

**IN THE MATTER OF THE ESTATE OF FRANK H. GOULETTE,
DECEASED. GOVERNMENT OF THE PHILIPPINE ISLANDS, CLAIMANT.***G.R. No. 36906. November 21, 1933*

Ponente: HULL, J.

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In the probate proceedings in the matter of the estate of Frank H. Goulette, deceased, pending in the Court of First Instance of Manila, Juan Posadas, as Collector of Internal Revenue, filed a claim on behalf of the Government claiming a deficiency income tax based on omissions in the income tax return made by the late Frank H. Goulette for the calendar year, 1925.

After trial the Court of First Instance rendered a decision holding that the Government was entitled to recover the sum of P12,751.03, and from this decision both the Government and the administrator of the estate appeal.

In his personal return for the year 1925 he included only one item, namely the dividends which he had received from France and Goulette, Inc., and paid the tax on this inadequate and erroneous return. Some years later, the Internal Revenue Bureau compared Goulette's return with the return made by France and Goulette, Inc., for 1925, by E. A. Gebert, auditor, and found indications that Goulette had drawn from France and Goulette, Inc., the sum of P391,819.61 instead of P198,481.11, and a representative of the Bureau of Internal Revenue interviewed Gebert relative to these items.

The deceased at the time that the return of France and Goulette, Inc., was rendered had left the active management of the company and only retained a small interest therein, and so far as the record is concerned, had nothing to do with the preparation of the income tax return of the corporation. The Government proceeded to try the case on the theory that the oral statements of the auditor, made not under oath and many years after the transactions, made the representative of the Bureau of Internal Revenue a competent witness against the estate, that the representative could testify as to the nature of Gebert's statements to him, and that such statements were binding upon the estate.

For this novel contention that the purest hearsay is admissible and valuable, the Government relied upon section 1670, Wigmore on Evidence, in discussing official inquisitions. If the Government had carefully read the context of Professor Wigmore's remarks, it would have discovered that the nature of the inquisitions by him discussed are entirely different from what was found here. Most of the testimony for the Government is therefore the rankest kind of hearsay and of no evidential value.

In 1925 the deceased sold 2,150 shares of stock in France and Goulette, Inc., to a group of business men of the City of Manila for the sum of P330,000. France and Goulette was incorporated in 1921, at which time Goulette owned 1,150 shares of stock of the par value of P100 each. Sometime after the incorporation in 1921, he acquired additional shares of stock, but at what price the Government did not attempt to establish. As the company was successful and as he evidently purchased the shares from France, it is more reasonable to suppose that he paid a premium than that he bought them for their par value. The sale in 1925 was at the rate of P153.48 per share, which, disregarding the 1,000 shares of stock of which we have no actual knowledge, gave him a profit of

P61,520, which should have been included in his income tax return for the year 1925. This money was actually paid to the National City Bank as agent of Frank H. Goulette, and the contention of the administrator that the Government cannot recover anything on account of this item because it has not been shown that the National City Bank transferred this money to Goulette personally, is without merit.

At the same time, the purchasers paid in 1925 to the bank P5,775 as interest on the deferred payments. This item is likewise income, which should have been reported.

Gebert was called as a witness, but his testimony was of little value as he claimed that the books and papers of France and Goulette, Inc., had been destroyed by fire in 1928 and that he could not remember at the time of trial the items that appeared on the returns of the company. He did, however, identify the item of P1,678.06 as the value of certain drugs which Goulette had taken from the company in 1925 for his personal benefit and which item is corroborated by the fact that there is an item in the inventory of the estate of a similar nature.

The holding of the trial court that this item is correctly a part of income and was erroneously omitted from the return of the deceased, we believe to be correct.

There is no sufficient evidence in the record to sustain the contentions of the Government that the items known as the Lyric Music House and Goulette, Inc., should likewise be included.

Modifying the decision so as to allow the Government to recover taxes on the profits on the sale of 1,150 shares of stock of France and Goulette, Inc., instead of 2,150 shares of stock, it results that the return of the deceased should have been in the sum of P267,454.17 instead of P198,481.11, and the amount of the normal tax and surtaxes on the additional items amounts to P3,809.91, for which judgment will be entered.

As thus modified, the judgment appealed from is affirmed. No expression as to costs. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Imperial, JJ., concur.

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