fib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KATSUHIRO OTA,
Petitioner,

- versus - C.T.A. CASE NO. 3161

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

3/31/82

D E C I S I O N

This case comes before us on appeal from an assessment for deficiency income tax as a result of the respondent's disallowance of certain items of deductions claimed by petitioner on his income tax return for the taxable year 1975.

In précis, petitioner a Japanese national (1) arrived in the Philippines on April 3, 1975 and admitted as temporary visitor under Section 9(a) of the Philippine Immigration Act of 1940, as amended; (2) had secured a conversion of said visa into a pre-arranged employee or a non-immigrant status pursuant to Section 9(g) of the same Act on July 23, 1975 and authorized for a year stay but subsequently renewed; (3) worked with the Japan Air Lines (Manila office) as an Assistant Manager for maintenance and remained so until 1979; (4) filed an income return for the calendar year 1975 on February 2, 1976, likewise for the years subsequent, under the status of a resident alien in the Philippines; (5) was assessed for a deficiency income tax for the said year resulting from the disallowance of the claimed deductions under notice of August 31, 1977 in the amount of ₱3,727.40 exclusive of the increment incident to the delinquency; (6) was served warrant of distraint on personal property dated November 9, 1978; (7) protested the assessment under letters dated September 2, 1977 and December 15, 1978 claiming as a resident alien entitlement to the disallowed deductions and requesting cancellation /withdrawal thereof; but respondent denied the same on August 29, 1980. Hence this petition.

In assailing the deficiency assessment, petitioner holds himself out as a resident alien in the Philippines for income tax purpose during the taxable year 1975 within the purview of the pertinent provisions of the Income Tax Regulations, that, an alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines (Sec. 5) and retains his status as a resident until he abandons the same and actually departs fromthe Philippines (Sec. 6). As such a resident becomes entitled to the personal and additional exemptions (Section 23), optional standard deduction (Section 30) under the rates prescribed in Section 21, all of the Tax Code, as amended, which petitioner availed for his income tax return in calendar year 1975, computed as follows:

Total gross income		P41,004.00
Less:		
Optional standard deduction (10% of the gross income)		4,100.40
Total net income..		P36,903.60
Less:		
Exemptions -		
Personal (Head of family)..P3,000.00		
Additional per dependent ..	1,000.00	4,000.00
Taxable net income..		P32,903.60
Amount of tax due (Rates in Sec. 21)..		6,805.30
Less:		
Amount withheld		8,425.98
Amount refundable ..		P 1,620.68

Respondent maintains, however, that as a pre-arranged employee, petitioner was a non-resident alien engaged in trade or business in the Philippines and cannot avail of the benefits of deductions normally accorded residents and citizens for income tax purposes, thus the disallowance and the consequent deficiency liability in the amount of P3,727.70, excluding increment incident to the delinquency. Further stressing that petitioner's intended stay in the Philippines was temporary notwithstanding the change of the visitor's visa to one of pre-arranged employment. For the taxable year 1975, petitioner had less than one year stay in the country which period was too short to convert the original intention to stay temporarily in the Philippines to that of a resident alien but long enough under revenue laws to qualify him as a non-resident engaged in trade or business pursuant to Section 22(a) of the Tax Code, which provides, insofar as pertinent, that, "a non-resident alien individual who shall come to the Philippines and stay therein for an aggregate period of more than one hundred eighty days during any calendar year shall be deemed a non-resident alien doing business in the Philippines."

The issue of whether or not petitioner is a resident alien is at its core a question of intention as regards the tenure and nature of his stay in the Philippines.

Suffice it to state that for purposes of income tax, alien individuals are generally divided into two classes, namely, resident and non-resident aliens. The first are treated at par with citizens of the Philippines and accorded the benefits of deduction in their income as invoked by the petitioner. The second are classified into those (1) engaged in trade or business who may avail of itemized sans optional standard deduction pursuant to Section 30, as well as personal exemption upon proof of reciprocity as provided in Section23, and (2) not engaged in trade or business, taxed on a flat rate of 30% on gross income derived from Philippine sources under Section 22(a) and (b), all of the Tax Code.

Be that as it may, there is no dispute as to any material facts in this suit but the parties seem trying to get the better of each other over by a quibble on the proper import of the pertinent provisions of the Income Tax Regulations, which read:

> "Sec. 5. Definition.- A 'non-resident individual' means an individual (a) whose residence is not within the Philippines; and (b) who is not a citizen of the Philippines.
>
> "An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the Philippines and has no definite intention as to his stay, he is a resident. One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient. But if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the Philippines, he becomes

a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned." (Underscoring supplied)

"Sec. 6. Loss of residence by alien.- An alien who has acquired residence in the Philippines retains his status as a resident until he abandons the same and actually departs from the Philippines. An intention to change his residence does not change his status as a resident alien to that of a non-resident alien. Thus an alien who acquired a residence in the Philippines is taxable as a resident for the remainder of his stay in the Philippines."

We find nothing ambiguous nor obscure in the language of the regulations insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar.

As disclosed in the records, the conversion of the temporary visitor's visa issued on March 20, 1975 by the Philippine Embassy in Tokyo, Japan, into a category of a pre-arranged employment under Section 9(g), supra, granted by the Commission of Immigration and Deportation on July 23, 1975 gave a more definite shape to petitioner's intended stay, so to speak. He had now that involvement for the specific purpose of a continued employment and for such indefinite time as may be required by the exigency of his position as Assistant Manager for maintenance in the Manila office of the Japan Air Lines. The locus of the undertaking established, petitioner did take his home and continued to reside and live with his family in the Philippines through the years 1975 to 1979 until transferred to another foreign station. We think such circumstances found for petitioner an appropriate legal cubbyhole fit for a resident status vis a vis a mere transient or sojourner within the contemplation of Sections 5 and 6 of the Regulations, supra, aptly ensconced in a holding that, "As used in the statute and as interpreted by the regulations, 'residence' means broadly, presence as an inhabitant in a given place, not as a mere transient, but either indefinite as to time or for a purpose that is such a nature that an extended stay may be necessary for its accomplishment." (Jones v. Kyle, 10 Circuit 191, 190 F 2d 353). We see no threat of ambiguity arising from petitioner's intention which appears amply sufficient to dispel any pall of uncertainty cast over his status as a resident alien.

Petitioner's status as a resident alien need not possibly result in an inconclusive dithering yet loose to run the gauntlet of respondent's rulings fashioned for non-resident aliens engaged in trade or business. It does not need to be. It is beyond the reach of the issue in the instant case, which as earlier stated, is nothing but simply a question of distinguishing a resident alien from a mere transient or sojourner for income tax purposes, as conceived and defined in the Income Tax Regulations. Significantly noted, moreover, is the fact that "petitioner has consistently filed his income tax returns in 1976, 1977, 1978 and 1979, as a resident alien, availing of the optional standard deduction as well as personal and additional exemptions and until now the same have never been questioned." (Memorandum for Petitioner, p. 7). The situation where petitioner stood during the calendar year 1975 remained obtaining through the subsequent taxable years 1976-1979. We see no reason and none is offered for such a quirk of a variance in the treatment of petitioner's income tax return for the year 1975. We hold that petitioner stands relieved of the tax liabilities for the calendar year 1975 consequenced by the deficiency assessment, a contradiction by fiat with the unquestioned income tax returns for the taxable years 1976 through 1979.

We conclude, and that is all we need decide, that petitioner qualified as a resident alien and find his income tax return for the calendar year 1975 in order. The refund of ₱1,620.60 representing payment in excess of the amount legally due for said year has still to be met by respondent.

WHEREFORE, petition is hereby granted without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 31, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge