

MARIA CARLA PIROVANO, ETC., ET AL., PETITIONER AND APPELLANTS, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.

G.R. No. L-19865. July 31, 1965

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

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

This case is a sequel to the case of Pirovano, vs. De la Rama Steamship Co., 96 Phil. 335.

Briefly, the facts of the aforesaid case may be stated as follows:

Enrico Pirovano was the father of the herein petitioners-appellants. Sometime in the early part of 1941, De la Rama Steamship Co. insured the life of said Enrico Pirovano, who was then its President and General Manager until the time of his death, with various Philippine and American insurance companies for a total sum of one million pesos, designating itself as the beneficiary of the policies obtained by it. Due to the Japanese occupation of the Philippines during the second World War, the Company was unable to pay its premiums on the policies issued by its Philippine insurers and these policies lapsed, while the policies issued by its American insurers were kept effective and subsisting, the New York office of the Company having continued paying its premiums from year to year.

During the Japanese occupation, or more particularly in the latter part of 1944, said Enrico Pirovano died.

After the liberation of the Philippines from the Japanese forces, the Board of Directors of De la Rama Steamship Co. adopted a resolution dated July 10, 1946 granting and setting aside, out of the proceeds expected to be collected on the insurance policies taken on the life of said Enrico Pirovano, the sum of P400,000.00 for equal division among the four (4) minor children of the deceased, said sum of money to be convertible into 4,000 shares of stock of the Company, at par, or 1,000 shares for each child. Shortly thereafter, the Company received the total sum of P643,000.00 as proceeds of the said life insurance policies obtained from American insurers.

Upon receipt of the last stated sum of money, the Board of Directors of the Company modified, on January 6, 1947, the above-mentioned resolution by renouncing all its rights, title, and interest to the said amount of P643,000.00 in favor of the minor children of the deceased, subject to the express condition that said amount should be retained by the Company in the nature of a loan to it, drawing interest at the rate of five per centum (5%) per annum, and payable to the Pirovano children after the Company shall have first settled in full the balance of its present remaining bonded indebtedness in the sum of approximately P5,000,000.00. This latter resolution was carried out in a Memorandum Agreement on January 10, 1947 and June 17, 1947, respectively, executed by the Company and Mrs. Estefania R. Pirovano, the latter acting in her capacity as guardian of her children (petitioners-appellants, herein) and pursuant to an express authority granted her by the court.

On June 24, 1947, the Board of Directors of the Company further modified the last mentioned resolution providing therein that the Company shall pay the proceeds of said life insurance policies to the heirs of the said

Enrico Pirovano after the Company shall have settled in full the balance of its present remaining bonded indebtedness, but the annual interests accruing on the principal shall be paid to the heirs of the said Enrico Pirovano, or their duly appointed representative, whenever the Company is in a position to meet said obligation.

On February 26, 1948, Mrs. Estefania R. Pirovano, in behalf of her children, executed a public document formally accepting the donation; and, on the same date, the Company, through its Board of Directors, took official notice of this formal acceptance.

On September 13, 1949, the stockholders of the Company formally ratified the various resolutions hereinabove mentioned with certain clarifying modifications that the payment of the donation shall not be effected until such time as the Company shall have first duly liquidated its present bonded indebtedness in the amount of P3,260,855.77 with the National Development Company, or fully redeemed the preferred shares of stock in the amount which shall be issued to the National Development Company in lieu thereof; and that, any and all taxes, legal fees, and expenses in any way connected with the above transaction shall be chargeable, and deducted from the proceeds of the life insurance policies mentioned in the resolutions of the Board of Directors.

On March 8, 1951, however, the majority stockholder of the Company voted to revoke the resolution approving donation in favor of the Pirovano children.

As a consequence of this revocation and refusal of the Company to pay the balance of the donation amounting to P564,980.90 despite demands therefor, the herein petitioners-appellants, represented by their natural guardian, Mrs. Estefania R. Pirovano, brought an action for the recovery of said amount, plus interest and damages against De la Rama Steamship Co., in the Court of First Instance of Rizal, which case ultimately culminated to an appeal to this Court. On December 29, 1954, this Court rendered its decision in the appealed case (v. 96 Phil. 385) holding that the donation was valid and remunerative in the dispositive part of which reads:

"Wherefore, the decision appealed from should be modified as follows: (a) the, the donation in favor of the children of the late Enrico Pirovano of the proceeds of the insurance policies taken on his life is valid and binding on the defendant corporation, (b) that said donation which amounts to a total of P583,813.59, including interest, as it appears in the, books of the corporation as of August 31, 1951, plus interest thereon at the rate of 5 per cent per annum from the filing of the complaint, should be paid to the plaintiff after the defendant corporation shall have fully redeemed the preferred shares issued to the National Development Company under the terms and conditions stated in the resolutions of the Board of Directors of January 6, 1947 and June 24, 1947, as amended by the resolution of the stockholders adopted on September 13, 1949; and (c) defendant shall pay to plaintiff an additional amount equivalent to 10 per cent of said amount of P583,813.59 as damages by way of attorney's fees, and to pay the costs of action."

(Pirovana, et al vs. De la Rama Steamship Co., 96 Phil. 367-368)

The above decision become final and executory. In compliance therewith, De la Rama Steamship Co. made on April 6, 1955, a partial payment on the amount of the judgment and paid the balance thereof on May 12, 1955.

On March 6, 1955, respondent Commissioner of Internal Revenue assessed the amount of P60,869.67 as donee's gift tax, inclusive of surcharges, interests and other penalties, against each of the petitioners-appellants, or for the total sum of P243,478.68; and, on April 23, 1955 a donor's gift tax in the total amount of P34,871.76 was also assessed against De la Rama Steamship Co., which the latter paid.

Petitioners-appellants herein contested respondent Commissioner's assessment and imposition of the donee's gift taxes and donor's gift tax and also made a claim for refund of the donor's gift tax so collected. Respondent Commissioner overruled petitioners' claim; hence, the latter presented two (2) petitions for review against respondent's rulings before the Court of Tax Appeals, said petitions having been docketed as CTA Cases Nos. 347

and 375, CTA Case No. 347 relates to the petition disputing the legality of the assessment of donees's gift taxes and donor's gift tax while CTA Case No. 375 refers to the claim for refund of the donor's gift tax already paid.

After the filing of respondent's usual answers to the claim for petitions, the two cases, being interrelated to each other, were tried jointly and terminated.

On January 31, 1962, the Court of Tax Appeals rendered its decision in the two cases, the dispositive part of which reads:

"In resume, we are of the opinion, that (1) the donor's gift tax in the sum of P34,371.76 was erroneously assessed and collected hence, petitioners are entitled to the refund thereof; (2) the donees' gift taxes were correctly assessed; (3) the imposition of the surcharge of 25% is not proper; (4) the surcharge of 5% is legally due and (5) the interest of 1 per cent per month on the deficiency donees' gift taxes is due from petitioners from March 8, 1955 until the taxes are paid.

"IN LINE WITH THE FOREGOING OPINION, petitioners are hereby ordered to pay the donees' gift taxes as assessed by respondent, plus 5% surcharge and interest at the rate of 1% per month from March 8, 1955 to the date of payment of said donees' gift taxes. Respondent is ordered to apply the sum of P34,371.76 which in refundable to petitioners, against the amount due from petitioners. With cost against petitioners in Case No. 347."

Petitioners-appellants herein filed a motion to reconsider the above decision which the lower court denied. Hence, this appeal before us.

In the instant appeal, petitioners-appellants herein question only that portion of the decision of the lower court ordering the payment of donees' gift taxes as assessed by respondent as well as the imposition of surcharge and interest on the amount of donees' gift taxes.

In their brief and memorandum, they dispute the factual finding of the lower court that De la Rama Steamship Company's renunciation of its rights, title, and interest over the proceeds of said life insurance policies in favor of the Pirovano children "was motivated solely and exclusively by its sense of gratitude, an act of pure liberality, and not to pay additional compensation for services: inadequately paid for". Petitioners now contend that the lower court's finding was erroneous in seemingly considering the disputed grant as a simple donation, since our previous decision (96 Phil. 335) had already declared that the transfer to the Pirovano children was a remuneration donation. Petitioners further contend that the same was not for an insufficient or inadequate consideration but rather it was made for a full and adequate compensation for the valuable services rendered by the late Enrico Pirovano to the De la Rama Steamship Co.; hence, the donation does not constitute a taxable gift under the provisions of Section 108 of the National Internal Revenue Code.

The argument for petitioners-appellants fails to take into account the fact that neither in Spanish nor Anglo-American law was it considered that past services, rendered without relying on a coetaneous promise, express or implied, that such services would be paid for the future, constituted cause or consideration that would make a conveyance of property anything else but a gift or donation. This conclusion flows from the text of Article 619 of the Code of 1889 (identical with Article 726 of the present Civil Code of the Philippines):

"A thing given to a person in consideration of his merits oar for services rendered to the donor provided they do not constitute recoverable debts, is also a donation" * * *."

There is nothing on record to show that when the late Enrico Pirovano rendered services as President and General Manager of the De la Rama Steamship Co, he was not fully compensated for such services, or that, because they were "largely responsible for the rapid and very successful development of the activities of the company" (Resol.

of July 10, 1946), Pirovano expected or was promised further compensation over and in addition to his regular emoluments as President and General Manager. The fact that his services contributed in a large measure to the success of the company did not give rise to a recoverable debt, and the conveyances made by the company to his heirs remain a gift or donation. This is emphasized by the director's Resolution of January 6, 1947, that "out of gratitude" the company decided to renounce in favor of Pirovano's heirs the proceeds of the life insurance policies in question. The true consideration for the donation was, therefore, the company's gratitude for his services, and not the services themselves.

That the tax court regarded the conveyance as a simple donation, instead of a remuneratory one as it was declared to be in our previous decision, is but innocuous error; whether remuneratory or simple, the conveyance remained a gift, taxable under Chapter 2, Title III, of the Internal Revenue Code.

But then, appellants contend, the entire property or right donated should not be considered as a gift for taxation purposes; only that portion of the value of the property or right transferred, if any, which is in excess of the value of the services rendered should be considered as a taxable gift. They cite in support Section III of the Tax Code which provides that—

"when property is transferred for less than the adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift."

The flaw in this argument lies in the fact that, as copied from American law, the term consideration used in this section, refers to the technical "consideration" defined by the American Law Institute (Restatement of Contracts) as "anything that is bargained for by the promisor and given by the promisee in exchange for the promise" (Also, v. Corbin on Contracts, vol. I, p. 359). But, as we have seen, Pirovano's successful activities as of the De la Rama Steamship Co. can not be such consideration for the gift to his heirs, since the services were rendered long before the Company ceded the value of the life policies to said heirs; cession services were not the result of one bargain or of a mutual exchange of promises.

And the Anglo-American law treats a subsequent promise to pay for past services (like one to pay for improvements already made without prior request from the promisor) to be a *Nudum pactum* (*Roscorla vs. Thomas*, 3 O.B. 234; *Peters vs. Poro*, 25 ALR 615; *Carson vs. Clark* 25 Am. Dec. 79; *Boston vs. Dodge*, 12 Am. Dec. 205), i.e. one that is unenforceable in view of the common law rule that consideration must consist in a legal benefit to the promisee or some legal detriment to the promisor.

What is more, the actual consideration for the cession of the policies, as previously shown, was the Company's gratitude to Pirovano; so that under section III of the Tax Code there is no consideration the value of which be deducted from that of the property transferred as a gift. Like "love and affection", gratitude has no economic value and is not "consideration" in the sense that the word is used in this section of the Tax Code.

As stated by Chief Justice Griffith of the Supreme Court of Mississippi in his well-known book, "Outline of the Law" (p. 204)—

"Love and affection are not considerations of value—they are not estimable in terms of value. Nor are sentiments of gratitude for gratuitous past favors or kindnesses; nor are obligations which are merely moral. It has been well said that if a moral obligation were alone sufficient it would remove the necessity for any consideration at all, since the fact of making a promise imposes the moral obligation to perform it."

It is of course perfectly possible that a donation or gift should at the same time impose a burden or condition on the donee involving some economic liability for him. A, for example, may donate a parcel of land to B on

condition that the latter assume a mortgage existing on the donated land. In this case the donee may rightfully insist that the gift tax be computed only on the value of the land less the value of the mortgage. This, in fact, is contemplated by Article 619 of the Civil Code of 1889 (Art. 726) of the New Code) when it provides that there is also a donation "when the gift imposes upon the donee a burden which is less than the value of the thing given". Section III of the Tax Code has in view situations of this kind, since it also prescribes that "the amount by which the value of the property exceeded the value of the Consideration" shall be deemed a gift for the purpose of the tax.

Petitioners finally contend that, even assuming that the donation in question is subject to donees's gift taxes, the imposition of the surcharge of 5% and interest of 1% per month from March 8, 1955 was not justified because the proceeds of the life insurance policies were actually received on April 6, 1955 and May 12, 1955 only and in accordance with Section 115(c) of the Tax Code; the filing of the returns of such tax became due on March 1, 1956 and the tax became payable on May 15, 1956, as provided for in Section 116(a) of the same Code. In other words, petitioners maintain that the assessment and demand for donees' gift taxes was prematurely made and of no legal effect; hence, they should not be held liable for such surcharge and interest.

It is well to note, and it is not disputed, that petitioners-donee have failed to file any gift tax return and that they also failed to pay the amount of the assessment made against them by respondent in 1955. This situation is covered by Section 119(b) (1) and (c) and Section 120 of the Tax Code.

"(b) Deficiency.

(1) Payment not extended.—Where a deficiency, or any interest Assessed in connection therewith, or any addition to the tax provided in section one hundred twenty is not paid in full within thirty days from the date of the notice and demand from the Collector, there shall be collected as a part of the taxes, interest upon the unpaid amount at the rate of one per centum a month from the date of such notice and demand until it is paid, (section 119)

"(c) Surcharge.—If any amount of the taxes included in the notice and demand from the Collector 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 above as a part of the taxes a surcharge of five per centum of the unpaid amount." (sec.119)

The failure to file a return was found by the lower court to be due to reasonable cause and not to willful neglect. On this score, the elimination by the lower court of the 25% surcharge as ad valorem penalty which respondent Commissioner had imposed pursuant to Section 120 of the Tax Code was proper, since said Section 120 vests in the Commissioner of Internal Revenue or in the tax court power and authority to impose or not to impose such penalty depending upon whether or not reasonable cause has been shown in the non-filing of such return.

On the other hand, unlike said Section 120, Section 119, paragraphs (b) (1) and (c) of the Tax Code, does not confer on the Commissioner of Internal Revenue or on the courts any power and discretion not to impose such interest and surcharge. It is likewise provided for by law that an appeal to the Court of Tax Appeals from a decision of the Commissioner of Internal Revenue shall not suspend the payment or collection of the tax liability of the taxpayer unless a motion to that effect shall have been presented to the court and granted by it on the ground that such collection will jeopardize the interest of the taxpayer (Sec. 11, Republic Act No. 1125; Rule 12, Rules of the Court of Tax Appeals). It should further be noted that—

"It has been the uniform holding of this Court that no suit for adjoining the collection of a tax, disputed or undisputed, can be brought, the remedy being to pay the tax first, formerly under protest and now without need of protest, Ale the claim with the Collector, and if he denies it, bring an action for recovery against him."

(David vs. Ramos, et al., 90 Phil. 351)

"Section 306 of the National Internal Revenue Code * * * lays down the procedure to be followed in those cases wherein a tax payer entertains some doubt about the correctness of a tax sought to be collected. Said section provides that the tax should first be paid and the taxpayer should sue for its recovery afterwards. The purpose of the law obviously is to prevent delay in the collection of taxes upon which the Government depends for its existence. To allow a taxpayer to first secure a ruling as regards the validity of the tax before paying it would be to defeat this purpose." (National Dental Supply Co. vs. Meer 90 Phil. 265)

Petitioners did not file in the lower court any motion for the suspension of payment or collection of the amount of assessment made against them.

On the basis of the above stated provisions of law and applicable authorities, it is evident that the imposition of 1% interest monthly and 5% surcharge is justified and legal. As succinctly stated by the court below, said imposition is "mandatory and may not be waived by the Commissioner of Internal Revenue or by the courts" (Resolution on petitioners' motion for reconsideration, Annex XIV, petition). Hence, said imposition of interest and surcharge by the lower court should be upheld.

Wherefore, the decision of the Court of Tax Appeals is affirmed. Costs against petitioners Pirovano.

Bengzon, C. J., Bautista Angelo, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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