REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HERNANDO B. CONWI,
JAIME E. DY-LIACCO,
VICENTE D. HERRERA,
BENJAMIN T. ILDEFONSO,
ALEXANDER LACSON, JR.,
ADRIAN O. MICIANO,
EDUARDO A. RIALP,
LEANDRO G. SANTILLAN, and
JAIME A. SOQUES,
Petitioners,

- versus - C.T.A. CASE NO. 2511

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

ENRIQUE R. ABAD SANTOS,
HERNANDO B. CONWI,
TEDDY L. DIMAYUGA,
JAIME E. DY-LIACCO,
MELQUIADES J. GAMBOA, JR.,
MANUEL L. GUZMAN,
VICENTE D. HERRERA,
BENJAMIN T. ILDEFONSO,
ALEXANDER LACSON, JR.,
ADRIAN O. MICIANO,
EDUARDO A. RIALP and
JAIME A. SOQUES,
Petitioners,

9/26/77

- versus - C.T.A. CASE NO. 2594

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

For the purpose of establishing a uniform rate of exchange of U.S. dollars or other foreign currencies to Philippine pesos for internal revenue tax purposes during the years 1970 and 1971, respondent Commissioner of Internal Revenue, with the approval of the Secretary of Finance, issued Revenue Memorandum Circulars No. 7-71 and No. 41-71 dated February 11, 1971 and December 20, 1971. When petitioners filed individually their income tax returns for these years, they computed and paid, insofar as their respective dollar income is concerned, the income tax due thereon by applying the dollar-to-peso conversion rate prescribed under said Revenue Memorandum Circulars. Later, petitioners amended their income tax returns, using this time the parity rate of ₱2.00 to a U.S. dollar as basis for converting their respective dollar income into Philippine pesos and computing their corresponding income tax. Overpayments having resulted therefrom, separate claims for refund and/or tax credit were filed with respondent. However, without awaiting respondent's action thereon, petitioners filed with this Court the instant petitions for review.

The facts are not in dispute. Petitioners are Filipino citizens and employees in various capacities of Procter and Gamble Philippine Manufacturing Corporation, with offices at Sarmiento Building, Ayala Avenue, Makati, Rizal. Said corporation is a subsidiary of Procter and Gamble, a foreign corporation based in Cincinnati, Ohio, United States of America. For certain periods during the year 1970 (CTA Case No. 2511) and the year 1971 (CTA Case No. 2594), petitioners were assigned either to Procter & Gamble (United States) or to its other foreign subsidiaries, outside of the Philippines, for which, they were paid compensation in United States currency for services rendered in their foreign assignments. When petitioners filed their individual income tax returns for the said years, they computed and paid the income tax due thereon by applying the dollar-to-peso conversion rate on the basis of the floating rate prescribed under Bureau of Internal Revenue Ruling No. 70-027, dated May 14, 1970, which is synonymous to Revenue Memorandum Circulars Nos. 7-71 and 41-71. Thus, as indicated on petitioners' respective original individual income tax returns, the peso value of their dollar income is as follows:

Name	1970 Dollar Income	Philippine Peso Value
Hernando B. Conwi	$38,072.94	₱225,161.00
Jaime E. Dy-Liacco	69,973.19	413,321.45
Vicente D. Herrera	10,746.10	67,163.13
Benjamin T. Ildefonso	37,180.95	219,888.14
Alexander Lacson Jr.	31,460.62	196.628/87
Adrian O. Miciano	12,062.76	75,391.88

Eduardo A. Rialp	13,874.40	86,715.00
Leandro G. Santillan	16,987.92	94,758.62
Jaime A. Soques	35,732.80	211,323.78

(Par. V, Petition for Review, CTA Case No. 2511; Annexes A, A-1 to A-8, pp. 10-20, CTA rec.)

Name	1971 Dollar Income	Philippine Peso Value
Enrique R. Abad Santos	$21,298.13	₱133,113.31
Hernando B. Conwi	51,057.94	319,112.00
Teddy. L. Dimayuga	12,643.08	79,019.00
Jaime E. Dy-Liacco	72,468.88	452,931.00
Melquiades J. Gamboa,Jr.	24,727.72	154,548.00
Manuel L. Guzman	10,568.40	66,052.50
Vicente D. Herrera	11,920.75 2,111.85	74,504.73 13,197.19
Benjamin T. Ildefonso	53,910.82	336,942.62
Alexander Lacson, Sr.	53,542.98	334,643.00
Adrian O. Miciano	39,485.21	246,782.00
Eduardo A. Rialp	26,077.27	162,983.00
Jaime A. Soques	51,855.38	324,096.00

(Par. V, Petition for Review, CTA Case No. 2594; Annexes A, A-1 to A-11, pp. 10-21, CTA rec.)

For the same years, petitioners paid the Philippine income tax in the amounts and on the dates herein below indicated, to wit:

Name	1970 Amount Paid	Date of Payment	OR No.
Hernando B. Conwi	P41,999.60	7/14/71	454068
Jaime E. Dy-Liacco	100,820.11	7/14/71	454067
Vicente D. Herrera	7,737.00	7/14/71	454065
Benjamin T. Ildefonso	52,649.27	7/14/71	454059
Alexander Lacson, Jr.	30,589.30 62,061.28	4/15/71 7/14/71	538982 454061
Adrian O. Miciano	225.25 19,680.00	4/14/71 7/14/71	445593 454069
Eduardo A. Rialp	10,545.00	7/14/71	454064
Leandro G. Santillan	5,877.42 24,117.00	7/14/71 7/14/71	445592 454066
Jaime A. Soques	20,914.19 50,226.00	4/14/71 7/14/71	445591 454060

(Par. VI, Petition for Review, CTA Case No. 2511; Annexes B, B-1 to B-12, pp. 21-29, CTA rec.)

Name	1971 Amount Paid	Date of Payment	OR NO.
Enrique M. Abad Santos	P17,483.00	7/17/72	454785
Hernando B. Conwi	52,904.00	7/17/72	454794
Teddy L. Dimayuga	1,949.00	7/17/72	454800
Jaime E. Dy-Liacco	96,019.00	7/17/72	454793
Melquiades J. Gamboa, Jr.	34,389.00	7/17/72	454796
Manuel L. Guzman	22,187.00	4/15/72	5811054
Vicente D. Herrera	14,922.50	7/17/72	454783
Benjamin T. Ildefonso	55,127.00	7/17/72	454784

Alexander Lacson, Jr.	20,195.00 74,985.00	4/15/72 7/17/72	5811052 454797
Adrian O. Miciano	30,772.00	7/17/72	454795
Eduardo A. Rialp	12,833.00	7/17/72	454799
Jaime A. Soques	28,553.00 76,614.00	4/15/72 7/17/72	5811051 454798

(Par. VI, Petition for Review, CTA Case No. 2594; Annexes B, B-1 to B-13, pp. 21-29, CTA rec.)

On February 8, 1973 and on October 8, 1973 petitioners filed with the office of respondent amended income tax returns for the years 1970 and 1971, respectively, using the par value of the peso, as prescribed in Section 48 of Republic Act No. 265 in relation to Section 6 of Commonwealth Act No. 699, as the basis for converting their respective dollar income into Philippine currency, for purposes of computing and paying the corresponding Philippine income tax thereon. As shown on the amended individual income tax returns, petitioners made the following overpayments for which separate claims for refund and/or tax credit were individually filed with respondent, to wit:

Name	1970	Amount claimed to be Refunded
Hernando B. Conwi		₱25,021.60
Jaime E. Dy-Liacco		48,383.11
Vicente D. Herrera		5,611.00
Benjamin T. Ildefonso		28,997.27

Alexander Lacson, Jr.	52,348.58
Adrian O. Miciano	9,953.25
Eduardo A. Rialp	8,381.00
Leandro G. Santillan	11,575.42
Jaime A. Soques	34,838.91
T o t a l	₱225,110.14

(Annexes D, D-1 to D-8 to the Petition for Review, CTA Case No. 2511, pp. 41-113, CTA rec.)

Name 1971	Amount claimed to be Refunded
Enrique R. Abad Santos	₱12,741.00
Hernando B. Conwi	23,859.00
Teddy L. Dimayuga	3,360.00
Jaime E. Dy-Liacco	30,428.00
Melquides Gamboa, Jr.	19,336.00
Manuel L. Guzman	8,177.80
Vicente D. Herrera	8,017.50
Benjamin T. Ildefonso	33,492.00
Alexander Lacson, Jr.	47,483.00
Adrian O. Miciano	18,373.00
Eduardo A. Rialp	12,370.00
Jaime A. Soques	52,056.00
T o t a l	₱269,693.30

(Annexes D, D-1 to D-11 to the Petition for Review, CTA Case No. 2594, pp. 58-141, CTA rec.)

Without waiting for the resolution of respondent on their claims for refund and/or tax credit, petitioners filed two separate petitions for review with this Court on April 13, 1973 and April 15, 1974.

These two cases have been consolidated by this Court in its order dated September 9, 1974, upon joint motion of the parties, on the ground that they involve common questions of law and facts. Hence, only one decision is being rendered.

In these appeals, petitioners raised two issues, namely: (1) whether their dollar incomes for the taxable years 1970 and 1971 for services rendered during their foreign assignments constitute receipts arising out of foreign exchange transactions; and (2) whether the proper conversion rate for the purpose of reporting and paying the Philippine income tax on the foreign dollar earnings of petitioners is the par value of the Philippine peso and not the "floating rate". Respondent, however, submits that the legal question to be resolved in the instant cases is not whether or not there was foreign exchange transaction involved, but whether the dollar incomes of petitioners should be converted into Philippine pesos, for internal revenue purpose, at the parity rate of ₱2.00 to a U.S. dollar or at the prevailing free market rate of exchange as provided for under Revenue Memorandum Circulars Nos. 7-71 and 41-71 reiterating Bureau of Internal Revenue Ruling No. 70-027 dated May 14, 1970.

Indeed, "due to the pressure on the international reserve of the country and the threat to economic stability," as well as "the rate of exchange crisis," the Monetary Board availed of the emergency power granted by Section 74 of Republic Act No. 265, otherwise known as the Central Bank Act, and issued, on December 9, 1949, Circular No. 20 restricting "sales of exchange by the Central Bank," subjecting "all transactions in gold and foreign exchange to licensing" by the same, and requiring the surrender thereto of 100% of all foreign exchange receipts at the official parity rate of ₱2.00 to a U.S. dollar. (See Commissioner of Internal Revenue vs. Royal Interocean Lines, No. L-26806, July 30, 1970, 34 SCRA 9.) Section 2 of Circular No. 22 of the Central Bank, dated May 21, 1953, provided, <u>inter alia</u>:

> "The following are foreign exchange transactions and as required by Central Bank Circular No. 20 are subject to prior licensing by or on behalf of the Central Bank:
>
> x x x x x x x
>
> "(f) Any transaction by which a resident performs any service for a non-resident other than tourists or temporary visitors. If the proper license is obtained, the former shall demand and obtain payment for such service within ninety days in U.S. dollars or in any other foreign currency acceptable to the Central Bank;

"(g) Any transaction by which a resident performs for another resident service rendered in business or profession of the latter located outside the Philippines. If proper license is obtained, the former shall demand and obtain payment of the fair value of such service within ninety days from the date of the performance of the aforesaid service, in U.S. dollars or in any other currency acceptable to the Central Bank;

x x x x x x

"(m) Any other transactions involving international financial implications."

Pursuant to the above provisions, the aforementioned dollar incomes or earnings of petitioners for their foreign assigaments are the product of foreign exchange transactions, within the purview of Central Bank Circular No. 20, because:

First, as admitted by petitioners themselves under paragraphs 1, II & III of their petitions for review;

I. Petitioners are all Filipino citizens, of legal age, married and holding office and/or with office address at Procter & Gamble Philippine Manufacturing Corporation, Sarmiento Building, Ayala Avenue, Makati, Rizal.

As Filipino citizens, holding office and/or with office address at Procter & Gamble Philippine Manufacturing Corporation, Sarmiento Building, Ayala Avenud, Makati, Rizal, petitioners are residents of the Philippines.

II. Prior to the year 1970 and up to the present, the petitioners have been and are still employees, in various capacities, of Procter & Gamble Philippine Manufacturing Corporation, a Philippine subsidiary of Procter

& Gamble Company, the latter being a foreign corporation based in Cincinnati, Ohio, United States of America.

As employees of Procter & Gamble Philippine Manufacturing Corporation, a domestic corporation organized and existing under the laws of the Philippines, with offices at Sarmiento Building, Ayala Avenue, Makati, Rizal, petitioners are engaged in the service of, perform services and work for Procter & Gamble Philippine Manufacturing Corporation, and their activities are under the exclusive direction and control of Procter & Gamble Philippine Manufacturing Corporation, the person or firm employing them. (Kuenzle & Streiff, Inc. vs. Commissioner of Internal Revenue, L-17648, October 31, 1964, 12 SCRA 301; Feati University vs. Bautista, L-21278, December 27, 1966, 18 SCRA 1215). Petitioners are, therefore, performing service for another resident, Procter & Gamble Philippine Manufacturing Corporation, being admittedly a resident corporation organized and existing under the laws of the Philippines.

III. For certain periods during the year 1970 (CTA Case No. 2511) and for certain periods during the year 1971 (CTA Case No. 2594), petitioners were assigned abroad either to Procter & Gamble (United States) or its other foreign subsidiaries (i.e., other than the Philippine Manufacturing Corporation) in various capacities. During the duration of their assignments abroad, and in consideration thereof, the petitioners were paid compensation in United States currency (hereinafter referred to as "Dollar Income"), although the Dollar Income was allegedly paid by means of direct remittances of Procter & Gamble (United States) to the respective foreign subsidiaries of assignment, which in turn paid to the petitioners, without any remittance being made to the Philippine Manufacturing Corporation, either for the account or credit of any of the petitioners.

Since petitioners have always been and are still employees in various capacities of Procter & Gamble Philippine Manufacturing Corporation (paragraph II, Petitions for Review, quoted above under II), as such employees, they have always been and still are working exclusively for Procter & Gamble Philippine Manufacturing Corporation, and have no other office or place of business of their own, and their activities have always been and are under the exclusive direction and control of Procter & Gamble Philippine Manufacturing Corporation. (See Kuenzle & Streiff, Inc. vs. Commissioner of Internal Revenue, supra.) That petitioners, for certain periods during the year 1970 and during the year 1971, were assigned abroad, either to Procter & Gamble (United States) or its other foreign subsidiaries, does not by any logical inference, remove the fact that petitioners have always been and are still rendering or performing service in connection with the business of Procter & Gamble Philippine Manufacturing Corporation. Consequently, as such employees, the activities of petitioners have always been and are under the exclusive direction and control of the employer Procter & Gamble Philippine Manufacturing Corporation. Unless, of course, petitioners would admit that the notion of separate corporate existence of parent and subsidiaries or affiliated corporations should not be recognized because Procter & Gamble Philippine Manufacturing Corporation is so organized and controlled and its business conducted in such a manner as it is merely an agency, intrumentality, adjunct, or alter ego of Procter & Gamble (United States) and/or its other foreign subsidiaries; so that petitioners are employees not of Procter & Gamble Philippine Manufacturing Corporation but Procter & Gamble (United States) and/or its other foreign subsidiaries.

It seems clear, therefore, that the aforementioned dollar incomes or earnings of petitioners are product of "foreign exchange" transactions because the same represented compensation for services performed by residents of the Philippines for another resident rendered in connection with the business of the latter outside the Philippines. And petitioners, as admitted by them, were paid and obtained payment of the value of such services in U.S. dollars.

Secondly, granting that the dollar incomes or earnings were paid through direct remittances of Procter & Gamble (United States) to the respective foreign subsidiaries of assignment, which in turn paid to petitioners, without any remittance being made to Procter & Gamble Philippine Manufacturing Corporation, either for the account or credit of any of petitioners (paragraph III, Petitions for Review), such dollar incomes or earnings are the product of "foreign exchange" transactions because they would fall under the category of "any other transactions involving international financial implications," covered by subdivision (m) of the above quoted section.

With this conclusion, the theory of petitioners that their dollar incomes are not receipts derived from foreign exchange transactions is positively without merit. And on this basis, petitioners' pose that the proper rate of conversion in respect of their foreign dollar incomes is the parity rate of ₱2.00 to a U.S. Dollar at once loses its potency. Accordingly, the next problem that presents itself is: Given the fact that petitioners' dollar earnings are receipts derived from foreign exchange transactions, what is the true and correct value in Philippine pesos of their dollar incomes for internal revenue tax purposes?

As long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of Section 74 of Republic Act No. 265, the Central Bank, in respect of all sales of foreign exchange by the said Bank and its agent banks, were authorized on July 16, 1959 under Republic Act No. 2609 to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under Section 79 of Republic Act No. 265. The policy incorporated in Circular No. 20 and implemented in subsequent circulars, was also relaxed with the enactment of Republic Act No. 2609, which directed the monetary authorities to take steps for the adoption of a four-year program of gradual decontrol, during which the Monetary Board, with the approval of the President, could and did fix the conversion rate of the Philippine peso to the U.S. dollar at a ratio other than that prescribed in Section 48 of Republic Act No. 265. On February 21, 1970, the Central Bank of the Philippines promulgated its Circular No. 289 instituting the floating rate of exchange, except, insofar as it may have some bearing hereto, foreign exchange payments for outstanding foreign obligations and letters of credit covered by forward exchange contracts, but clearly and obviously not applicable to petitioners.

Consequently, to effectuate and bring into accord the true and correct value of the Philippine peso vis-a-vis the U.S. dollar, in accordance with the prescribed prevailing free market rate, for internal revenue tax purposes, a uniform rate of exchange of the U.S. dollar to the Philippine peso for the year 1970, period covered in CTA Case No. 2511, was adopted by the Bureau of Internal Revenue, which was circularized in Revenue Memorandum Circular No. 7-71 dated February 11, 1971, and duly approved by the Secretary of Finance. We quote:

REVENUE MEMORANDUM CIRCULAR NO. 7-71

SUBJECT: Prescribing a uniform rate for U.S. Dollars to Philippine Pesos for Internal Revenue Tax Purposes.

TO: All Internal Revenue Officers and others concerned:

For the purpose of establishing a uniform rate of exchange of U.S. dollars to Philippine pesos for internal revenue tax purposes for the year 1970, the following schedule of exchange rates are hereby prescribed for reference and guidelines of all concerned:

Schedule of Exchange Rates

1. In all cases of transactions involving remittances and acceptances of U.S. dollars occurring during the period from January 1 to February 20, 1970, the official rate of exchange of ₱3.90 to $1.00 shall be used.

2. In the case of transactions involving remittances or acceptances of U.S. dollars occuring after February 20, 1970, the following rules shall govern:

(a) In the case of regular or habitual transactions involving remittances and acceptances of U.S. dollars, such as salaries, royalty payments and the like, the uniform rate of ₱6.25 to U.S. $1.00 shall be used; provided, however, that in the case of transactions involving the computation of advance sales or compensating taxes, the rates used by the Bureau of Customs, at the time of the payment of such taxes shall prevail.

(b) In the case of an isolated or casual transaction involving remittances or acceptances of U.S. dollars, such as dividends, occasional sales of property and the like, the exchange rate quoted by the Foreign Exchange Department of the Central Bank of the Philippines prevailing at the time of such remittances or acceptance shall be used.

Enforcement and Publicity

All internal revenue officers and others charged with the enforcement of the 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

APPROVED:

(SGD.) CESAR VIRATA
Secretary of Finance"

For the year 1971, the period covered in C.T.A. Case No. 2594, and for the same purposes stated above, Revenue Memorandum Circular No. 41-71 was issued on December 20, 1971, which provides as follows:

REVENUE MEMORANDUM CIRCULAR NO. 41-71

"SUBJECT: Prescribing a uniform exchange rate for U.S. dollars to Philippine pesos for internal revenue tax purposes

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 pesos for internal revenue tax purposes for the year 1971, the following schedule of exchange rates are hereby prescribed for reference and guidelines of all concerned:

Schedule of Exchange Rates

In all cases of transactions involving remittances and acceptances of U.S. dollars and other foreign currencies occuring during the year 1971, the following rules shall govern:

(a) In the case of regular or habitual transactions involving remittances or acceptances of US 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 uniform rate of ₱6.25 to U.S. $1.00 shall be used.

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

(c) 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 exchange rate quoted by the Foreign Exchange Department of the Central Bank of the Philippines prevailing at the time of such remittances or acceptances shall be used.

(d) 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 other 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

APPROVED:

(SGD.) CESAR VIRATA
Secretary of Finance"

It appears that the exchange rates prescribed in the above-quoted revenue memorandum circulars were adopted from the Central Bank Annual Reports for 1970 and 1971, the pertinent portions of which are quoted hereunder:

"The exchange reform which allowed the peso to float and seek its own level in the free market resulted in the interbank rate's immediate jump to an average of ₱5.628 during the last week of February from a "pre-floating" level of ₱3.9195. From then on, the average interbank rate gradually inched upward, rising to ₱6.095 in March, ₱6.195 in June, and ₱6.378 in September. In October, it hit ₱6.435 at which level it held steady until the end of the year. (Central Bank 22nd (1970) Annual Report)

The par value of the peso is at 0.227864 grams of fine gold per Philippine Peso or at ₱3.90 per U.S. $1.00, with official limits set by the Central Bank, at ₱3.8805 buying and ₱3.9195 selling per U.S. $1.00, in its dealings with authorized agent banks.

Since February 21, 1970, however, with the issuance of Circular No. 289 of the Central Bank, the peso was allowed to seek its own level in the foreign exchange market. All foreign exchange transactions were conducted on the basis of the free market rate since May 1, 1970 when the export tax (R.A. 6125) was approved to replace the 80 per cent surrender requirement for proceeds of leading export products at the official par value under Circular No. 289.

Exchange regulations are administered by the Central Bank which issued circulars and memoranda to authorized agent banks on the basis of policy decisions adopted by the Monetary Board.

The exchange rate of the peso vis-a-vis the U.S. dollar, which had remained stable at ₱6.435 (interbank), ₱6.402 (buying) and ₱6.484 (selling) since October 1970 to July 1971, exhibited slight fluctuations during the latter part of 1971. These changes reflected the uncertainties in the international money market brought about by the weakening of the U.S. dollar in relation to other major currencies.

The interbank rate dropped to ₱6.424 in August and slid further to ₱6.412 in September. For October and November, however, it staged a recovery rising to ₱6.433 and returned to ₱6.435 by the end of the year. Similarly, buying and selling rates fell to ₱6.391 and ₱6.379 and ₱6.460, respectively.

> Recoveries were likewise registered for October and November with the buying rate up at ₱6.400 and the selling rate of ₱6.488, rising further to ₱6.402 and ₱6.484, respectively, by December 1971. (Central Bank 23rd (1971) Annual Report)"

It is not disputed that Revenue Memorandum Circulars Nos. 7-71 and 41-71, or Bureau of Internal Revenue Ruling No. 70-027 dated May 14, 1970, which prescribed the uniform rates of exchange of the U.S. dollar to the Philippine peso for internal revenue tax purposes for the years 1970 and 1971, are the products of rule making, and rule making is the part of the administrative process that resembles a legislature's enactment of a statute. (Balmaceda vs. Corominas & Company, Inc., No. L-21971, September 5, 1975, 66 SCRA 553, citing Davis, Administrative Law Treaties, 1958 Ed., p. 275, et seq.) In this jurisdiction, administrative authorities are vested with the power to promulgate rules and regulations to implement a given statute and to effectuate its policies. (Del Mar v. The Philippine Veterans Bank Administration, No. L-27299, June 27, 1973, 51 SCRA 348.) And when promulgated, such administrative rules and regulations become laws. (Macailing vs. Andrada, No. L-21607, January 30, 1970, 31 SCRA 139; Balmaceda vs. Corominas & Company, Inc., supra.)

In the light of the above, the argument of respondent that in applying the free market rate to the dollar incomes of petitioners, as provided for in Revenue Memorandum Circulars Nos. 7-71 and 41-71, he is merely ascertaining the true and correct value thereof in Philippine currency for internal revenue purposes, is not devoid of merit. On this point, respondent avers, and it is not without basis, that the use of the prevailing free market rate in the instant cases is not because of the involvement of a foreign exchange transaction but because of the need to ascertain the true and correct amount of income in Philippine pesos of dollar earners for Philippine income tax purposes, which we may add, is to be paid in Philippine currency. The use of the parity rate would be unrealistic and will not give the true and correct value of the Philippine peso in relation to the U.S. dollar. (See Memorandum for the Respondent, pp. 233-234, Records of CTA Case No. 2511.)

And the argument is based not merely on realism, but also on the truism that the accretion in the purchasing power or increase in the fair and true value of the income of petitioners in terms of Philippine pesos, when their dollar earnings are converted into Philippine pesos for income tax purposes, is just as much taxable income to them as if money assets had been actually received by them. To pay the income tax in Philippine currency on dollar income at parity rate, when the true and correct value of the Philippine peso in relation to the U.S. dollar in accordance with the prevailing free market rate is very much greater, would therefore result in an absurdity from which mischievous consequences would follow to the prejudice of the Government. Thus, if the dollar income in terms of pesos would be ₱2.00 to a U.S. dollar for income tax purposes at the parity rate, but in accordance with the prevailing free market rate the correct and true value would be ₱6.00 or even more to a U.S. dollar, that would create altogether a situation where the Government is deprived of its lawful revenue on the peso value of the difference between the parity rate and the prevailing free market rate, when the taxpayer has fully and completely enjoyed all benefits accruing therefrom.

Following the reasoning of the Supreme Court, speaking thru Chief Justice Roberto Concepcion, in its decision in the case of Commissioner of Internal Revenue vs. Royal Interocean Lines, No. L-26306, July 30, 1970, 34 SCRA 9, the infirmity of petitioners' theory becomes readily apparent when we consider that, if upheld, its effect would be to subject to the income tax at the free market rate the dollar income of taxpayers who bring their dollar earnings into the Philippines, and to apply the parity rate to those who do not bring in their dollars or other foreign exchange, thereby discriminating against those who help maintain and increase our international reserve and in favor of those who do not only fail to do so, but jeopardize the condition of such reserved, by keeping or salting abroad their dollar and other earnings and, worse still, by inducing others, to adopt the same practice, in order to avoid, evade or cut down payment of said tax. This result could not surely have been intended or countenanced by the framers of our tax laws, much less by those responsible for our policy of control and, later, of gradual and, eventually, full decontrol, considering their grave concern for our international reserve and stability of the Philippine currency.

It is to be admitted that the case is not squarely in point. Nonetheless, the rationale of the decision that would stress the malady of subjecting to the income tax at free market rate Filipinos that bring their dollar earnings into the Philippines, and to apply the parity rate to those who do not bring in their dollars or other foreign currency in order to avoid, evade or cut down the payment of said tax is present in these cases. As a matter of fact, in that opinion the freight revenues accruing to the taxpayer therein, even though collected abroad and not remitted to its office in the Philippines, are held part of its foreign exchange operations and subject to the common carrier's tax (and of course income tax), computed at the free market rate then prevailing. (Commissioner of Internal Revenue vs. Royal Interocean Lines, supra, 34 SCRA at page 17.) Where, as here, the dollar earnings of petitioners are derived from foreign exchange transactions, there is no basis for an assertion that the same should be subject to income tax at the parity rate.

In view of all the foregoing, we find and so hold that the proper conversion rate for the purpose of reporting and paying the Philippine income tax on the dollar earnings of petitioners are the rates prescribed under Revenue Memorandum Circulars Nos. 7-71 and 41-71. Accordingly, the claims for refund and/or tax credit of petitioners in the above-entitled cases are hereby denied.

WHEREFORE, we find no merit in these Petitions For Review and the above-entitled cases are hereby dismissed with costs against petitioners in both instances.

SO ORDERED.

Quezon City, September 26, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Constante C. Roaquin
CONSTANTE C. ROAQUIN
Associate Judge