

FIRST DIVISION

[G.R. NO. 120721, February 23, 2005]

MANUEL G. ABELLO, JOSE C. CONCEPCION, TEODORO D. REGALA, AVELINO V. CRUZ, PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF APPEALS, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, assailing the decision of the Court of Appeals in CA –G.R. SP No. 27134, entitled “Comissioner of Internal Revenue v. Manuel G. Abello, Jose C. Concepcion, Teodoro D. Regala, Avelino V. Cruz and Court of Tax Appeals,” which reversed and set aside the decision of the Court of Tax Appeals (CTA), ordering the Commissioner of Internal Revenue (Commissioner) to withdraw his letters dated April 21, 1988 and August 4, 1988 assessing donor’s taxes and to desist from collecting donor’s taxes from petitioners.

During the 1987 national elections, petitioners, who are partners in the Angara, Abello, Concepcion, Regala and Cruz (ACCRA) law firm, contributed P882,661.31 each to the campaign funds of Senator Edgardo Angara, then running for the Senate. In letters dated April 21, 1988, the Bureau of Internal Revenue (BIR) assessed each of the petitioners P263,032.66 for their contributions. On August 2, 1988, petitioners questioned the assessment through a letter to the BIR. They claimed that political or electoral contributions are not considered gifts under the National Internal Revenue Code (NIRC), and that, therefore, they are not liable for donor’s tax. The claim for exemption was denied by the Commissioner.^[1]

On September 12, 1988, petitioners filed a petition for review with the CTA, which was decided on October 7, 1991 in favor of the petitioners. As aforesaid, the CTA ordered the Commissioner to desist from collecting donor’s taxes from the petitioners.^[2]

On appeal, the Court of Appeals reversed and set aside the CTA decision on April 20, 1994.^[3] The appellate Court ordered the petitioners to pay donor’s tax amounting to P263,032.66 each, reasoning as follows:

The National Internal Revenue Code, as amended, provides:

Sec. 91. Imposition of Tax. (a) There shall be levied, assessed, collected, and paid upon the transfer by any person, resident, or non-resident, of the property by gift, a tax, computed as provided in Section 92. (b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Pursuant to the above-quoted provisions of law, the transfer of property by gift, whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible, is subject to donor's or gift tax.

A gift is generally defined as a voluntary transfer of property by one to another without any consideration or compensation therefor (28 C.J. 620; Santos vs. Robledo, 28 Phil. 250).

In the instant case, the contributions are voluntary transfers of property in the form of money from private respondents to Sen. Angara, without considerations therefor. Hence, they squarely fall under the definition of donation or gift.

As correctly pointed out by the Solicitor General:

The fact that the contributions were given to be used as campaign funds of Sen. Angara does not affect the character of the fund transfers as donation or gift. There was thereby no retention of control over the disposition of the contributions. There was simply an indication of the purpose for which they were to be used. For as long as the contributions were used for the purpose for which they were intended, Sen. Angara had complete and absolute power to dispose of the contributions. He was fully entitled to the economic benefits of the contributions.

Section 91 of the Tax Code is very clear. A donor's or gift tax is imposed on the transfer of property by gift.

The Bureau of Internal Revenue issued Ruling No. 344 on July 20, 1988, which reads:

Political Contributions. – For internal revenue purposes, political contributions in the Philippines are considered taxable gift rather than taxable income. This is so, because a political contribution is indubitably not intended by the giver or contributor as a return of value or made because of any intent to repay another what is his due, but bestowed only because of motives of philanthropy or charity. His purpose is to give and to bolster the morals, the winning chance of the candidate and/or his party, and not to employ or buy. On the

other hand, the recipient-donee does not regard himself as exchanging his services or his product for the money contributed. But more importantly he receives financial advantages gratuitously.

When the U.S. gift tax law was adopted in the Philippines (before May 7, 1974), the taxability of political contributions was, admittedly, an unsettled issue; hence, it cannot be presumed that the Philippine Congress then had intended to consider or treat political contributions as non-taxable gifts when it adopted the said gift tax law. Moreover, well-settled is the rule that the Philippines need not necessarily adopt the present rule or construction in the United States on the matter. Generally, statutes of different states relating to the same class of persons or things or having the same purposes are not considered to be in *pari materia* because it cannot be justifiably presumed that the legislature had them in mind when enacting the provision being construed. (5206, Sutherland, Statutory Construction, p. 546.) Accordingly, in the absence of an express exempting provision of law, political contributions in the Philippines are subject to the donor's gift tax. (cited in National Internal Revenue Code Annotated by Hector S. de Leon, 1991 ed., p. 290).

In the light of the above BIR Ruling, it is clear that the political contributions of the private respondents to Sen. Edgardo Angara are taxable gifts. The vagueness of the law as to what comprise the gift subject to tax was made concrete by the above-quoted BIR ruling. Hence, there is no doubt that political contributions are taxable gifts.^[4]

Petitioners filed a motion for reconsideration, which the Court of Appeals denied in its resolution of June 16, 1995.^[5]

Petitioners thereupon filed the instant petition on July 26, 1995. Raised are the following issues:

1. DID THE HONORABLE COURT OF APPEALS ERR WHEN IT FAILED TO CONSIDER IN ITS DECISION THE PURPOSE BEHIND THE ENACTMENT OF OUR GIFT TAX LAW?
2. DID THE HONORABLE COURT OF APPEALS ERR IN NOT CONSIDERING THE INTENTION OF THE GIVERS IN DETERMINING WHETHER OR NOT THE PETITIONERS' POLITICAL CONTRIBUTIONS WERE GIFTS SUBJECT TO DONORS TAX?
3. DID THE HONORABLE COURT OF APPEALS ERR WHEN IT FAILED TO CONSIDER THE DEFINITION OF AN "ELECTORAL CONTRIBUTION" UNDER THE OMNIBUS ELECTION CODE IN DETERMINING WHETHER OR

NOT POLITICAL CONTRIBUTIONS ARE TAXABLE?

4. DID THE HONORABLE COURT OF APPEALS ERR IN NOT CONSIDERING THE ADMINISTRATIVE PRACTICE OF CLOSE TO HALF A CENTURY OF NOT SUBJECTING POLITICAL CONTRIBUTIONS TO DONORS TAX?
5. DID THE HONORABLE COURT OF APPEALS ERR IN NOT CONSIDERING THE AMERICAN JURISPRUDENCE RELIED UPON BY THE COURT OF TAX APPEALS AND BY THE PETITIONERS TO THE EFFECT THAT POLITICAL CONTRIBUTIONS ARE NOT TAXABLE GIFTS?
6. DID THE HONORABLE COURT OF APPEALS ERR IN NOT APPLYING AMERICAN JURISPRUDENCE ON THE GROUND THAT THIS WAS NOT KNOWN AT THE TIME THE PHILIPPINES GIFT TAX LAW WAS ADOPTED IN 1939?
7. DID THE HONORABLE COURT OF APPEALS ERR IN RESOLVING THE CASE MAINLY ON THE BASIS OF A RULING ISSUED BY THE RESPONDENT ONLY AFTER THE ASSESSMENTS HAD ALREADY BEEN MADE?
8. DID THE HONORABLE COURT OF APPEALS ERR WHEN IT DID NOT CONSTRUE THE GIFT TAX LAW LIBERALLY IN FAVOR OF THE TAXPAYER AND STRICTLY AGAINST THE GOVERNMENT IN ACCORDANCE WITH APPLICABLE PRINCIPLES OF STATUTORY CONSTRUCTION?^[6]

First, Fifth and Sixth Issues

Section 91 of the National Internal Revenue Code (NIRC) reads:

(A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 92

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

The NIRC does not define transfer of property by gift. However, Article 18 of the Civil Code, states:

In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.

Thus, reference may be made to the definition of a donation in the Civil Code. Article 725 of said Code defines donation as:

. . . an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

Donation has the following elements: (a) the reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and, (c) the intent to do an act of liberality or *animus donandi*.^[7]

The present case falls squarely within the definition of a donation. Petitioners, the late Manuel G. Abello^[8], Jose C. Concepcion, Teodoro D. Regala and Avelino V. Cruz, each gave P882,661.31 to the campaign funds of Senator Edgardo Angara, without any material consideration. All three elements of a donation are present. The patrimony of the four petitioners were reduced by P882,661.31 each. Senator Edgardo Angara's patrimony correspondingly increased by P3,530,645.24^[9]. There was intent to do an act of liberality or *animus donandi* was present since each of the petitioners gave their contributions without any consideration.

Taken together with the Civil Code definition of donation, Section 91 of the NIRC is clear and unambiguous, thereby leaving no room for construction. In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*^[10] the Court enunciated:

It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (*Cebu Portland Cement Co. v. Municipality of Naga*, 24 SCRA 708 [1968])

Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (*Chartered Bank Employees Association v. Ople*, 138 SCRA 273 [1985]; *Luzon Surety Co., Inc. v. De Garcia*, 30 SCRA 111 [1969]; *Quijano v. Development Bank of the Philippines*, 35 SCRA 270 [1970]).

Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.

Second Issue

Since *animus donandi* or the intention to do an act of liberality is an essential element of a donation, petitioners argue that it is important to look into the intention of the giver to determine if a political contribution is a gift. Petitioners' argument is not tenable. First of

all, donative intent is a creature of the mind. It cannot be perceived except by the material and tangible acts which manifest its presence. This being the case, donative intent is presumed present when one gives a part of ones patrimony to another without consideration. Second, donative intent is not negated when the person donating has other intentions, motives or purposes which do not contradict donative intent. This Court is not convinced that since the purpose of the contribution was to help elect a candidate, there was no donative intent. Petitioners' contribution of money without any material consideration evinces *animus donandi*. The fact that their purpose for donating was to aid in the election of the donee does not negate the presence of donative intent.

Third Issue

Petitioners maintain that the definition of an "electoral contribution" under the Omnibus Election Code is essential to appreciate how a political contribution differs from a taxable gift.^[11] Section 94(a) of the said Code defines electoral contribution as follows:

The term "contribution" includes a gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute, whether or not legally enforceable, made for the purpose of influencing the results of the elections but shall not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. It shall also include the use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area.

Since the purpose of an electoral contribution is to influence the results of the election, petitioners again claim that donative intent is not present. Petitioners attempt to place the barrier of mutual exclusivity between donative intent and the purpose of political contributions. This Court reiterates that donative intent is not negated by the presence of other intentions, motives or purposes which do not contradict donative intent.

Petitioners would distinguish a gift from a political donation by saying that the consideration for a gift is the liberality of the donor, while the consideration for a political contribution is the desire of the giver to influence the result of an election by supporting candidates who, in the perception of the giver, would influence the shaping of government policies that would promote the general welfare and economic well-being of the electorate, including the giver himself.

Petitioners' attempt is strained. The fact that petitioners will somehow in the future benefit from the election of the candidate to whom they contribute, in no way amounts to a valuable material consideration so as to remove political contributions from the purview of a donation. Senator Angara was under no obligation to benefit the petitioners. The proper performance of his duties as a legislator is his obligation as an elected public servant of the Filipino people and not a consideration for the political contributions he received. In fact, as a public servant, he may even be called to enact laws that are contrary to the interests of

his benefactors, for the benefit of the greater good.

In fine, the purpose for which the sums of money were given, which was to fund the campaign of Senator Angara in his bid for a senatorial seat, cannot be considered as a material consideration so as to negate a donation.

Fourth Issue

Petitioners raise the fact that since 1939 when the first Tax Code was enacted, up to 1988 the BIR never attempted to subject political contributions to donor's tax. They argue that:

. . . It is a familiar principle of law that prolonged practice by the government agency charged with the execution of a statute, acquiesced in and relied upon by all concerned over an appreciable period of time, is an authoritative interpretation thereof, entitled to great weight and the highest respect. . . . [12]

This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed. It is a well-entrenched rule that

. . . erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute (PLDT v. Collector of Internal Revenue, 90 Phil. 676), and that the Government is never estopped by mistake or error on the part of its agents (Pineda v. Court of First Instance of Tayabas, 52 Phil. 803, 807; Benguet Consolidated Mining Co. v. Pineda, 98 Phil. 711, 724). [13]

Seventh Issue

Petitioners question the fact that the Court of Appeals decision is based on a BIR ruling, namely BIR Ruling No. 88-344, which was issued after the petitioners were assessed for donor's tax. This Court does not need to delve into this issue. It is immaterial whether or not the Court of Appeals based its decision on the BIR ruling because it is not pivotal in deciding this case. As discussed above, Section 91 (now Section 98) of the NIRC as supplemented by the definition of a donation found in Article 725 of the Civil Code, is clear and unambiguous, and needs no further elucidation.

Eighth Issue

Petitioners next contend that tax laws are construed liberally in favor of the taxpayer and strictly against the government. This rule of construction, however, does not benefit petitioners because, as stated, there is here no room for construction since the law is clear and unambiguous.

Finally, this Court takes note of the fact that subsequent to the donations involved in this case, Congress approved Republic Act No. 7166 on November 25, 1991, providing in

Section 13 thereof that political/electoral contributions, duly reported to the Commission on Elections, are not subject to the payment of any gift tax. This all the more shows that the political contributions herein made are subject to the payment of gift taxes, since the same were made prior to the exempting legislation, and Republic Act No. 7166 provides no retroactive effect on this point.

WHEREFORE, the petition is **DENIED** and the assailed Decision and Resolution of the Court of Appeals are **AFFIRMED**.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, and Carpio, JJ., concur.

Ynares-Santiago, J., no part.

[1] Rollo, p. 38.

[2] *Ibid.*

[3] Penned by Justice Consuelo Ynares-Santiago, now Associate Justice of this Court, and concurred in by Associate Justices Oscar M. Herrera and Delilah Vidallon-Magtolis, of the Eleventh Division of the Court of Appeals.

[4] Rollo, pp. 39-41 (Emphasis in the original).

[5] Rollo, p. 44.

[6] Rollo, pp. 167-168.

[7] Republic of the Philippines v. Guzman, 326 SCRA 90 (2000); Tayoto v. Heirs of Cabalo Kusop, 184 SCRA 355 (1990).

[8] See Manifestation, dated 25 November 2003, by counsel for petitioners informing the Court of the death of petitioner Abello; Rollo, p. 192-A.

[9] P882,661.31 x 4 = P3,530,645.24.

[10] 320 SCRA 279, 289 (1999).

[11] Rollo, p. 174.

[12] Rollo, p. 178.

[13] Republic v. Phil. Long Distance Co., 26 SCRA 620, 631 (1969).