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LOPEZ, ESTEBAN LOPEZ, MARIA DE
LA CONCEPCION LOPEZ, and PILAR
GURREA, through their attorney-
in-fact ELIZALDE & CO., INC.,
Petitioners

March 16, 1964

versus CTA CASE NO. 1244

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

D E C I S I O N

This is an appeal from the decision of the respondent denying the claim for refund of the petitioners in the aggregate amount of ₱1,465.06 as deficiency income tax for the year 1960.

Petitioners are Spanish citizens residing abroad. All the petitioners, except Pilar Gurrea, are co-owners of the Hacienda "Consuelo-Piedad" situated in Negros Occidental and managed by Elizalde & Co., Inc. of Iloilo City. They are also stockholders of different corporations in the Philippines. In 1960, petitioners received incomes derived from the operation of the Hacienda "Consuelo-Piedad" and from dividends from domestic corporations. In their individual income tax returns for said year, said incomes were reported, each of them claiming the optional standard deduction under Section 30(k) of the National Internal Revenue Code. For being non-resident aliens, however, the optional standard deduction was disallowed giving rise to the deficiency income tax. The deficiency income tax assessed against each of the petitioners was paid under protest. At the same time, petitioners, through their agent, requested reconsideration of the assessment claiming that they should be allowed to deduct from their gross incomes the margin fees collected by the Central Bank, pursuant to Republic Act No. 2609, and other expenses incurred in remitting to them their incomes from Philippine sources. Allowance of said expenses as a deduction from their gross incomes would result in overpayment of their income tax liability for said year, refund of which overpayment was sought but was denied by respondent. Hence, this appeal.

It is contended on behalf of petitioners that the margin fee imposed and collected by the Central Bank under Republic Act No. 2609 is a tax and, therefore, deductible from gross income under Section 30(c) of the Revenue Code. On the other hand, respondent claims that said margin fee is a regulatory fee and not a tax.

> "The imposition of the 25% margin fee is provided by Circular No. 95, which was issued by the Central Bank on July 17, 1959 (55 O. G. (29), pp. 5523-5526), pursuant to Republic Act

No. 2609. Said Republic Act seeks to stabilize currency and its 'main and primary objective are (1) to arrest inflation; (b) to recover and maintain the stability of the peso and insure and preserve its external convertibility by balancing payments and bolstering our reserves.x x x.'(1) In other words, it is quite apparent that the object of the Act is not to raise revenues. As Senator Sabido said during the deliberations of Senate Bill No. 457, which later become Republic Act No. 2609:

> 'Almost all of them (members of the Opposition) seem to regard this measure as a tax measure. That is an error, Mr. President. Senate Bill No. 457, same as Senate Bill No. 344 is a currency measure or a monetary measure. If a revenue is derived from either it is only incidental. Were it a tax measure, I would not have authored any one of them, because, firstly, such measure would be violative of our agreement with the United States under the Laurel-Langley Agreement, and secondly, it would be an unjustified burden to our people if the sole and primary purpose of it were to enable the government to carry out the various projects indicated in Budget B . . . But Mr. President, this is not a tax measure, neither by its nature and by the desposition of the income that it may generate can Senate Bill No. 457 be regarded as a tax measure. In no portion of Senate Bill No. 457 is the word 'tax' used. . . .' (Senate Diario, No. 3, June 3, 1959)

(1) Senator Sabido Senate Diario No. 3, June 3, 1959.

> The foregoing opinion of Senator Sabido is confirmed by Section 1 of Republic Act No. 2609, which states that said Act, 'along with the other monetary, credit and fiscal measures' seeks 'to stabilize the economy.' In other words, Republic Act No. 2609 imposes the 25% margin fee with a regulatory purpose, to provide means for the stabilization of the currency."

The position taken by respondent on the nature of the margin fee is supported by an opinion of the Secretary of Justice. (See Opinion No. 201, series of 1959, Sec. of Justice.) We find this opinion well taken. Republic Act No. 2609 is not a revenue measure. Its sole purpose, as expressly stated in Section 1 thereof, is "to effectively curtail any excessive demand upon the international reserve.'" The margin fee imposed and collected to make that purpose effective can not in any sense be called a tax.

Petitioners also argue that -

> "If the margin fee in question is not a tax or a license fee, it is at least a deductible business expense inasmuch as same was incurred 'for the production or collection of income.' We believe, that, in fairness to the taxpayer, the forcible exaction of the margin fee and non-voluntary payment thereof should be considered if not as a tax at least as an 'ordinary and necessary expense' and not 'as a personal expense.'"

Petitioners contend that the margin fees and other expenses incurred in remitting to them abroad their incomes from Philippine sources are deductible as business expenses under Section 30(a) of the Revenue Code, such expenses being necessary in the production or earning of their incomes.

We do not think that said expenses are business expenses or expenses in connection with the production or earning of petitioners' incomes in the Philippines. They are expenses incurred in the disposition of said incomes, which are manifestly personal in nature and not business expenses. As such personal expenses, they are not deductible, pursuant to Section 31(a)(1) of the Revenue Code. Consequently, we find it unnecessary to pass upon the question whether or not petitioners are non-resident aliens engaged in trade or business in the Philippines.

B

Finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioners.

SO ORDERED.

Manila, March 16, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO [illegible]
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge