5%

surcharge and 1%

monthly interest up to

March 8, 1968 - P 1,289,818.17

Less: Payments made on

February 27, 1968 and

March 8, 1968 under

O.R. 207001 and 207002 - P 1,182,296.16

Deficiency income taxes

still due and collectible . . P 107,522.01

plus additional 1% monthly

interest thereon from

March 8, 1968 until full

payment."

The Commissioner also explained that the income taxes paid by Atty. Medina in the total amount of

P1,182,296.16 "included only the 1/2% monthly interest on deficiency with respect to the deficiency income taxes for 1961 to 1965 and the 1% monthly interest for delinquency up to September 29, 1967 with respect to the income tax for 1965 which was paid per return, but did not include the 5% surcharge and 1% monthly interest for delinquency from August 29, 1967 until full payment with respect to the income tax for the 1965 return." The Commissioner consequently prayed that Atty. Medina be ordered to pay:

"(1) The amount of P756,000.00 as balance of the estate tax, 5% surcharge and 1% monthly interest from December 9, 1967 to March 9, 1968, plus additional 1% monthly interest from March 9, 1968 until full payment;

"(2) The amount of P191,986.75 as balance of the inheritance tax, plus 5% surcharge and 1% monthly interest thereon from March 9, 1968 until full payment; and

"(3) The amount of P107,522.01 as balance of the deficiency income taxes, 5% surcharge and 1% monthly interest for delinquency up to March 8, 1968, plus additional 1% monthly interest thereon from March 8, 1968 until full payment"

On August 23, 1968, Atty. Medina filed a manifestation with this Court adverting to the re-fusal of the Overseas Bank of Manila to permit the withdrawal of the time deposit of the testate estate in the said bank in spite of the fact that the extended maturity date of said deposit had already expired. Atty. Medina prayed that the bank officials as well as those who made possible the deposit of the funds of the estate of Elsie M. Gaches with the said bank be declared in contempt. On September 18, 1968, the Central Bank of the Philippines filed with this Court a comment on the urgent manifestation of Atty. Medina concerning the deposit in question. The Central Bank, which according to the Overseas Bank of Manila had restrained it from paying its time deposits to the bank's depositors, averred that this Court's resolution of November 17, 1967 merely authorized Atty. Medina to withdraw the deposit from the said bank and did not order the bank to pay the time deposit in question. Moreover, according to the Central Bank, the non-payment of the said deposit was not wilful as the Overseas Bank of Manila was in a state of insolvency. A comment was filed on October 11, 1968 by the Overseas Bank of Manila stating that the majority stockholders of the bank filed a petition against the Central Bank for certiorari, prohibition and mandamus in this Court in L-29352 entitled "Emerito M. Ramos, et al. vs. Central Bank;"[2] that the time deposit in question was an unrecorded transaction; and that the Central Bank prohibited the bank to do business due to its distressed financial condition, for which reason it could not give preference to the payment of the said deposit as it might prejudice other creditors of the bank.

On November 11, 1968, Atty. Medina filed with this Court a motion reiterating a previous one to allow the payment of the amount of P200,000.00 to Atty. Manuel M. Paredes whom she and the other respondent herein -- Abanto and Eribal -- hired as counsel in connection with the settlement proceedings of Elsie M. Gaches' estate. On March 29, 1969, pursuant to a resolution of this Court, Atty. Paredes submitted a memorandum on the nature and extent of the legal services he had rendered to the herein respondents Atty. Medina, Eribal and Abanto.

On June 26, 1971, Abanto and Eribal jointly wrote the Chief Justice, expressing willingness and agreement to pay the amount due the government as taxes against the estate and the heirs thereof. However, the two respondents herein subsequently retracted their statement in the said letter, claim-ing they signed and sent the same without knowing and understanding its effect and consequences.

A perusal in depth of the facts of the instant case discloses quite plainly that the respondent Judge committed a grave abuse of discretion amounting to lack of jurisdiction in issuing its orders of June 5, 8 and 9, 1967. Section 103 of the National Internal Revenue Code (hereinafter referred to as "Tax Code") unequivocally provides that "No judge shall authorize the executor or judicial administrator to deliver a distributive share to any party

interested in the estate unless it shall appear that the estate tax has been paid."[3] The aforesaid orders of the respondent Judge are clearly in diametric opposition to the mentioned Section 103 of the Tax Code and, consequently, the same cannot merit approval of this Court.

While this Court thus holds that the questioned orders are not in accordance with statutory requirements, the fundamental question raised herein regarding the objectionable character of the probate court's mentioned orders has opened other issues which, not alone their importance to jurisprudence, but the indispensability of forestalling needless delays when those issues are raised anew, have, perforce, persuaded this Court that their complete and final adjudication here and now is properly called for. Said issues may be specifically framed as follows:

- (1) Should the herein respondent heirs be required to pay first the inheritance tax before the probate court may authorize the delivery of the hereditary share pertaining to each of them?
- (2) Are the respondent heirs herein who are citizens and residents of the Philippines liable for the payment of the Philippine inheritance tax corresponding to the hereditary share of another heir who is a citizen and resident of the United States of America, the said share of the latter consisting of personal (cash deposits and stock shares) properties located in the mentioned country?
- (3) Does the assignment of a certificate of time deposit to the Commissioner of Internal Revenue for the purpose of paying thereby the estate tax constitute payment of such tax?
- (4) Should the herein respondent heirs be held liable for the payment of surcharge and interest on the amount (P700,000.00) representing the face value of time deposit certificates assigned to the Commissioner which could not be converted into cash?

Aside from the foregoing, there are also other incidental questions which are raised in the present recourse, viz.,

- (5) What should be the liability of the respondents herein on the contempt charges respectively lodged against them?
- (6) What should be a reasonable fee for the counsel of the respondents Atty. Medina, Eribal and Abanto for professional services rendered in connection with the settlement of the estate of Elsie M. Gaches?

1. On the matter of the authority of a probate court to allow distribution of an estate prior to the complete liquidation of the inheritance tax, the Tax Code apparently lacks any provision substantially identical to the mentioned Section 103 thereof. There are provisions of the Tax Code, e.g., Section 104, which makes it the duty of registers of deeds not to register the transfer to any new owner of a hereditary estate unless payment of the death taxes shall be shown; Section 106, which imposes a similar obligation on business establishments; and Section 107, which penalizes the executor who delivers to an heir or devisee, and the officers and employees of business establishments who transfer in their books to any new owner, any property forming part of a hereditary estate without the payment of the death taxes first being shown; but those provisions by themselves do not clearly establish that the purpose and object of the statute is to make the payment of the inheritance tax a pre-condition to an order for the distribution and delivery of the decedent's estate to the lawful heirs thereof. The cloud of vagueness in the statute, however, is not entirely unbreachable. Section 1, Rule 90 of the Rules of Court erases this hiatus in the statute by providing thus:

"Section 1. When order for distribution of residue made. -- When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons

may demand and recover their respective shares from the executor or administrator, or any person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

"No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

Under the provisions of the aforequoted Rule, the distribution of a decedent's assets may only be ordered under any of the following three circumstances, namely, (1) when the inheritance tax, among others, is paid; (2) when a sufficient bond is given to meet the payment of the inheritance tax and all the other obligations of the nature enumerated in the above-cited provision; or (3) when the payment of the said tax and all the other obligations mentioned in the said Rule has been provided for. None of these three cases, insofar as the satisfaction of the inheritance tax due from the estate is concerned, were present when the questioned orders were issued in the case at bar. Although the respondent Judge did make a condition in its order of June 5, 1967 that the distribution of the estate of Elsie M. Gaches (except the cash deposits of than P2 million) shall be trusted to Atty. Medina for the payment of whatever taxes may be due to the government from the estate and the heirs thereto, this Court cannot subscribe to the proposition that the payment of the tax claims was thereby adequately provided for. In the first place, the order of June 5, 1967 was, for all practical intents and purposes, a complete distribution of the estate to the heirs, for, the executor who is supposed to take care of the estate was absolutely discharged; the attorney's fees for the services of a lawyer who presumably acted as legal counsel for the estate in the court below were ordered paid as were also the fees for the executor's services; the cash funds of the estate were ordered paid to the heirs; and the non-cash (real property and shares of stock) properties were likewise ordered delivered to Atty. Medina whose participation in the said proceedings was in the capacity of an attorney-in-fact of the herein respondent heirs Eribal and Abanto. In short, the probate court virtually withdrew its custodial jurisdiction over the estate which is the subject of settlement before it. In the second place, the respondent Judge, in ordering the distribution of the properties of the estate in question, relied solely upon the mere manifestation of the counsel for the heirs Eribal and Abanto that there were sufficient properties of the estate with which to pay the taxes due to the government. There is no evidence on record that would show that the probate court ever made a serious attempt to determine what the values of the different assets of the estate were with the view to determining the correctness of the tax claims of the government and ascertaining that such properties shall be preserved for the satisfaction of those claims. In the third place, considering that millions of pesos in taxes were being claimed by the Bureau of Internal Revenue, the least reasonable thing that the probate court should have done was to require the heirs to deposit the amount of inheritance tax being claimed in a suitable institution or to authorize the sale of non-cash assets under the court's control and supervision.

The record is likewise bereft of any evidence to show that sufficient bond has been filed to meet this particular outstanding obligation.

2. The liability of the herein respondents Eribal and Abanto to pay the inheritance tax corresponding to the share of Bess Lauer in the inheritance must be negated. The inheritance tax is an imposition created by law on the privilege to receive property.^[4] Consequently, the scope and subjects of this tax and other related matters in which it is involved must be traced and sought in the law itself. An analysis of our tax statutes supplies no sufficient indication that the inheritance tax, as a rule, was meant to be the joint and solidary liability of the heirs of a decedent. Section 95(c) of the Tax Code, in fact, indicates that the general presumption must be otherwise. The said subsection reads thus:

"(c) x x x

"The inheritance tax imposed by Section 86 shall, in the absence of contrary disposition by the predecessor, be charged to the account of each beneficiary, in proportion to the value of the benefit received, and in accordance with the scale fixed for the class or group to which he pertains: Provided, That in cases where the heirs divide extrajudicially the property left to them by their predecessor or otherwise convey, sell, transfer, mortgage, or encumber the same without paying the estate or inheritance taxes within the period prescribed in the preceding subsections (a) and (b), they shall be solidarily liable for the payment of the said taxes to the extent of the estate they have received."

The statute's enumeration of the specific cases when the heirs may be held solidarily liable for the payment of the inheritance tax is, in the opinion of this Court, a clear indication that beyond those cases, the payment of the inheritance tax should be taken as the individual responsibility, to the extent of the benefits received, of each heir.

3. On the effect of the indorsement of the time deposit certificates to the Commissioner, the same cannot be held to have extinguished the estate's liability for the estate tax. In the first place, in accepting the indorsement and delivery of the said certificates, the Commissioner expressly gave notice that his Office -?

"x x x regrets that the same cannot be accepted as payment of the deficiency estate tax in this case since they cannot, at present or on or before December 9, 1967, be converted into cash. However, we are holding said certificates of time deposit for possible application in payment of the unpaid balance of the deficiency estate tax in this case as soon as said certificates can be converted into cash. x x x"

In the second place, a time deposit certificate is a mercantile document and is essentially a promissory note.[5] By the express terms of Article 1249 of the Civil Code of the Philippines, the use of this medium to clear an obligation will "produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired." From the records of the case at bar, the Commissioner as well as the herein respondents Atty. Medina, Eribal and Abanto spared no time trying to collect the value of the said certificates from the Overseas Bank of Manila but all to no avail. Consequently, the value of the said certificates (P700,000.00) should still be considered outstanding.

4. The estate of Elsie M. Gaches is likewise liable for the payment of the interest and surcharges on the said amount of P700,000.00 imposed under Section 101(a)(1) and (c), respectively, of the Tax Code.[6]

The interest charge of 1% per month imposed under Section 101(a)(1) of the Tax Code is essentially a compensation to the State for delay in the payment of the tax due thereto[7] and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands.[8] As the indorsement and delivery of the mentioned time deposit certificates to the Commissioner did not result in the payment of the estate tax (for which it was intended), the decedent's estate is consequently liable for the interest charge imposed in the Tax Code.

The estate cannot likewise be exempted from the payment of the 5% surcharge imposed by Section 101(c) of the Tax Code. While there are cases in this jurisdiction holding that a surcharge shall not be visited upon a taxpayer whose failure to pay the tax on time is in good faith,[9] this element does not appear to be present in the case at bar. The Commissioner, as aforesaid, fully informed the respondents Atty. Medina, Eribal and Abanto of the condition to his acceptance of the said time deposit certificates. The Commissioner, in fact, advised them in the same letter that "It will be understood in this connection that if the balance of the estate tax in this case is not paid on or before December 9, 1967, the same shall be subject to the interest on deficiency, 5% surcharge and 1% monthly interest for delinquency." Moreover, Judge Tan himself, as executor of the estate of Elsie M. Gaches, specifically admitted that he was the one who caused the extension (and consolidation) of the maturity dates of the

two time deposit certificates in question (one for P100,000.00 to mature on May 12, 1967 and the other for P600,000.00 to mature on June 16, 1967) to May 12, 1968.

It will be worthwhile to mention also, in this connection, that when Atty. Medina applied to this Court for authority to withdraw the amount of P700,000.00 from the Overseas Bank of Manila on September 9, 1967, the resolution of this Court dated November 17, 1967, approving her request, authorized her to withdraw the said amount in the form of cashier's checks payable to the Commissioner. Apparently, because the Overseas Bank of Manila refused to issue such checks or to allow her to withdraw said amount in view of the extension of the maturity date of the deposit in question, Atty. Medina thought that by simply assigning the time deposit certificates to the Commissioner, she would be deemed to have paid the estate's obligation in its corresponding amount. However, as aforesaid, the Commissioner was also unable to convert said amount into cash and he gave notice to that effect to Atty. Medina. Since the refusal of the Overseas Bank of Manila to allow the withdrawal of the said deposit was then well-known to the parties, it stands to reason that the representatives of the estate who stand to be benefited therefrom, such as the respondents Eribal and Abanto, should have forthwith asked for authority to pay the same from other funds of the estate. Atty. Medina was, in fact, given the authority by this Court to sell assets of the estate for the payment of the taxes due to the State, but she never tried to pay the equivalent amount of P700,000.00 in question from the proceeds of the sales she made afterwards. Moreover, it will also be noted that the respondents Eribal and Abanto, during the pendency of this case, had in their actual possession at least P2.3 million (the amount they were able to withdraw from the Philippine National Bank on account of the questioned orders) which they could have very well used for the payment of the estate tax. They, however, opted to put the same to other uses.

5. We now consider the several petitions for contempt filed in the case at bar, namely, (a) against the Philippine National Bank officials for allowing Atty. Medina to withdraw P2,330,000.00 in contravention of the writ of garnishment issued by the Commissioner; (b) against the officers of the Overseas Bank of Manila for allowing the extension of the maturity date of the mentioned time deposit of P700,000.00 and for refusing to pay the same after the extended term expired; (c) against Judge Tan who renewed the maturity date of the said time deposits; (d) against the Lepanto Consolidated Mining Co. for refusing to turn over dividends payable to the estate of Elsie M. Gaches unless the Commissioner first lifted his garnishment order; and (e) against the herein respondents Atty. Medina, Eribal and Abanto for depositing shares of stock with the probate court instead of the cash amount of P2,330,000.00 which they withdrew from the Philippine National Bank on account of the questioned orders of the probate court, contrary to the resolutions of this Court dated July 10 and 17, 1967.

(a) The contempt charge against the officials of the Philippine National Bank is without merit, it appearing to the satisfaction of this Court that they exerted reasonable efforts not to disobey the writ of garnishment issued by the Commissioner. Indeed, said officials merely acted in obedience to the order of the probate court which threatened them with contempt of court after they moved to be allowed to deposit with the said probate court the money of the estate of Elsie M. Gaches deposited with the said bank. The Commissioner himself, through the Solicitor General, admitted later that its writ of garnishment cannot be superior to that of the probate court's orders as the estate in question was then in custodia legis.

(b) The contempt charges against the officials of the Overseas Bank of Manila likewise merit dismissal. In the case of the renewal of the term of the time deposits in question, the said extension was made by no less than the executor of the estate himself. The renewal of said term may be considered as purely an act of administration for the enhancement (due to the higher interest rates) of the value of the estate, and the officials of the bank cannot consequently be blamed for acting favorably on the executor's application. Judge Tan himself explained that he did what he did in the honest belief that it would redound to the benefit of the estate on account of the higher

interest rate on time deposits.

With reference to the refusal of the bank's officials to allow the withdrawal of the time deposit in question after the extended term expired on May 12, 1968, this Court takes notice of the fact, as stated in our decision in *Ramos vs. Central Bank* (L-293250, Oct. 4, 1971; 41 SCRA 565), that as early as November 20, 1967 the Central Bank required the Overseas Bank of Manila, in view of its distressed financial condition, to execute a voting trust agreement in order to bail it out through a change of management and the promise of fresh funds to replenish the bank's financial portfolio. The Overseas Bank of Manila was not able to normalize its operations in spite of the voting trust agreement -- for, on July 31, 1968, it was excluded by the Central Bank from inter-bank clearing; on August 1, 1968, its operations were suspended; and on August 13, 1968, it was completely forbidden by the Central Bank to do business preparatory to its forcible liquidation. Under the circumstances, this Court is satisfied with the explanation that to allow Atty. Medina to withdraw the said time deposits after the extended term would have worked an undue prejudice to the other depositors and creditors of the bank.

(c) The contempt charge against Judge Tan is also not meritorious. There is no sufficient and convincing evidence to show that he renewed the maturity date of the time deposits in question maliciously or to the prejudice of the interest of the estate.

(d) The Lepanto Consolidated Mining Company is likewise entitled to exoneration from the contempt charge lodged against it. In refusing to turn over to Atty. Medina stock dividends payable to the estate of Elsie M. Gaches, it is evident that the said corporation acted in good faith in view of the writ of garnishment issued to it by the Commissioner. Moreover, on February 16, 1968, this Court passed a resolution suspending temporarily the warrants of garnishment issued by the Commissioner, and it does not appear that thereafter the turnover of the stock dividends to the estate was refused.

(e) With reference to the charge for contempt against the respondents Atty. Medina, Eribal and Abanto, although admittedly the resolutions of this Court dated July 10 and 17, 1967 were not strictly complied with by the said respondents, it appears clearly that they immediately deposited with the probate court shares of stock with a fairly stable liquidity value of P2,588,520.00. In any case, the main objective of the instant petition is to assure the State that the assessed tax obligations shall be paid and, from the records, more than P2 million had already been paid to the State during the pendency of the instant proceedings in this Court.

6. With reference to the attorney's fees to be paid to Atty. Manuel M. Paredes, this Court is of the opinion, after a careful study of the statement of services rendered by said counsel to the respondents Eribal and Abanto which was submitted to this Court, that the amount of Fifty Thousand Pesos (P50,000.00) is fair and reasonable. The payment of this amount, however, is the personal liability of the said respondents Eribal and Abanto, and not that of the estate of Elsie M. Gaches, as the said counsel was hired by the said respondents to give legal aid to them in connection with the settlement of the various claims proffered in the probate court and in this Court.

7. The Court's intended adjudication of the main issue has been rendered academic by supervening events which dictate that the Court refrain from issuing any further order relating thereto. On July 18, 1977 a "Manifestation and Compliance" was filed by the respondent Delia P. Medina which states that a compromise payment of P700,000 as deficiency estate tax, evidenced by an official receipt (annex A of the Manifestation), was accepted and duly approved by Acting Commissioner of Internal Revenue Efren I. Plana (annex B of the same Manifestation), and that "with the said compromise payment of P700,000, all estate, inheritance and deficiency income taxes ... including pertinent delinquency penalties thereof have been fully paid and liquidated, aggregating to P7,929,498.55" No objection thereto was inter-posed by any of the parties concerned despite due notice thereof. This was further supplemented by a communication, dated July 19, 1977, of Deputy Commissioner

Conrado P. Diaz, informing the Register of Deeds of Pasig, Metro Manila, that the Gaches estate has already paid all the estate and inheritance taxes assessed against it, and that, consequently, the notice of tax lien inscribed on the property and property rights of the estate can now be considered cancelled. With the full settlement of the tax claims, the requirements of the law have been fully met, and it has become unnecessary for the Court to issue orders relative to the main issue.

ACCORDINGLY, the respondent Delia P. Medina is directed to deliver the remaining assets of the estate to the voluntary heirs in the proportions adjudicated in the will and to submit a report of compliance.

On the incidental issues, the Court renders judgment as follows:

- (1) The amount of FIFTY THOUSAND (P50,000.00) PESOS is hereby awarded to Manuel M. Paredes as legal fee for his services, the same to be paid by the respondent Eribal and the estate of Abanto, now deceased;
- (2) The contempt charges against the officials of the Philippine National Bank and the Overseas Bank of Manila, Judge Bienvenido Tan, Sr., and Lepanto Consolidated Mining Co. are hereby ordered dismissed;
- (3) The authority given to the respondent Delia P. Medina in the resolution of the Court dated February 6, 1968, to pay the death and income taxes, including delinquency penalties, claimed by the State and, for that purpose, to withdraw all cash deposits in various banks and sell such properties of the estate as may be necessary, is hereby terminated; and
- (4) The writs of preliminary injunction issued by the Court pursuant to its resolutions dated July 10 and 17, 1967 are hereby dissolved.

No costs.

Antonio, Muñoz Palma, Concepcion, Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.
Fernando, J., on official leave.
Teehankee, J., concurs in a separate opinion.
Barredo, Makasiar, and Aquino, JJ., no part.

[1] After deducting the sum of P610,190.60 representing the income tax for 1965 and allowable expenses.

[2] This case was decided by this Court on October 4, 1971. See 41 SCRA 565.

[3] A similar provision may be found in Sec. 95(c) of the Tax Code.

[4] See *Maxwell vs. Bugbee*, 250 U.S. 525, 40 S Ct 2.

[5] See 3 R.C.L. 573.

[6] Section 101 of the Tax Code provides: "Sec. 101. Additions to the tax in case of non-payment. -- (a) Tax shown on the return. (1) Payment not extended. -- Where the amount of the taxes imposed by this Chapter, or any part of such amount is not paid on the due date of the taxes, there shall be collected as a part of the taxes, interest upon such unpaid amount at the rate of one per centum a month from due date until it is paid.

"x x x

(c) Surcharge. -- If any amount of the taxes included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in Sections 99 and 100 and as part of the taxes a surcharge of five per centum of the unpaid amount."

[7] Republic vs. Heras, L-26742, April 30, 1970.

[8] Castro vs. Collector of Int. Revenue, L-12174, December 28, 1962.

[9] Connel Bros. Co. (Phil.), Inc. vs. Collector of Int. Revenue, L-15470, Dec. 26, 1963, aff'd. on reconsideration in L-15470, Mar. 31, 1964; Insular Lumber Co. vs. Collector of Int. Revenue, L-7190, April 28, 1956.

105 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur in the disposition of the incidental issues regarding the payment of Atty. Paredes' attorney's fees due from respondent Eribal and Abanto's estate and the contempt charges as set forth in the Court's judgment.

I reserve my vote as to the Court's "intended adjudication" of the main issues (Nos. [1] to [4] as discussed in the Chief Justice's main opinion at pages 25 - 33), since as stated in the main opinion itself (at page 36) the said issues have been rendered academic with the full settlement of the Internal Revenue Commissioner's tax claims and it has therefore become unnecessary to advance an opinion there-on or resolve the same.

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