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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FRANK ROBERTSON,
Petitioner,

- versus - C.T.A. CASE NO. 2735

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

JAMES W. ROBERTSON,
Petitioner,

- versus - C.T.A. CASE NO. 2736

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

ROBERT H. CATHEY,
Petitioner,

- versus - C.T.A. CASE NO. 2738

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

12/14/84

JOHN L. GARRISON,
Petitioner,

- versus - C.T.A. CASE NO. 2739

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

DECISION

The above entitled cases come before Us on similar or identical fact situations on a question involving a judicial determination of the scope of the tax exemption provision in Article XII, Par. 2, of the RP-US Military Bases Agreement of 1947, quoted as follows:

> "2. No national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine source or sources other than the United States sources."

The records in brief show that -

Petitioner Frank Robertson (CTA Case No. 2735) is an American citizen born in the Philippines on July 8, 1924. He resided in the Philippines until repatriated to the United States in 1945 and took residence at Long Beach, California. Soon after he was employed by the U.S. Federal Government with a job at the U.S. Navy. His work brought him to the U.S. Navy's various installations overseas with eventual assignment at the U.S. Naval Ship Repair Facility at Subic Bay, Olongapo, Philippines, in 1962.

Like his brother Frank Robertson, petitioner James Robertson (CTA Case No. 2736) was born in the Philippines on December 22, 1918 and had since resided in this country until repatriated to the United States in 1945 and there, established his domicile. He landed a job with the U.S. Navy Shipyard at Long Beach, California as a U.S. Federal Civil Service employee. He returned to the Philippines in 1958 with assignment at the U.S. Naval Base at Subic Bay, Olongapo, and has since remained thru 1972.

In CTA Case No. 2738, petitioner Robert H. Cathey is a United States born citizen who first came to the Philippines with the U.S. liberation force in 1944, and upon discharge from the military service in 1946 turned a U.S. Navy's civilian employee with station at Makati, Metro Manila.

Petitioner John Garrison (CTA Case No. 2739) is a Philippine born American citizen also repatriated to the United States in 1945 establishing his domicile at San Francisco, California. Soon after he was employed by the U.S. Federal Government in its military installations. He returned to the Philippines in 1952 assigned at the U.S. Naval Base, Subic Bay, Philippines.

All told, the petitioners are citizens of the United States; holders of American passports and admitted as Special Temporary Visitors under Section 9(a) visa of the Philippine Immigration Act of 1940, as amended; civilian employees in the U.S. Military Base in the Philippines in connection with its construction, maintenance, operation, and defense; and incomes are solely derived from salaries from the U.S. government by reason of their employment in the U.S. Bases in the Philippines.

Sometime in March, 1970, the Philippine Military Liaison Officer at the U.S. Naval Base at Subic Bay submitted a list of the Filipinos working at the base together with a handful of American citizens including the petitioners who were deemed "habitual" residents of the Philippines prior to their employment at the U.S. bases. The report had for particulars the petitioners' earnings in 1969, as follows:

Frank Robertson	- - -	$12,045.84
James W. Robertson	- - -	14,985.54
Robert H. Cathey	- - -	9,855.20
John L. Garrison	- - -	15,288.00

In the light of a recent ruling of the respondent Commissioner of Internal Revenue providing among others that, "Americans presently working in the U.S. Bases in the Philippines who were either born in the Philippines or were residents of this country prior to their employment in said bases, are not included among those exempt from income tax by virtue of the foregoing provision of the Military Bases Agreement" (BIR Ruling No. 70-30 dated May 28, 1970), petitioners were advised to file their income tax returns under

Section 45(a)(1)(b) of the Tax Code, as amended, which requires every alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines. And, for ignoring and failing compliance, petitioners were criminally prosecuted upon separate informations for the said violation in the Court of First Instance of Zambales and Olongapo City, and were subsequently found guilty as charged.

Despite conviction, petitioners still refused to file their income tax returns. The respondent prepared the petitioners' respective returns based on the 1969 earnings in the absence of records of incomes for the subsequent years thru 1972 under authority of Section 51(b) of the Tax Code, providing, inter alia, that, "The Commissioner of Internal Revenue shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise," and "shall be prima facie good and sufficient for all legal purposes." Accordingly, in separate letters and assessment notices all dated July 31, 1974, the respondent assessed and demanded from the petitioners deficiency income taxes for the taxable years 1969 to 1972 including interests and surcharges in the following amounts:

Frank Robertson	- - -	₱132,750.65
James W. Robertson	- - -	190,433.17
Robert H. Cathey	- - -	92,013.17
John L. Garrison	- - -	196,754.32

Petitioners' requests for reinvestigation of the said assessment were to no avail as the same were denied by the respondent on July 30, 1975.

Hence, these appeals.

By and large, petitioners hold on to the proposition that the incomes subject of the assessments constitute their salaries from the United States government as American citizens and Federal Civil Service employees, working in the Philippines in connection with the construction, maintenance, operation or defense of the U.S. military bases and residing in the Philippines by reason thereof, and consequently said incomes are exempt from income tax pursuant to Article XII, par. 2 of the R.P. - U.S. Military Bases Agreement dated 14 March 1947.

Respondent demurs because under the said provision, only nationals of the United States who are working in the U.S. Bases and residing in the Philippines by reason only of such employment enjoy tax exemption. When the American nationals were already residing in the Philippines prior to their employment, it is clear that they did not reside here by reason of their employment in the base." (BIR Ruling No. 70-30, May 28, 1970).

The case presents no dispute as to the simple material facts but the parties seem trying to get the better of each other over by a quibble on the effective application of the tax exemption clause in the Agreement.

Determinative of the sense and extent of the coverage of the privilege which appear implicit in meaning and explicit in terms under Article XII, par. 2 of the Military Bases Agreement are the requisites to the availment of the tax exemption, viz: 1) nationals of the United States, 2) employed in connection with the construction, maintenance, operation or defense of the bases, 3) residing in the Philippines by reason of such employment, and 4) incomes derived from the United States Government. And, it appears manifest that insofar as the provision is brought to bear upon the circumstances obtaining, petitioners' cases can readily slip into that cubby-hole of the tax shelter contemplated in the provision. That seemed to be where the petitioners stood with respect to the enjoyment of the privilege as then construed and implemented since the Agreement's effectivity in 1947 until the respondent Commissioner of Internal Revenue rendered such entitlement passe' in 1970. Petitioners' residency status had been tacked to situs of birth in the Philippines. A constraint that appears neither here nor there in the Agreement. The past becomes prologue, so to speak.

We find nothing in the said treaty provision that justified the lifting of the tax exemption privilege of the petitioners. Respondent has grafted a meaning other than that conveyed by the plain and clear tenor of the Agreement. An examination of the words used and the circumstances in which they were used, shows the basic intendment "to exempt all U.S. citizens working in the Military Bases from the burden of paying Philippine Income Tax without distinction as to whether born locally or born in their country of origin." Ubi lex non distinguit nec nos distinguere debemos. Moreover, the ruling has altered a satisfactorily settled application of the exemption clause and has fallen short of measuring up to the familiar principle of International Law that, "The obligation to fulfill in good faith a treaty engagement requires that the stipulations be observed in their spirit as well as according to their letter and that what has been promised be performed without evasion, or subterfuge, honestly and to the best of the ability of the party which made the promise." (Kunz, The Meaning and Range of the Norm Pacta Sunt Servanda, 29 A.J.I.L. 180 (1945);

cited in Freidmann, Lissitzyn, Pugh, International Law (1969) 329). Somehow, the ruling becomes an anacoluthon and a persiflage.

It bears repeating as so disclosed in the records that the petitioners together with families upon repatriation in 1945 had since acquired domicile and residency in the United States. And, obtained employment with the United States Federal Service. Not until after several years of a hiatus, petitioners did return to the Philippines not so much of honoring a pledge nor of sentimental journey but by reason of taking up assigned duties with the United States military bases in the Philippines where they were gainfully employed by the U.S. Federal Government. The situation of the petitioners is of no different mold as of the rest of the U.S. civilian employees who continued to enjoy the benefits of tax exemption under the Agreement. Petitioners' circumstances before the questioned ruling remained obtaining thru the taxable years 1969-1972. It appears too much of a stretch to hold petitioners straight-jacketed to an irreversible situs of birth constraint and by reason thereof deny altogether any opportunity to a serendipitous enjoyment of a tax relief accorded in the Agreement. Such a random quirk of a pirouette in the tax treatment falls sharply at odds with the shared expectations of the high contracting parties. This Court will not deem itself authorized to depart from the plain meaning of the tax exemption provision, so explicit in terms and so searching in extent. This does not however foreclose the possibility of petitioners' coming to roost in the country contingent upon the termination of their tour of duty, but only then may the bridge be crossed for tax purposes.

The holding in the Reagan Case (L-26379, December 27, 1969, 30 SCRA 968) cited by the respondent simply infused vigor to the exercise of Philippine sovereign authority over the U.S. Bases which seems to have enervated into impotency, as thus, "to render the truth unmistakable, that the areas covered by the United States Military Bas s are not foreign territory in both the political and ographic sense." Thus, the U.S. military bases ar not foreign soil or territory for purposes of income x legislation, except to certain tax matters cove by appropriate exemptions as so provided in Article XI the RP-US Military Bases Agreement. As earlier di sed, the cases of petitioners come within the impo and scope of the exception.

The cited consolidated decision of the Court of

First Instance of Zambales and Olongapo City dated May 28, 1973, hardly presents a gripping precedent. The petitioners were indicted for non-filing of their respective income tax returns for 1969; whereas the cases under review refer to the non-payment of income taxes for the years 1969-1972, otherwise payable by the petitioners if not for the tax exemption accorded them by the Agreement. The situation in the case at bar is of a different prestation.

We accordingly hold that the petitioners have established their rights under the pertinent provisions of Article XII, par. 2 of the Military Bases Agreement and are entitled to the exemption from Philippine taxes on salaries by reason of their employment as American citizens and Federal Service employees working in the Philippines in connection with the construction, maintenance, operation and defense of the U.S. military bases in the Phi ippines, as income derived from United States Governmen

UPON THE VII WE TAKE OF THE CASES, the assessments for deficie income taxes for the taxable years 1969-1972 ir sive of interests and penalties against the petitic ers:

Frank Robertson (CTA Case No. 2735) - ₱132,750.65;

James W. Robertson (CTA Case No. 2736) - ₱190,433.17;

Robert H. Cathey (CTA Case No. 2738) - ₱ 92,013.17; and

John L. Garrison (CTA Case No. 2739) - ₱196,754.32

are hereby set aside and cancelled. No costs.

SO ORDERED.

Quezon City, Metro Manila, December 14, 1984.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge