REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MAERSK-FILIPINAS, INC. [formerly MAERSK-TABACALERA SHIPPING AGENCY (FILIPINAS), INC.], STEAMSHIP COMPANY OF SVENDBORG, and STEAMSHIP COMPANY OF 1912, ***Petitioners,***	**C.T.A. CASE NO. 6567** Members: CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	**Promulgated:**
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	JUN 2 4 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by Maersk-Filipinas, Inc. [formerly Maersk-Tabacalera Shipping Agency (Filipinas) Inc.], Steamship Company of Svendborg, and Steamship Company of 1912 (hereafter "petitioners"), which seeks the reversal of the Decision of the

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Commissioner of Internal Revenue (hereafter "respondent") dated August 8, 2002, the dispositive portion of which reads as follows:

> "In view of the foregoing, your request for reconsideration is hereby DENIED. Consequently MAERSK TABACALERA xxx hereby ordered to pay the following amounts within thirty (30) days from receipt hereof, otherwise, the collection thereof will be enforced by means of the summary remedies prescribed by law:
>
> Deficiency Income Tax –
>
> <u>1988</u>
>
> | | | | |
> |---|---|---|---|
> | 1. | Maersk - | P | 1,200,708.83 |
> | 2. | Svendborg | | 991,464.41 |
> | 3. | Steamship of 1912 | | 991,464.41 |
>
> <u>1989</u>
>
> | | | | |
> |---|---|---|---|
> | 1. | Maersk | P | 1,140,971.67 |
> | 2. | Svendborg | | 1,255,048.33 |
> | 3. | Steamship of 1912 | | 1,255,048.33 |
>
> Deficiency Gross Philippine Billings
>
> <u>1989</u>
>
> | | | | |
> |---|---|---|---|
> | 1. | Svendborg | P | 10,888.75 |
> | 2. | Steamship of 1912 | | 10,888.75 |
>
> This constitutes our final decision on the matter."

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THE FACTS

Petitioners and respondent submitted the following Joint Stipulation of Facts:

1. This is an appeal pursuant to Section 228 of the National Internal Revenue Code of 1997 (the "Tax Code") of the Decision of the respondent dated August 8, 2002 on the protest of petitioners against the deficiency income tax and withholding tax assessments for the taxable years 1988 and 1989. A copy of the Decision was received by petitioners on October 16, 2002.

2. The copy of the Decision attached as Annex "A" of the Petition for Review is a faithful reproduction of the original.

3. In the Decision, respondent cancelled the deficiency withholding tax assessments but reiterated the deficiency income tax assessments and ordered petitioners to pay the following amounts:

Year/Tax Type	*Taxpayer*	*Amount*
1988 deficiency income tax	Maersk-Tabacalera	P1,200,708.83
1988 deficiency income tax	Svendborg	991,464.41
1988 deficiency income tax	Steamship of 1912	991,464.41
1989 deficiency income tax	Maersk-Tabacalera	1,140,971.67
1989 deficiency income tax	Svendborg	1,255,048.33
1989 deficiency income tax	Steamship of 1912	1,255,048.33
1989 deficiency income tax	Svendborg	10,888.75
1989 deficiency income tax	Steamship of 1912	10,888.75

TOTAL DEFICIENCY TAXES		P6,856,483.48
		==========

4. Petitioner Maersk-Tabacalera Shipping Agency (Filipinas), Inc. (*now* MAERSK-FILIPINAS, INC.), and hereinafter referred to as "Maersk" for brevity, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 900 Romualdez Street, Paco, Manila,

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Philippines, where it may be served with processes of this Honorable Court; petitioners Steamship Company of Svendborg, hereinafter referred to as "Svendborg," and Steamship Company of 1912, hereinafter referred to as "Steamship of 1912" are foreign corporations organized and existing under the laws of Denmark and engaged in international shipping with Maersk as the general agent in the Philippines and, as such, may be served with processes of this Honorable Court through its agent, Maersk, at the latter's principal office."

5. Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City, where he may be served with summons.

6. On January 22, 1992, petitioner Maersk received from respondent a demand letter dated January 6, 1992 together with various assessment notices (Assessment Notice No. FAS-1-88-89-91) for alleged deficiency income taxes and deficiency withholding taxes for the taxable years 1988 and 1989 in the aggregate amount of P8,882,466.81 which are broken down as follows:

Taxpayer	*Annex*	*Year*	*Tax Type*	*Amount*
Maersk-Tabacalera	"B-1"	1988	Income Tax	P1,200,708.83
Svendborg	"B-1"	1988	Income Tax	991,464.41
Steamship of 1912	"B-1"	1988	Income Tax	991,464.41
Maersk-Tabacalera	"B-2"	1988	Withholding Tax	1,054,234.97
Maersk-Tabacalera	"B-2"	1989	Income Tax	1,140,971.67
Svendborg	"B-3"	1989	Income Tax	10,888.75
Steamship of 1912	"B-3"	1989	Income Tax	10,888.75
Svendborg	"B-3"	1989	Income Tax	1,255,048.33
Steamship of 1912	"B-4"	1989	Income Tax	1,255,048.33
Maersk-Tabacalera	"B-4"	1989	Withholding Tax	911,748.36

7. The copies of the Demand letter and assessment notices for the alleged deficiency income tax and deficiency withholding tax assessments attached as Annexes "B" and "B-1" to "B-4" of the Petition for Review are faithful reproduction of the originals.

8. Petitioners duly protested the said demand letter and assessment notices through a protest-letter dated February 20, 1992 timely filed with the respondent, through the Chief, Accounts Receivable/Billing Division

of the BIR National Office.

9. The copy of petitioner's protest letter attached as Annex "C" of the Petition for Review is a faithful reproduction of the original.

10. In reply to petitioner's protest, respondent issued the Decision dated August 8, 2002, copy of which was received by petitioners on October 16, 2002, ordering petitioners to pay the deficiency income tax assessments in the aggregate amount of P6,856,483.48, broken down in paragraph 3 hereof, and stating that the Decision constitutes our final decision on the matter.

11. Petitioner Maersk is engaged in the business of acting as general agent in the Philippines for, among other principals, Svendborg and Steamship of 1912, which are foreign corporations engaged in international shipping.

12. For the taxable years 1988 and 1989, respondent assessed petitioners for various deficiency income taxes and withholding taxes in the total amount of P8,822,466.81.

13. Petitioners protested the respondent's assessments for alleged deficiency income and withholding taxes, together with the increments thereto, on the ground that the said assessments have no factual or legal basis.

14. The respondent cancelled the deficiency withholding tax assessments against Maersk for the taxable years 1988 and 1989 in the amount of P1,054,234.97 and P911,748.36, respectively, leaving in issue the deficiency income tax assessments for 1988 and 1989 in the aggregate amount of P6,856,483.48.

15. The deficiency income tax assessments for 1988 and 1989 in the amounts of P1,200,708.83 and P1,140,971.67, respectively, arose from the disallowance of : (1) EDP charges and (2) medical expenses of expatriates' families which were deducted by Maersk from its gross receipts.

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For the taxable year 1988, the breakdown of the alleged basic tax per the BIR examiners' investigation is as follows:

EDP expenses	P1,676,200.97
Medical expenses	83,862.69
Total expenses disallowed	P1,760,063.66
Tax rate	x 35%
Basic tax due	P 616,022.28

16. Respondent disallowed the EDP charges on the ground that the expense was not fully substantiated as really incurred for the following reasons: (a) the Agency Agreement between Maersk and A.P. Moller did not clearly specify the basis for the allocation and the extent of the EDP expense to be charged to Maersk, and (b) the allocation is not proper since Maersk is not a branch of A.P. Moller but an agent of the foreign shipping companies.

17. Petitioners Svendborg and Steamship of 1912 collect demurrage fees from importers.

18. Respondent maintains that the demurrage fees collected by Svendborg and Steamship of 1912 (principals of Maersk) are not as part of gross Philippine billings but are considered "other income" subject to regular corporate income tax pursuant to Section 25(a)(1) of the Tax Code *[now* Section 28(A)(1) of the National Internal Revenue Code of 1997*]*, in relation to Section 15 of Revenue Regulations No. 2 (Income Tax Regulations), as amended by Revenue Regulations No. 8-75, quoting Section 2 of Rev. Regs. 8-75.

19. The assessment for deficiency income tax against Svendborg and Steamship of 1912 of P10,888.75 each arose from a finding of additional freight revenue for November, 1989.

20. Petitioner Maersk and A.P. Moller, acting as managing owner for

Svendborg and Steamship of 1912 executed the Agency Agreement, Addendum No. 1 and Addendum 1.1 which are pages 508 to 495 of the BIR Records.

21. Addendum 1.1 to the Agency Agreement provides:

> "EDP-expenses:
>
> "Maersk-Tabacalera will pay for edp expenses in accordance with the agreed principels (sic) for all Maesk (sic) line agencies abroad, it being understood that edp expenses are for the overall benefit of the service, and that the agent agrees to pay his share of the cost subject to Maersk Line on request reviewing the basis for the amount the agent is asked to contribute."

22. Pursuant to the Agency Agreement, A.P. Moller issued debit memos issued to Maersk for its share in EDP for 1988 and 1989.

23. The KPMG C. Jespesen, independent external auditors of A.P. Moller of Copenhagen, Denmark, issued a Certification showing that the allocated EDP cost to Maersk amounts to US$89,301.00 and US$93,859.18 for the year 1988 and 1989.

24. The amount of disallowed EDP expenses for 1989 is P1,905,156.79 while amount of disallowed medical expense for 1989 is P16,509.32.

25. The deficiency income tax assessments against Svendborg and Steamship of 1912 of P991,464.41 each for 1988 and P1,225,048.33 each for 1989 arose purely from the demurrage fee which respondents claims to be subject to the 35% corporate income tax.

26. The demurrage fee is a fee collected for the inbound cargoes of importers.

27. The demurrage rates are fixed in accordance with the Transpacific

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Westbound Rate Agreement to which Maersk is a signatory.

Respondent, in his Answer, by way of special and affirmative defenses, averred:

> "5. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses:
>
> 6. The deficiency income tax assessments for the years 1988 and 1989 against petitioner Maersk-Filipinas, Inc. arose from the disallowance of EDP charges for not being properly substantiated. The documents presented to support the EDP allocation cost were insufficient to warrant deductibility. The Agency Agreement does not clearly specify the basis of the allocation and the extent of the EDP expenses to be charged to petitioner. Moreover, petitioner is not a branch but an agent of the foreign shipping companies.
>
> 7. Other items of gross income derived by international carriers which are resident foreign corporations subject to a tax of 2 ½% on their Gross Philippine Billings as defined under Section 25(a) (2) (A) of the Tax Code, as amended, are subject to the regular corporate income tax payable by and imposed upon resident foreign corporations under Section 25 (a) (1) of the Tax Code, as amended. For income tax purposes, 'demurrage income' is an income derived from local shippers, hence, derived from sources within the Philippines since the activity that produces the income was subject to the 35% corporate income tax imposed on and payable by resident foreign corporations (BIR Ruling No. 25-A-000-00-302-87 dated September 23, 1987). Hence, petitioners Steamship Company of Svendborg and Steamship Company of 1912 are liable for deficiency income tax on said demurrage income.

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8. The assessments were issued in accordance with law and regulations.

9. All presumptions are in favor of the correctness of tax assessments."

Petitioners submitted the written interrogatories of witnesses Mr. Henning L. Krust and Mr. Soeren Thorup, and documentary evidence, marked as Exhibits "A" to "N", together with the submarkings.

On the other hand, at the hearing on November 10, 2004, respondent manifested that he will no longer present testimonial and documentary evidence and moved that the parties be given thirty (30) days therefrom within which to file their simultaneous memoranda, which the Court granted.

Both parties having complied thereto, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE EDP EXPENSES SHOULD BE DISALLOWED FOR LACK OF SUBSTANTIATION ON THE GROUND THAT: (A) THE AGENCY AGREEMENT

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BETWEEN MAERSK AND A.P. MOLLER DID NOT CLEARLY SPECIFY THE BASIS FOR THE ALLOCATION AND THE EXTENT OF THE EDP EXPENSE TO BE CHARGED TO MAERSK, AND (B) THE ALLOCATION IS NOT PROPER SINCE MAERSK IS NOT A BRANCH OF A.P. MOLLER BUT AN AGENT OF THE FOREIGN SHIPPING COMPANIES.

II

WHETHER OR NOT THE DEMURRAGE FEES COLLECTED BY PETITIONERS STEAMSHIP COMPANY OF SVENDBORG AND STEAMSHIP COMPANY OF 1912 FROM IMPORTERS ARE SUBJECT TO THE REGULAR CORPORATE INCOME TAX OF 35% UNDER SECTION 25(A)(1) [NOW SECTION 28(A)(1)] OF THE TAX CODE OF 1977.

III

WHETHER OR NOT PETITIONERS STEAMSHIP COMPANY OF SVENDBORG AND STEAMSHIP COMPANY OF 1912 HAVE PAID THE 1989 DEFICIENCY INCOME TAX ASSESSMENT IN THE AMOUNT OF P10,888.75 EACH.

THE COURT'S RULING

The petition is partly meritorious.

First Issue: EDP Expenses

Anent the first issue, respondent assessed petitioner Maersk for deficiency income tax on the basis of the following:

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	1988	1989
EDP expenses	P1,676,200.97	P1,905,156.79
Medical expenses	83,862.69	16,509.32
Total expenses disallowed	P1,760,063.66	P1,921,666.11
Tax rate	35%	35%
Tax Due	P 616,022.00	P 672,583.00
Surcharge	154,005.50	168,145.75
Interest	410,681.33	280,242.92
Compromise	20,000.00	20,000.00
Total Amount Due	P1,200,708.83	P1,140,971.67

Petitioner Maersk does not contest the disallowance of the medical expenses, hence, only the disallowance of the EDP expense is in issue.

Respondent disallowed the EDP charges on the ground that the expense was not fully substantiated, thus concluding that the same was not incurred for the following reasons: (a) the Agency Agreement between Maersk and A.P. Moller did not clearly specify the basis for the allocation and the extent of the EDP expense to be charged to Maersk, and (b) the allocation is not proper since Maersk is not a branch of A.P. Moller but an agent of the foreign shipping companies.

We do not agree with the respondent.

The disallowed EDP expenses represent the share of petitioner Maersk in the installation of EDP system for the benefit of the entire Maersk Line agencies.

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1.a. <u>EDP expenses were fully substantiated and verified</u>

Contrary to the position of respondent, the EDP expenses were fully substantiated. While the Agency Agreement does not clearly specify the basis for the allocation and the extent of the EDP expense to be charged to Maersk, it definitely stipulates that petitioner Maersk will pay EDP expenses, and the subsequent certification issued by KPMG G Jespersen, Auditors of A.P. Moller of Copenhagen, Denmark (*Exhibits "H", "H-1", "I", "I-1"*) competently showed the allocated EDP cost of petitioner Maersk.

1.b. <u>Basis of Allocation</u>

Moreover, Mr. Soeren Thorup, a partner of KPMG C. Jespersen, in response to written interrogatories, elaborated on the basis of the allocation *(Exhibit "M"),* to wit:

> "12. What is the basis in determining "EDP expenses"? EDP expenses in the A.P. Moller Group are determined on a cost basis.
>
> 13. How are EDP expenses shared among A.P.Moller's agents worldwide? The EDP expenses charged to A.P. Moller's agents worldwide are based on actual costs incurred and an allocation based on the agent's use of the systems. The method applied was actual CPU (Central Processing Unit) time, measured in seconds. As a result of the fact that everyone at A.P. Moller has a unique user id, A.P. Moller is able to measure what system is used by each employee and for how long. This method is applied to all agents worldwide, including Maersk Filipinas, Inc."

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From the foregoing, the allocation of the EDP expense was contingent upon the usage of the EDP system by each agent for the respective taxable year. The share of each local agent is determined at the end of each taxable year, which is embodied in a certificate issued by its auditors. Such as in the case at bar, petitioner Maersk recognized the EDP expenses upon receipt of the certification from KPMG G Jespersen, auditor of A.P. Moller of Copenhagen, Denmark (*Exhibits "H", "H-1", "I", "I-1"*).

In the case of *CIR vs. CTA and Smith Kline and French Overseas Co., 127 SCRA 9*, much akin to the surrounding circumstances to the case at bench, the Supreme Court had the occasion to rule that the statements of independent auditor has evidentiary weight in proving allocated expenses. The pertinent portion of said ruling states, to wit:

> "A certification issued by the auditors of a patent company with respect to the shares of its branch in the overhead expenses is ample evidence to show that the expenses was really incurred."

In addition thereto, to be deductible from the gross income the EDP expenses must comply with *Section 34 (A) (1), formerly Section 29 (a) (1) (A), of the NIRC* which provides:

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"(A) Expenses. —

(1) Ordinary and necessary trade, business or professional expenses. —

(a) In general. — There shall be allowed as deduction from gross income all ordinary and necessary expenses paid or incurred during the taxable year in carrying on, or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession."

1.c. EDP expenses are necessary and indispensable

Indisputably, the EDP system is necessary and indispensable to the business of Maersk as a general agent of international shipping companies. This Court is well aware of the fact that automation and computerization have become indispensable in coping with the demands of the modern society. As testified by petitioner's witness, Mr. Edwin Marasigan, Accounting Manager of Maersk:

> "EDP facilitates us in our works and in our rushes, especially, this documentation system where all cargo details are indicated in that system and cargoes assigned in the container vans, and also the container number, the details about the shipper's name, the consignee's name, the name of the vessel, the destination country and, of course, the freight charges, whether it is paid locally or paid abroad, among others. Also we could keep track on the cargoes to the system whether it is still in the port for loading or on board the vessels to the destination country or whether the cargo has been arrived at its destination country. So, it is very important to us. Also, we could print the manifest, it is very important for the incoming shipments/importation as required by the Bureau of Customs. We could immediately print the manifest for submission to Customs. So, it is very important in our business." (TSN, pp. 7-8, May 7, 2003)

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Conclusively, this Court finds that the evidences presented adequately showed that petitioner had duly incurred the EDP expenses for the taxable years 1988 and 1989. Therefore, the 1988 and 1989 EDP expenses, pursuant to *Section 34 (a)(1),* should be allowed as deduction from gross income for income tax purposes, and the income tax assessment based on the same should be cancelled.

Nonetheless, as admitted, petitioner Maersk is still liable for the 1988 and 1989 deficiency income taxes based on the disallowed medical expenses, excluding delinquency interest and surcharges, computed as follows:

	1988	1989
Medical expenses	P 83,862.69	P 16,509.32
Tax rate	35%	35%
Tax Due	P 29,351.94	P 5,778.26
Surcharge (25%)	7,337.99	1,444.57
Interest	19,567.84	2,407.59
Total Amount Due	P 56,257.77	P 9,630.42

However, respondent's imposition of compromise penalty is hereby deleted. Compromise penalty should not be imposed since no compromise agreement was reached between the parties. "The imposition of the same without the conformity of the taxpayer is illegal

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and unauthorized" (*Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., 193 SCRA 92*).

<u>*Second Issue: Demurrage Fees*</u>

Petitioners Svendborg and Steamship of 1912 collect demurrage fees from consignees who failed to return the carrier's containers within the allotted free time. This fee is imposed to force consignees to unload their cargoes from the containers to enable the carrier to use the container for outbound cargoes.

Petitioners contend that as international carriers, they are taxable ONLY on freight arising from shipments originating from the Philippines, pursuant to Section 25(a)(2) of the NIRC, which provides:

> "SEC. 25. Rates of tax on foreign corporation. —
>
> (a) Tax on resident foreign corporations
> (1) x x x
>
> (2) International carriers. - International carriers doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on their "Gross Philippine Billings" as defined hereunder: x x x."

The above provision further defines "Gross Philippine Billings" as gross revenue whether for passenger, cargo or mail *originating from the Philippines* up to final destination, regardless of the place of sale or

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payments of the passage or freight documents.

The petitioner anchors their opposition on the fact that they are taxed solely on their "Gross Philippine Billing". As such petitioners are not liable for any tax other than those arising from it. Given that the assailed demurrage fees do not fall within the meaning of "Gross Philippine Billing", because the containers did not originate from the Philippines, then petitioner submits that they are not liable for any deficiency income tax.

The theory advanced by petitioner is clearly misplaced.

Undeniably, petitioners are international carries doing business in the Philippines, and are subject to pay a tax of two and one-half percent (2 1/2%) on their "Gross Philippine Billings". Admittedly, the demurrage fees involved are not within the import of gross Philippine billing. However, despite the overwhelming discussions and conjectures raised by the petitioners, this Court is not persuaded.

2. a. Petitioners are Resident Foreign Corporation doing business in the Philippines

Petitioners are not taxed based solely on their Gross Philippine Billings. It is an undisputed fact that petitioners are principally

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considered resident foreign corporations doing business in the Philippines. As such, petitioners are still subject to the 35% regular corporate income tax (RCIT) as provided under *Section 25 of the National Internal Revenue Code of 1977* which states:

> "SEC. 25. Rates of tax on foreign corporation. —
>
> (a) Tax on resident foreign corporations (1) In general. — Unless otherwise provided, a corporation organized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to a tax equivalent to 35% of the taxable income derived in the preceding taxable year from all sources within the Philippines."

The above provision provides that in general, resident foreign corporations are subject to 35% corporate income tax on their taxable income derived from **all sources within the Philippines**. The different rate provided for "Gross Philippine billings" with regard to international carriers did not preclude the latter from being subjected to the 35% corporate income tax on their income **other than** Gross Philippine Billings, pursuant to Section 25 (a)(1). To construe otherwise would be to provide an exemption where no exemption is intended. Settled is the rule that exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority' primarily because taxes are the lifeblood of government and their prompt

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and certain availability is an imperious need. Thus, to be exempted from payment of taxes, it is the taxpayer's duty to justify the exemption "by words too plain to be mistaken and too categorical to be misinterpreted" (*Province of Tarlac vs. Alcantara, 216 SCRA 797-798*).

2.b. Demurrage Fees are considered "Other Income"

Respondent aptly maintained that the demurrage fees collected by petitioners are not considered gross Philippine billings but as "other income". Thus, it is subject to 35% regular corporate income tax (RCIT) under Section 25(a)(1) of the NIRC of 1977, in relation to Section 15 of Revenue Regulations (RR) No. 2, as amended by RR No. 8-75.

The words "income from any source", mentioned in the foregoing section, disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws. Income means "cash received or its equivalent;" it is the amount of money coming to a person within a specific time xxx; it means something distinct from principal or capital. For, while capital is a fund, income is a flow. As used in our income tax law, "income" refers to the flow of

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wealth (*Commissioner of Internal Revenue v. British Overseas Airways Corporation, 149 SCRA 407).*

It is undeniable that petitioners are rendering service to its client in providing containers for their use. For the extended use of the containers, petitioners are charging demurrage fees. Although, petitioners call it a penalty, they are in effect imposing a form of rental or lease fee for the continued use of the containers. The cash or its equivalent that they receive is a flow of wealth.

2.c. Demurrage Fees are income derived within the Philippines

In the instant case, the rental fees/penalty is the activity that produces the income. The containers as well as the payments exchanged hands here. Thus, the flow of wealth proceeded from, and occurred within Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government *(Commissioner of Internal Revenue vs. British Overseas Airways Corporation, supra).*

In this jurisdiction, demurrage charges are intended to be "in part compensation to the carrier" and "in part a penalty to secure the release of equipment"(*Words and Phrases, Vol.12, p. 54*). Thus, for taxation purposes, demurrage charges are considered income of carriers.

Accordingly, demurrage fees collected by petitioners Steamship Company of Svendborg and Steamship of 1912 from consignees are subject to 35% corporate income tax under Section 25(a)(1) of the NIRC of 1977, as amended. Therefore, respondent's assessment based on the same should be sustained.

Svenborg and **Steamship of 1912**	1998	1999
Basic	P 506,851.00	P 741,029.00
Surcharge	126,712.75	185,257.25
Interest	337,900.66	308,372.08
Total	971,464.41	1,235,048.33

Except for compromise penalties, petitioners Svendborg and Steamship of 1912 are still subject to deficiency income tax assessments in the amount of P971,464.41 each for 1988 and P1,205,048.33 each for 1989, as assessed by the respondent.

Third Issue: Deficiency Income Tax
Assessment of P10,888.75

With regard the third issue, petitioners Svendborg and Steamship Company of 1912 have already paid the 1989 deficiency income tax assessments in the amount of P10,888.75 each. The payments were made

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pursuant to Revenue Memorandum Order (RMO) No. 61-97 which authorized the settlement or compromise of delinquent accounts covering the period of 1996 and prior years, the basic tax of which does not exceed P500,000.00, with the payment of 50% of the basic tax for non-jeopardy assessments.

Petitioners assessments, which were classified as non-jeopardy (*Exhibits "D" & "E"*), in the amount of P10,888.75 each includes P5,633.25 basic tax. Pursuant to the aforementioned RMO, petitioners paid 50% of the basic tax of P5,633.25 or P2,816.63 in 1997. The said payments are evidenced by machine validated BIR Payment Form 0605 and by peso credit and debit memos (*Exhibits "D" to "D-3" & "E" to "E-3"*).

Considering that petitioners had already settled their assessments for the 1989 deficiency income taxes in the amount of P10,888.75 each, the same should be cancelled.

WHEREFORE, premises considered, the present Petition For Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioners are ordered to pay respondent the sum of P4,413,025.48, as deficiency income tax for the taxable year ended 1988, computed as follows:

	Petitioner	*Amount*	*Total*
1988 Deficiency Tax	Maersk	P 56,257.77	
1988 Deficiency Tax	Svendborg	971,464.41	
1988 Deficiency Tax	Steamship of 1912	971,464.41	1,942,928.82
1989 Deficiency Tax	Maersk	P 9,630.42	
1989 Deficiency Tax	Svendborg	1,235,048.33	
1989 Deficiency Tax	Steamship of 1912	1,235,048.33	2,470,096.66
Total			**4,413,025.48**

plus 20% delinquency interest per annum computed from November 16, 2002 until fully paid, pursuant to *Section 249 of the NIRC of 1977, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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