REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROGER E. WELINER,
Petitioner,

- versus - C.T.A. CASE NO. 3170

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against petitioner the sum of ₱26,162.08 as income tax for the year 1975, inclusive of interest.

It appears that petitioner, an Australian citizen, was employed by Envirotech Corporation, a United States Corporation with headquarters/offices at Palo, Alto, California, U.S.A., represented by B.B. Fisher & Co., a Philippine corporation, as its Area Manager in Southeast Asia and in the Middle East up to December 31, 1977. His salary as such Area Manager was paid directly to petitioner's bank, Bank of America, at Belmont, California, U.S.A.

During his entire period of employment, he had to make various trips to different countries in Southeast Asia and in the Middle East, all expenses incurred arising from or in connection with such trips and travels were borne exclusively by his employer, Envirotech Corporation.

Among the various countries in Southeast Asia which petitioner travelled to as area manager, was the Philippines in the year 1975, by reason of the fact that B.B. Fisher & Co., a Philippine domestic corporation, was the exclusive representative in the Philippines of petitioner's employer, Envirotech Corporation, for the latter's various equipment in mining, sugar, environmental and general processing industries. His various visits to the Philippines as such area manager of the Envirotech Corporation in the calendar year 1975 was the basis of the respondent in classifying petitioner as a non-resident alien engaged in trade or business within the Philippines under Section 22(a) of the Tax Code.

Consequently, on the last week of February, 1980, petitioner was assessed the sum of ₱18,424.00 and interest thereon of ₱7,738.08 or a total sum of ₱26,162.08 under Assessment No. 01-1-FR-005401-75 (Annex "A", p. 7, CTA rec.)

On March 3, 1980, petitioner protested the said assessment (Annex "B", pp. 8-9, CTA rec.) and requested for the setting aside of the same.

In a letter dated June 5, 1980, respondent denied said request (Annex "C", pp. 10-11, CTA rec.) and petitioner filed a request for reconsideration (Annex "D", pp. 12-13, CTA rec.) on August 18, 1980.

On September 24, 1980 (Annex "E", pp. 14-15, CTA rec.) respondent denied the request for reconsideration, hence this appeal.

This case has been submitted for decision based on the records and pleadings.

The sole issue to be resolved is whether or not petitioner could be legally classified as a non-resident alien engaged in trade or business within the Philippines in the year 1975 in accordance with Section 22(a) of the Tax Code.

The law involved are Sections 22(a) and 37 of the Tax Code, in relation to Sections 8 and 155 of Revenue Regulation No. 2, implementing Sections 22 and 37 of the National Internal Revenue Code, which read as follows:

> "Sec. 22. Tax on non-resident alien individuals. - (a) non-resident alien engaged in trade or business within the Philippines. - There shall be levied, collected and paid for each taxable year upon the entire net income received from all source within the Philippines by every non-resident alien individual engaged in trade or business within the Philippines the tax imposed by Section twenty-one: Provided, That for purposes of this title, 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 provision of Section 20(g) of this Code to the contrary notwithstanding. (underscoring supplied)

> "Sec. 37. Income from sources within the Philippines. - (a) Gross income from sources within the Philippines. The following items of gross income shall be treated

> as gross income from sources within the Philippines:
>
> xxx xxx xxx
>
> (3) Service. - Compensation for labor or personal services performed in the Philippines;
>
> xxx xxx xxx
>
> Revenue Regulation No. 2
>
> "Section 8 - Taxation of non-resident aliens; Classification. x x x
>
> The phrase "engaged in trade or busines within the Philippines" includes the performance of personal services within the Philippines. x x x."
>
> xxx xxx xxx
>
> Section 155. - Compensation for labor or personal services. - Gross income from sources within the Philippines includes compensation for labor or personal services performed within the Philippines regardless of the residence of the payor, or the place in which the contract for service was made, or of the place of payment. x x x." (underscoring supplied)

From the above-quoted provisions of law (Secs. 22(a) and 37, National Internal Revenue Code), and its implementing rules and regulations cited above, it could readily be seen that petitioner could be legally classified as a non-resident alien engaged in trade or business within the Philippines in the year 1975.

Under the said provision of law, the following requisites must concur before the income tax imposed therein shall apply: firstly, there is a non-resident alien individual engaged in trade or business within the

Philippines or a non-resident alien deemed doing business in the Philippines, and <u>secondly</u>, income must have been received from sources within the Philippines. These two requisites are present in the instant case.

Petitioner, in the year 1975, stayed and performed services for 191 days in the Philippines in behalf of his foreign employer, the Envirotech Corporation of Palo Alto, California, U.S.A., represented in the Philippines by B.B. Fisher & Co., as the former's area manager in Southeast Asia and the Middle East. He received income from sources within the Philippines corresponding to the 191 days although payment of his salary during this period was made by Envirotech Corporation directly to his bank at Belmont, California, U.S.A.

Petitioner's contention that he is not liable to pay any tax as he was only deemed doing business in the Philippines but did not actually receive any income from sources within the Philippines as his salary as area manager in Southeast Asia and Middle East was allegedly paid directly to his bank, Bank of America at Belmont, California, U.S.A. is without merit.

Suffice it to state that Revenue Regulation No. 2, particulary Sections 8 and 155, implementing Sections 22 and 37, respectively, of the National Internal Revenue Code above-quoted states that the phrase "engaged in trade or business within the Philippines" includes the performance of personal services within the Philippines and that "gross income from sources within the Philippines includes compensation for labor or personal services performed within the Philippines regardless of the residence of the payor, or the place in which the contract for service was made, or of the place of payment."

Moreover, every person, like petitioner in this case, who work as area manager of the Envirotech Corporation and who was performing personal services in the Philippines for compensation, was therefore "engaged in trade or business within the Philippines". (Sec. 22(a), NIRC, taken in relation to Secs. 8 and 155 of Rev. Reg. No. 2) /_Jose Arañas, National Internal Revenue Code, Vol. I, p. 44, citing Mertens, Law of Federal Income Taxation, Vol. IV, Chap. 25, pp. 21-22._7

Accordingly, petitioner having been temporarily staying in the Philippines and having rendered personal service to Envirotech Corporation, which is represented by B.B. Fisher & Co. in the Philippines, and having actually stayed for 191 days here is rightfully considered non-resident alien engaged in trade or business in the Philippines and as such subject to income tax on income earned for personal services performed in the Philippines in 1975.

WHEREFORE, we find no error in the decision appealed from and the same is hereby affirmed. Petitioner is hereby ordered to pay the sum of ₱26,162.08 as income tax for 1975, plus 5% surcharge and 14% interest per annum from August 6, 1979 up to July 31, 1980, and 20% interest per annum from August 1, 1980, pursuant to the provisions of Section 51(e) of the 1977 Tax Code, as amended.

SO ORDERED.

Quezon City, Metro Manila, May 23, 1986.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge