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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

MARUBENI CORPORATION
Manila Branch,
Petitioner,

- versus - C.T.A. CASE NO. 4589

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 10 1995

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D E C I S I O N

Petitioner Marubeni Corporation, Manila Branch, seeks a review of the decision of respondent Commissioner of Internal Revenue in assessing under Section 208 (now Section 194) of the National Internal Revenue Code (NIRC) petitioner's deficiency in broker's tax in the amount of ₱2,134,871.23 inclusive of interests, surcharge and compromise penalties for the fiscal year ending March 31, 1988 as follows:

Tax Deficiency (basic)	₱ 1,097,463.00
Add : Surcharge	274,365.75
Interests (various)	738,042.48
Compromise penalty	25,020.00
Total amount due and collectible	**₱ 2,134,871.23**

To support its case, petitioner alleges that: it is a resident foreign corporation organized and existing under the laws of Japan and duly licensed to engage in business under Philippine laws with branch office at the 8th and 9th Floor, L.V. Locsin Building, Makati Avenue, corner Ayala Avenue, Makati, Metro Manila; the subject deficiency assessment is based mainly on petitioner's receipt of compensation from the Head Office for soliciting orders from Philippine customers; that the said compensation from head office cannot be considered commission subject to the 7% commercial broker's tax prescribed under Section 203 of the Tax Code then in force, that petitioner in liaising for its Head Office in looking for Philippine customers is not an act that is rendered for another person, but for itself considering that Marubeni (Philippines) and Marubeni (Japan) constitute one single taxable entity; in rendering such liaising service to its Head Office for sales directly made by the latter to Philippine customers, the Head Office allocated certain amounts to petitioner as compensation to cover its operating requirements, which amounts were reported to the Central Bank and converted to pesos and were also reported as income in petitioner's income tax return; and in its transaction, only two parties are involved, the Head Office and the Philippine customers, the petitioner as Branch being an integral part of the Head Office; hence there could not be a broker/agency transaction and accordingly the compensation received by the Branch from its Head Office cannot be considered commissions or brokerage fees subject to broker's tax.

On the other hand, respondent contends that Marubeni Corporation, petitioner's Head Office, based in Tokyo, Japan is primarily engaged as "Trading House" for importers and exporters. It has subsidiaries and branch offices world wide. Since import-export trade transcends national boundaries, brokerage services are rendered through the branch offices and subsidiaries where exporters and importers are based. Marubeni Corporation (Manila Branch) is a multinational enterprise which is a combination of companies of different nationality connected by stockholdings, managerial control and constituting an economic unity but are in fact separate legal units; that although petitioner and its Head Office constitute a single economic unit, their legal structures are separate and distinct from each other and constituting two taxable entities; that for bringing about sales or purchases of merchandise for Japanese traders and Filipino businessmen or bringing together proposed Filipino buyers and Japanese or other foreign sellers, petitioner is a commercial broker; that petitioner has a distinct character, independent of its Head Office; it is a separate business entity so that its income and expenses are segregated from those of the home office in order to clearly reflect its operating results; petitioner independently of its head office, acted as broker to both its Philippines customers and manufacturers abroad, other than Marubeni Corporation (Japan) and for its services rendered in the Philippines it received commission income in the total amount of ₱45,701,940.00 from the head office which are taxable, petitioner being a commercial broker pursuant to Section 157(t) of the Tax Code, as amended. Hence, for the failure to pay the 7% commercial broker's tax, petitioner was assessed in the amount of ₱2,134,871.23.

Petitioner offered in evidence its Financial Statements for 1987 and 1988 (Exh. A) to show that the said Financial Statements cover the specific taxable period subject of this case; the entry on page 3 of Exhibit H showing the amount of ₱45,701,940.00 as petitioner's subsidy from its Home Office; the commercial/invoices issued by the Home Office (Exh. B to G) to show that the Home Office is the seller of the goods covered by said invoices; the petitioner's "Business Operation Diagram/Flow Chart" (Exh. H) to show that there was no agency contract between the Japanese manufacturers/suppliers and the petitioner; and the authentication of the Notarial Certification dated January 28, 1993 issued by Marubeni Corporations Traffic Department in Japan (Exh. H-1) to show the authentication and due execution of the Commercial invoices, Exhibits B to G.

Exhibits A to H-1 inclusive of their submarkings, were admitted subject to the Court's appreciation and final determination of their purposes, materiality, relevancy and probative value in relation to the issue involved.

This case is similar to CTA Case No. 4110 between the same parties, wherein this Court found for the respondent. Although the Decision in CTA Case No. 4110 is on appeal before the Court of

Appeals, this Court does not find any compelling reason to depart therefrom and so it adopts the pertinent portions thereof which are quoted hereunder:

> "As defined a multinational enterprise is a combination of companies of different nationality connected by means of shareholdings, managerial control and constituting an economic unity. One basic idea which is common to all multinational enterprises is the disparity between economic and legal entity. Whereas, they are viewed as single unit, yet they are in truth and in fact separate legal units (*Multinational Enterprises by Robert Emmett Tindal, page V, XV*).
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> From the above cited definition of what a multinational enterprise is, we can very well opine that Marubeni Corporation, Manila Branch and its head office constitute a single economic unit but the legal structures are separate and distinct from each other thus constituting two (2) taxable entities. The fact remains that petitioner is engaged as commercial broker for its export - import trade considering that its export - import trade transcends national boundaries, Marubeni Corporation, Manila Branch is rendering brokerage services in the Philippines in bringing about sales or purchases of merchandise of Japanese and other foreign traders and Filipino businessmen or in bringing together proposed Filipino buyers and Japanese or other foreign sellers in the Philippines.
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> Under Section 187 (t) of the 1977 Tax Code, a commercial broker is defined as follows:

"(t). "Commercial broker" includes all persons, other than importers, manufacturers, producers or bona fide employees, who for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business owners of vessels or other means of transportation, or for the shippers, or consignors or consignee of freight carried by vessels or other means of transportation. The term includes commission merchants".

As it is, from the aforecited provision of the Tax Code, it can very well be concluded that indeed petitioner is a commercial broker. For all the brokerage services rendered by Marubeni Corporation branch in Manila, it received commissions from Marubeni Corporation, Head Office, a definite percentage from the commissions income received by the latter in a completed operation of brokerage services. This commission income was declared by Marubeni Corporation, Manila Branch, as subsidy from home office. It is however reported by the latter as income in its Statement of Income and Expenses for the period ended March 31, 1985 and 1984 attached to its Corporation Annual Income Tax Return.

For the commissions that they earned from the brokerage transactions, Marubeni Japan allocates a certain portion of that income out of the transaction for the services rendered by Marubeni Branch. It can be readily seen, in the course of the transaction that the source of the subsidy is tied with the import and export transaction.

Now, with regard to the pattern of percentage being sent as subsidy, the same is computed as based on percentage on sales price or on fixed amount based on quantity. The Court considers said amount as commissions contrary to the petitioner's claim. It is likewise noted that it is the Head Office (Marubeni Japan) that allocates the commissions as compensation for the services rendered by its Philippine branch.

We cannot give due assent to petitioner's claim that what it allocates to the Marubeni Branch are mere subsidies in the truest sense of the word. To our mind, it is more of a commission considering the fact that the amount of subsidies remitted varies, dependent upon the sales price or based on quantities. Furthermore, if these subsidies are only given to finance the transactions being undertaken by the branch office in favor of the mother company, then there would then be no need to determine the percentage of the subsidies on the basis of sales price and quantity.

The bigger the amount involved in the transaction, the bigger the commissions, the amount given by the Head Office is always dependent on the import - export transaction.

The term commissions, as defined are the allowances to an agent or factor for transacting business for another. (Citing Words and Phrases, Volume 7A, page 558)

- Commissions when used to express compensation for services rendered, it usually denotes a percentage on the amount of money paid out or received (ibid page 559)

- The word commission is usually employed to mean the compensation to an agent, broker or person who handles the affairs of others in payment for their services (ibid 559).

From the definitions cited above, the foreign remittances given to Manila Branch fall squarely within the definition of a commission.

In the instant case, petitioner laid out the nature of the transactions as involving two types. One, is where Marubeni Japan is itself the buyer or seller in a transaction, with a counterpart buyer or seller in the Philippines; and the other is where the Marubeni Head Office is neither the buyer nor the seller, there being Philippine buyers or sellers and counterpart foreign buyers or sellers. In both types of transactions, there was alleged to be active participation by Marubeni Branch by obtaining information, arranging for shipment, communicating and negotiating the terms and conditions with the Philippine parties involved, and other liaison services.

It was shown that Marubeni Head Office was itself the seller or the buyer in this activity in the Philippines. The role of the branch involved facilitation of the said transaction. For this it received "commissions from Home Office" amounting to ₱22,031,993.00. The second type of transaction was shown as one where petitioner was not a buyer or seller there being Philippine buyers or sellers and counterpart foreign buyers or sellers. The participation of the branch in this transaction also involved liaison service and the commission paid to it represents all income allocated to it by the Head Office.

Moreover, the Court sustains its deviation from the case of *Philipp Brothers Oceanic Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 3140 with the case at bar based on the following considerations:

In the Philipp Brothers Oceanic case, the amount of Commissions allocated to the Philippine Branch is not dictated by the amount, bulk, quantity or volume of the import and/or export transaction. It is based on a uniform Intercompany Commission schedule supplied by the Head Office.

Secondly, instead of subsidy the term used is Commission intercompany, and the amount of Commission is based on a pre-determined rates.

Lastly, the Commissions paid by the Head Office (PhiBro New York) to Philippine Branch in the form of foreign remittances are paid only after the latter has submitted a debit memo. (*Philipp Brothers Oceanic, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3140, p. 80 CTA Records*)"

Clearly then, the questioned assessment is in order.

WHEREFORE, the decision of the Commissioner of Internal Revenue assessing petitioner the amount of ₱2,134,871.23 is **SUSTAINED.**

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals