REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA CITY

ORIENT OVERSEAS CONTAINER LINE
and F.E. ZUELLIG (M), INC.,
Petitioners,

- versus - C.T.A. CASE NO. 3346

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

9/15/83

x - - - - - - - - - - - - - - - - x

D E C I S I O N

The sole issue in this case as posed by the parties is: What is the correct conversion rate of the U.S. (United States) dollar to the Philippine peso for purposes of determining petitioners' computed annual income tax liability for fiscal year ended March 31, 1976?

In paying the 2½% income tax provided for under Section 24(b)(2) of the National Internal Revenue Code on its declared gross Philippine billings of US$2,889,717.69 for fiscal year ended March 31, 1976, petitioner Orient Overseas Container Line, through its ship agent F.E. Zuellig (M), Inc., used the conversion rate of ₱7.00 to US$1.00. Respondent Commissioner of Internal Revenue asserts, however, that the proper exchange rate of the U.S. dollar to the

Philippine peso at that time was ₱7.50 and not ₱7.00 to a dollar, and the gross Philippine billings should be US$2,897,737.38 as shown in petitioners' quarterly business (percentage) tax returns for the same period. Hence, the deficiency income tax for the fiscal year ended March 31, 1976 in the amount of ₱47,801.85, now under review, the details of which are as follows:

ACR-25-6-04A-002953-76/78

Gross Phil. Billings - - - - - - - - - - - - - -	₱21,690,805.55
Tax due thereon - - - - - - - - - - - - - -	₱ 542,270.00
Less: Amount already assessed - - - - - - - -	505,701.00
B a l a n c e - - - - - - - - - - - - - -	₱ 36,569.00
Add: 14% int. fr. 7-16-76 to 9-26-78 - - - -	11,232.85
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - - -	₱ 47,801.85

The facts are not in dispute, the parties having submitted this case for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue bearing on the case, after petitioners waived their protest on the undeclared billings of US$8,019.69. As narrated by respondent in his memorandum dated February 10, 1983 (pp. 65-67, CTA records):

> Orient Overseas Container Line (referred to as Orient Overseas) is a foreign corporation engaged in international shipping. It is represented in the Philippines by its agent, petitioner F.E. Zuellig (M), Inc. The Philippines is one of its ports of call where it loads cargoes for transport to foreign ports. Freight is either free on board (FOB), or at destination for account of the foreign buyers. (Memorandum for Commissioner, pages 111-113, B.I.R. records).
>
> For fiscal year ended March 31, 1976, petitioner Orient Overseas declared in its

income tax return gross Philippine billings of US $2,889,717.69, equivalent to ₱20,228,023.83 converted at the exchange rate of ₱7.00 to US $1.00 (Pages 85-106, B.I.R. records).

In its quarterly business (percentage) tax returns for the same period, petitioner Orient Overseas declared gross receipts of US $2,897,737.38, equivalent to ₱21,690,805.55, on the basis of the free market rate of exchange at the time of the vessel's sailing, pursuant to Par. No. 4 of Revenue Memorandum Circular No. 1-75 (Pages 66-81, B.I.R. records).

The difference between the amount of US $2,897,737.38 declared as gross receipts in petitioner Orient Overseas' quarterly business (percentage) tax returns, for the fiscal year ended March 31, 1976, and the amount of US $2,889,717.69 declared as gross Philippine billings in its income tax return for the same fiscal year was US $8,019.69.

In a letter and assessment notice, both dated September 26, 1978, respondent assessed and demanded from petitioners the amount of ₱47,801.85, as deficiency income tax, inclusive of interest for the fiscal year ended March 31, 1976, based on petitioner Orient Overseas' gross Philippine billings of ₱21,690,805.55 (Pages 119-120, B.I.R. records).

In a letter dated October 24, 1978, petitioners protested the assessment on the ground that the rate of exchange applied by respondent in converting Orient Overseas' gross Philippine billings was ₱7.50 to US $1.00, under Revenue Memorandum Circular No. 9-76 dated March 10, 1976 (Pages 165-166, B.I.R. records). They reiterated their protest in a letter dated December 7, 1979 (Page 177, B.I.R. records).

In a letter dated April 30, 1981, respondent denied petitioners' protest on the ground that petitioner Orient Overseas had undeclared billings in the amount of US $8,019.69 and that transactions involving outbound revenues in the case of international shipping are not among the categories stated in Revenue Memorandum Circular No. 1-75, par. 2(b) dated January 13, 1975 (p. 181, B.I.R. records).

At the hearing of September 16, 1982, petitioners manifested that they were waiving protest on the income tax due on the amount of US $8,019.69 which was the underdeclared billings of Orient Overseas in its income tax return for the fiscal year ended March 31, 1976. In effect, petitioners admitted that the actual gross Philippine billings of petitioner Orient Overseas for purposes of income tax was US $2,897,737.38, not US $2,889,717.69.

The parties do not quarrel that Revenue Memorandum Circular No. 1-75 dated January 13, 1975, which prescribes a uniform exchange rate of U.S. dollars and other foreign currencies to Philippine pesos for internal revenue tax purposes for the calendar year 1975 and all fiscal years up to June 30, 1976, is the applicable reference and guideline for the schedule of the conversion rate of computing the income tax liability of petitioners involved in this case. To quote Memorandum Circular No. 1-75:

"January 13, 1975

REVENUE MEMORANDUM CIRCULAR NO. 1-75

SUBJECT: Prescribing a uniform exchange rate of U.S. dollars and other foreign currencies to Philippine pesos for internal revenue tax purposes for the calendar year 1975 and all fiscal years up to June 30, 1976.

TO : All Internal Revenue Officers and Others Concerned:

For the purpose of establishing a uniform rate of exchange of U.S. dollars or other foreign currencies to Philippine peso for internal revenue tax purposes for the calendar year 1975 and all the fiscal years up to June 30, 1976, the following schedule of exchange rates are hereby prescribed for reference and guidelines of all concerned:

1. In the case of regular or habitual transactions involving actual remittances or acceptances of U.S. dollars or other foreign currencies such as salaries, wages, fees or other renumeration for personal services, royalties, rents, interests or other fixed or determinable annual or periodical income, the following rules shall govern:

a. Where actual remittance is made to taxpayers abroad, the bank's selling rate of exchange of the foreign currency involved at the time of such remittance shall be used for the purpose of arriving at the tax base;

b. Where acceptance is made by taxpayers in the Philippines and there is an actual conversion of the foreign currency to Philippine pesos at any time during the year, the bank's buying rate of exchange at the time of such conversion shall be used for the purpose of arriving at the tax base;

2. In the case of regular or habitual transactions where there are no actual remittances or acceptances of U.S. dollars or other foreign currencies such as salaries, wages, fees, or other remunerations for personal services, royalties, rents, interests, or other fixed or determinable annual or periodical income, the following rules shall govern: (emphasis supplied.)

a. Where income accruing to taxpayers abroad is credited to their account by mere bookkeeping entries and such income is subject to withholding tax in the Philippines, the rate of exchange quoted by the Foreign Exchange Department of the Central Bank on the date the withholding tax accrues shall be used for the purpose of computing the tax base;

b. Where such income accruing to taxpayers abroad is not subject to withholding tax but is liable to income tax after the close of the taxable year, the rate of ₱7.00 to U.S. $1.00 shall be used. In the case of non-resident citizens taxable under Section 21 of the National Internal Revenue Code, as amended by Presidential Decree No. 69, the income tax liability computed in dollars shall be converted to Philippine pesos at the guiding rate of exchange quoted by the Central Bank at the time of payment if the taxpayer chooses to pay his tax liability in Philippine pesos; (underscoring supplied.)

c. Where taxpayers in the Philippines are entitled to receive income from abroad and there is no actual conversion of the foreign currency to Philippine pesos during the year, the same rate of ₱7.00 to U.S. $1.00 shall be used for income tax purposes.

3. In the case of transactions involving the computation of advance sales or compensating taxes, the rate of exchange used by the Bureau of Customs at the time of the payment of such taxes shall prevail.

4. <u>In the case of transactions involving the computation of percentage taxes, the rate of exchange quoted by the Foreign Exchange Department of the Central Bank on the date the percentage tax accrues shall be used.</u> (underscoring supplied.)

5. In the case of an isolated or casual transaction involving remittances or acceptances of U.S. dollars or other foreign currencies such as dividends, interests, capital gains or other gains from occasional sales of property and the like, the same rules promulgated in paragraphs 1 and 2 shall apply.

6. Where an allocation of income and expenses is either required or allowed, for income tax purposes, under Section 37 of the Tax Code and the regulations promulgated under it, the same rate of ₱7.00 to U.S. $1.00 shall be used.

7. Where the currency involved is other than U.S. dollars, the foreign currency shall

first be converted to U.S. dollars at the prevailing rate of exchange between the two currencies. The resulting amount shall then be converted to Philippine pesos in accordance with the above promulgated rules.

ENFORCEMENT AND PUBLICITY

All Internal Revenue Officers and others charged with the enforcement of internal revenue laws are enjoined to enforce the provisions of this Circular accordingly and to give it as wide a publicity as possible.

(sgd.) MISAEL P. VERA
Commissioner of Internal Revenue
TAN-1601-593-5

C-1-PMC/Aio

APPROVED:

(sgd.) ALFREDO PIO DE RODA, JR.
Acting Secretary of Finance"

The collision occurs at the particular provision or paragraph of the memorandum circular specifically applicable. Petitioners contend that as proper basis for the conversion rate of U.S. dollars to Philippine pesos of the gross Philippine billings of the Orient Overseas Container Line for income tax purposes for the fiscal year ended March 31, 1976, Paragraph 2(b) of Revenue Memorandum Circular No. 1-75 is controlling. On the other hand, respondent insists that Paragraph 4 governs the case.

Back to Paragraph 2(b) of the revenue memorandum circular. It says: "In the case of regular or habitual transactions where there are no actual remittances or acceptances of U.S. dollars or other foreign currencies such as salaries, wages, fees, or other remunerations for personal services, royalties, rents, interests, or other fixed or determinable annual or periodical income, x x x" the rate of ₱7.00 to U.S. $1.00 shall be used, "Where such income accruing to taxpayers abroad is not subject to withholding tax but is liable to income tax after the close of the taxable year." Paragraph 2(b) gives the ready answer when the conversion rate of ₱7.00 to U.S. $1.00 is to be used.

Here, in the case at bar, the gross Philippine billings in question of petitioner Orient Overseas Container Line were realized in the course of its regular or habitual transactions as a foreign corporation engaged in international shipping which do not involve, admittedly, actual remittances or acceptances of U.S. dollars or other foreign currencies such as salaries, wages, fees, or other remunerations for personal services, royalties, rents, interests or other fixed or determinable annual or periodical income. Neither were such gross Philippine billings income subject to withholding tax but petitioners are liable to income tax after the close of the taxable year. The emphases are - "no actual remittances or acceptances of U.S. dollars" and "not subject to withholding tax". Paragraph 2(b) is clear and specific. There is no room for interpretation. Accordingly, petitioners' rights and liabilities should be gauged by Paragraph 2(b) of Revenue Memorandum Circular No. 1-75. The conversion rate of the U.S. dollar to Philippine peso in determining petitioners' computed annual income tax liability for fiscal year ended March 31, 1976 should therefore be ₱7.00 to U.S. $1.00 as specified therein.

On the assumption that freight was either free on board (FOB) or at destination for account of the foreign buyers, as contended by respondent, we cannot infer and imply that Paragraph 4 of Memorandum Circular No. 1-75, in the case of transactions involving the computation of percentage taxes, "may be applied in a suppletory manner for the sake of uniformity and equity." (pp. 68-69, CTA records.) Adverting to the terms of Paragraph 4, it seems plain and clear that the rate of exchange quoted by the Foreign Exchange Department of the Central Bank applies only in the case of transactions involving the computation of percentage taxes. The paragraph employs the term "transactions involving the computation of percentage taxes." Nothing there said speaks of computation of income tax on gross Philippine billings. We cannot ignore the principle that express mention in a stature, or in the implementing memorandum circular, precludes reading others into it. And even more, how can we use the rate of exchange quoted by the Foreign Exchange Department of the Central

Bank in determining petitioners' computed annual income tax liability for the fiscal year ended March 31, 1976 when no evidence was presented by respondent as to the rate of exchange quoted by the Foreign Exchange Department on the date the income tax involved herein accrued.

The rule has been established that the application of tax laws, and implementing revenue memorandum circulars for that matter, if the meaning is doubtful, should not be extended by implication beyond the clear import of the language used. In fact, if the intent or meaning thereof is doubtful, the same should be construed most strongly against the government and in favor of the taxpayer. (Kuttner vs. Collector of Internal Revenue, 18 Phil. 461; Stevedoring vs. Trinidad, 43 Phil. 803.) To apply Paragraph 4 of Revenue Memorandum Circular No. 1-75 to the instant case "in a suppletory manner for the sake of uniformity and equity", as respondent avers, when the applicability of Paragraph 2(b) thereof is very explicit and unequivocal, is therefore "to force a square peg into a round hole". Revenue Memorandum Circular No. 1-75 was issued by respondent Commissioner of Internal Revenue for the enforcement and implementation of internal revenue laws. It is thus to be fairly and justly presumed that respondent, who possesses such a unilateral and one-sided authority, has so shaped Paragraph 4 as, without ambiguity or doubt, to bring within it "transactions involving the computation of percentage taxes" only as plainly and specifiedly stated therein.

Under the circumstances, the decision of respondent dated April 30, 1981 holding petitioners liable for the amount of ₱47,801.85 as deficiency income tax inclusive of interest for fiscal year ended March 31, 1976 cannot be sustained. Instead, considering that petitioner Orient Overseas Container Line's gross Philippine billings amounted to US$2,897,737.38 in fiscal year ended March 31, 1976, its deficiency income tax liability is computed as follows:

Gross Phil. Billings (US$2,897,737.38 converted at ₱7.00 to U.S.$1.00)	₱20,284,161.60
Tax due thereon	₱ 507,104.00
Less: Amount already assessed	505,701.00
Balance	₱ 1,403.00
Add 14% int. from 7-16-76 to 9-26-78	431.03
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 1,834.03

Accordingly, petitioners Orient Overseas Container Line and F.E. Zuellig (M), Inc., are hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱1,834.03 plus 5% surcharge and 14% annual interest from September 26, 1978 up to July 31, 1980 and 20% annual interest from August 1, 1980 until fully paid pursuant to Section 51(e)(2)(3) of the National Internal Revenue Code of 1977, as amended by Presidential Decree No. 1705, provided that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years.

WHEREFORE, the judgment under review is modified as indicated in the above opinion of the Court. With costs.

SO ORDERED.

Quezon City, Metro Manila, September 15, 1983.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge