

MARIA ELIZABETH KIENE, ET AL., PETITIONERS, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-5974. July 30, 1955

Ponente: BENGZON, ACTING C.J.

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BENGZON, ACTING C.J.:

Republic Act No. 1125 requires decision by this Court of those cases from the Board of Tax Appeals which were pending here at the time of its approval, in the same manner and with the same effect as appeals duly taken from the Court of Tax Appeals itself. This is one of them.

The facts are undisputed. On March 14, 1951 Ludwig Kiene, German citizen, died while a resident of Liechtenstein, Europe. He was married to Maria Elizabeth Kiene, with whom he had three children, Gustav Adolph, Rudolf and Lieselotte. On the day of his death he had intangible personal property in the Philippines (shares of stock of a domestic corporation) valued at P1,612,988.72 which was acquired during the marriage.

In September 1948 said spouses executed a joint will bequeathing all their property to their aforesaid children. On March 5, 1951, before Ludwig's demise, a deed of trust was executed by them establishing the "Ludwig Kiene Family Trust" to which the entire community property was transferred in trust for the benefit of the wife and three children.

The respondent Collector of Internal Revenue, assessed a total of P143,201.10 as estate and inheritance taxes on the properties left by Ludwig Kiene. And holding the deed of trust to be a donation by the mother to her three children, he assessed P75,016.72 as donor's gift tax, and P90,979.05 as donees' gift tax. Resisting payment of the assessments the wife and the children—hereafter called petitioners—brought the matter to Board of Tax Appeals contending: (1) that no estate or inheritance tax was due, in virtue of the reciprocity clause, Sec. 122 of the National Internal Revenue Code (Commonwealth Act No. 466 as amended) ; (2) that no gift tax was payable pursuant to the same clause; and (3) that if payable at all, the donor's tax should be deducted from the gift in computing the donee's tax.

The Board sustained the first contention; as to the second it held the gift was taxable; as to the third, it agreed that, in estimating the donee's tax, the Collector must first deduct the donor's tax from the amount donated.

Both sides appealed to this Court,

The Collector of Internal Revenue insists on collecting the estate and inheritance taxes. The Board relied on section 122 of the National Internal Revenue Code— hereafter called the Revenue Code—which reads partly as follows:

" * * * And provided further, That no tax shall be collected under this title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of

which the decedent was a resident at the time of his death allow a similar exemption from the transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that country. * * *." (Italics ours.)

Estate and inheritance taxes are no doubt, collected under "this title". The Board found from the documents submitted to it—proof of the laws of Liechtenstein—that said country does not impose estate, inheritance and gift taxes on intangible personal property of Filipino citizens not residing in that country. Wherefore, the Board declared that pursuant to the exemption above established, no estate or inheritance taxes were collectible, Ludwig Kiene being a resident of Liechtenstein when he passed away.

The Collector—hereafter named respondent—cites decisions of the United States Supreme Court and of this Court, holding that intangible personal property in the Philippines belonging to a non-resident foreigner, who died outside of this country is subject to the estate tax, in disregard of the principle "*mobilia sequuntur personam*". Such property is admittedly taxable here. Without the proviso above quoted, the shares of stock owned here by the Ludwig Kiene would be concededly subject to estate and inheritance taxes. Nevertheless our Congress chose to make an exemption where conditions are such that demand reciprocity—as in this case. And the exemption *v* must be honored.

In his second assignment of error, the respondent says the Board erred in holding that the donee's gift taxes payable by the three children should be computed on the balance of the donation after deducting the donor's gift tax in the amount of P72,016.72. He points out that whereas by express direction of the Revenue Code the "estate tax" is deductible from the "net estate" before computing the inheritance tax, no such deduction of the donor's tax is directed by statute when the donee's gift tax is assessed.

The reason for the different treatment, as we see it, is that the estate tax must necessarily be paid from the estate, thereby reducing it; whereas the donor's tax is, or maybe paid by, or collected from, the donor, who must be presumed to have reserved unto himself or herself sufficient property—as suggested by the respondent's counsel. (See Art. 750 New Civil Code; Art. 643 Civil Code.) Hence, the gift received by the donee is not necessarily diminished by the payment of the donor's tax.

The donor's gift tax is levied on the act of giving and the donee's gift tax on the act of receiving—both taxes being assessable on the aggregate sum of the gifts. And there is no legislative indication that the donee shall pay less than the donor—by deducting the tax assessed on the latter. It may not be said that the donor's tax necessarily reduces the gift received by the donee; and there is nothing in the law requiring the donor's tax to be discounted from the donation.

If in fact the donor's tax was paid by the donees out of the money or property donated, perhaps there would be some ground to claim deduction thereof in the computation of the donees' tax.[1] Such is not the fact, however, in this instance, because it appears that the donor's tax has already been paid (p. 6 petitioner's brief)—obviously by the donor Maria Elizabeth Kiene, or for her account, otherwise she would have no standing before the court. In other words, as the donor paid the tax, the amount donated was not reduced.

Consequently there is merit to this feature of respondent's appeal.

The Kienes in turn maintain in their brief that the Board erred in refusing to apply the reciprocity clause to the gift taxes, which they say, should not be collected, like the estate and inheritance tax.

The Board reasoned thus: Inasmuch as Section 122 (the reciprocity clause) grants exemption (a) if the decedent at the time of his death etc. and (b) if the laws of the foreign country of which the decedent was a resident, etc., and inasmuch as in the matter of donation there was no decedent, both donor and donees being alive, the exemption

may not be claimed since the condition for the exemption has not been fulfilled.

The taxpayers argued before the Board, and they repeat the argument here, that Congress intended to supplement the estate and inheritance taxes with the gift taxes, and the rules on both should be construed together being in *pari materia*, so that the reciprocity clause excepting the estate of a resident of Liechtenstein from death taxation should also except the donations by a resident therein.

Admitting the validity of the premises, we cannot agree to the conclusion, in view of the wording of the reciprocity clause, clearly reaching estate or inheritance taxes only (decedent), having due regard, specially, to the general principle that exemptions from taxation must be clearly expressed.

As a last stand, the petitioners set up the proposition that there was no gift *inter vivos*, but a donation *mortis causa*, taxable only upon the death of Maria Elizabeth Kiene. Being testamentary in character, they argue, it will be subject to the estate or inheritance tax in due time, but not to the gift tax. Scrutinizing the deed of trust they allegedly find that: (a) the donor is still the owner of both legal and beneficial title to the property transferred (b) donor had previously made a will: and retained extensive powers over the property and (c) the transfer was subject to reversionary interest of the grantor. They conclude therefrom that the deed of trust was a donation *mortis causa*, not taxable as gift *inter vivos* under the Revenue Code. ,

It is enough to point out that section 108 of the said Code imposing a gift tax provides that "the tax shall apply whether the transfer is in trust or otherwise". Any way, this issue was not contested before the Board, both sides having debated only two questions: (a) exemption due to reciprocity clause and (b) the deduction of the donor's tax in computing the tax payable by the donees. There was no assertion made there—nor before the Bureau of Internal Revenue—that the trust was a donation *mortis causa*, not taxable as gift.[2] Both sides treated the document as a gift *inter vivos*.

Anticipating the possible reply that petitioners are merely advancing an additional legal proposition—not a new issue—we hasten to explain that the question whether a document is a donation *inter vivos* or *mortis causa* may depend upon surrounding circumstances, which one party to the litigation might omit to emphasize or prove in the first instance, if no issue over its nature is joined there.

To be sure, this is not going off on a mere technicality, tangentially avoiding a substantial claim, because it is apparent from the document of trust, that the donees' acquisition of the property or any right thereto accrued immediately upon the effectivity of the instrument, and was not dependent upon the donor's death,—characteristics inconsistent with *mortis causa* donations.[3]

Accordingly, on the strength of the foregoing conclusions we hereby affirm the decision of the Board of Tax Appeals, except that portion which enjoins the deduction of the donor's gift tax before computing the donee's gift tax. Costs shall be paid by petitioners.

Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment modified.

[1] "Perhaps" is used advisedly. The argument is: because the gift has thereby been reduced, the donee's tax should be reduced correspondingly. Yet this answer might be presented: In paying the donor's tax, the donee acts for donor, he may recover from donor, therefore no reduction. Another answer: if the donor's tax is to be deducted because it reduces the gift, then by the same token the donee's tax should also be deducted—which is preposterous. The point is not free from doubt.

[2] The sections applied by respondent seem admittedly to cover gifts inter vivos. (Tuazon vs. Posadas, 54 Phil., 289; Roces vs. Posadas, 58 Phil., 108; B. I R. General Circular No. 428 quoted by Formilleza Commentaries, Nat. Int. Rev. Code Vol. II p, 636.)

[3] Cf. Zapanta vs. Posadas 52 Phil., 557; Guzman vs. Ibea 39 Off. Gaz., 1835; Roces vs. Posadas 58 Phil., 108.

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