REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARMENCITA P. PATIO, represented herein by her Attorney-in-fact, BERNARDO PATIO,
Petitioner,

- versus -

C.T.A. CASE NO. 2913

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

2/26/81

D E C I S I O N

Petitioner Carmencita P. Patio appealed from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from her the amount of ₱1,212.53 (should be ₱1,247.25), representing deficiency income tax allegedly due from her for the year 1975.

The records show that taxpayer-petitioner, Carmencita P. Patio, worked as a nurse in the Singian Memorial Hospital in Manila and had received therefrom as salary for the period from January 1, 1975 to February 27, 1975 the sum of ₱580.00. Sometime in May, 1975, she left the Philippines for Vienna, Austria and there she worked from May 25, 1975 to December 31, 1975. She had received a gross income of $3,843.75 for her work in Austria for the aforesaid period. It appears that up to the present, she continues to stay and work in Austria.

In connection with her salary for the period from January 1, 1975 to February 27, 1975, she reported said income in an income tax return which she filed with the Philippine Embassy in Vienna, Austria (p. 24, BIR rec.) on March 23, 1976, simultaneous with the filing of another separate income tax return, wherein she reported the sum of $3,843.75 which she earned in Vienna, Austria for the period from May 25, 1975 to December 31, 1975. (p. 25, BIR rec.) In the first income tax return (op. cit, p. 24) filed, it shows that petitioner is exempt from the payment of income tax. In the second income tax return (op. cit, p. 25) filed, it was shown that she is also exempt from the payment of income tax.

Subsequently, based upon an investigation conducted, petitioner was sent a letter dated August 9, 1977 from Assistant Commissioner Lauro D. Abraham, which shows that petitioner's income from the Philippines and abroad for 1975 was consolidated, and on that basis, her income tax liability was computed, and was subjected to a deficiency income tax in the amount of ₱1,247.26 (p. 28, BIR rec.), computed as follows:

	US $ to	₱
Gross income per return	$3,653.54	₱25,567.78
Add: Income from Phil.		580.00
Total Gross Income		₱26,147.78

Total Gross Income	₱26,147.78
Less 10% optional standard deduction	2,614.78
Net income per investigation	₱23,533.00
Less: Personal & additional exempt.	3,000.00
Amount subject to tax	₱20,533.00
Tax due thereon	₱ 3,024.00
Less: Amount of foreign tax credit	1,977.99
Balance	₱ 1,045.92
Add: 14% interest per annum from April 16 to August 31, 1977	201.34
Amount still due and collectible	₱ 1,247.26

The above assessment was arrived at by adding, as aforesaid, petitioner's income of ₱580.00 from the Philippines and her income earned from Vienna, Austria in the sum of $3,653.54 (not $3,843.75), the latter income computed at the prevailing rate of exchange at the time which was ₱7.00 to $1.00, and subjecting the same to the progressive income tax rates of 3% to 70%, under Section 21 of the National Internal Revenue Code, and not in the manner petitioner filed her two (2) separate income tax returns and computed her tax liability, i.e. at the progressive rates of 3% to 70% with respect to her income of ₱580.00 in the Philippines and with respect to her income from abroad of $3,843.75 (should be $3,653.54) at the progressive rates of 1% to 3% based upon the adjusted gross income thereon, because petitioner was not considered by respondent as a non-resident citizen contemplated in Section 21, as amended by P.D. 323. Assistant Commissioner Abraham stated in his assessment that the "Taxpayer (petitioner herein) is not qualified as a non-resident citizen. Her physical presence abroad for 1975 was less than an entire taxable year." (p. 28, Ibid.)

Upon receipt of the assessment, petitioner, through her counsel, protested on September 27, 1977 (p. 29, BIR rec.) the said assessment in the amount of ₱1,247.26 and requested the cancellation thereof on the grounds that Section 21 only requires that the citizen establishes tothe satisfaction of the Commissioner the fact of his physical presence abroad for an uninterrupted period; that P.D. 323 does not provide that in order for a Filipino to be a non-resident citizen, he must stay abroad for one whole taxable year, or from January to December; that it is enough that the stay abroad of a citizen is uninterrupted from the time that he leaves the Philippines; that the term "taxable year", under Section 84 of the Tax Code, includes, in the case of a return made for a fractional part of a year, only the period or the year for which such return is made, and, therefore, "taxable year" does not necessarily mean a twelve (12) months period; and that the reason for imposing different rates of tax (1% on the 1st $6,000; 2% on the next $14,000; and 3% on the excess over $20,000), under P.D. 323, amending Section 21 of the Tax Code, is to enable Filipinos abroad to better meet their obligations considering the heavy burden being paid by the non-resident Filipinos who have established their residences abroad.

The request of petitioner for reconsideration was denied in a letter of Fortunato P. Aguas, Chief, International Operations Division of the Bureau of Internal Revenue dated November 10, 1977. (p. 30, BIR rec.) Hence, this appeal.

The only issue involved in this case is whether or not petitioner may be considered as a non-resident citizen and, therefore, her income abroad is subject to tax at the preferential rates of 1% to 3% under the provisions of Section 21, as amended by P.D. 323, which provides as follows:

> Sec. 21. Rates of tax on citizens or residents. - A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or an alien residing in the Philippines, determined in accordance with the following schedule: Provided, however, That non-resident citizens shall be subject to tax under this schedule only on income derived by them from sources within the Philippines.
>
> Not over ₱2,000 - - - - - - - - 3%
> Over ₱2,000 but not over ₱4,000 ₱60
> plus 6% of excess over ₱ 2,000.
> Over ₱4,000 but not over ₱6,000 ₱180
> plus 9% of excess over ₱4,000.
> Over ₱6,000 but not over ₱8,000 ₱360
> plus 12% of excess over ₱6,000.
> Over ₱8,000 but not over ₱10,000 ₱600
> plus 14% of excess over ₱8,000.
> Over ₱10,000 but not over ₱12,000 ₱880
> plus 16% of excess over ₱10,000.

Over ₱12,000 but not over ₱14,000 ₱1,200 plus 18% of excess over ₱12,000.
Over ₱14,000 but not over ₱16,000 ₱1,560 plus 20% of excess over ₱14,000.
Over ₱16,000 but not over ₱18,000 ₱1,960 plus 22% of excess over ₱16,000.
Over ₱18,000 but not over ₱20,000 ₱2,400 plus 24% of excess over ₱18,000.
Over ₱20,000 but not over ₱24,000 ₱2,880 plus 27% of excess over ₱20,000.

x x x x x x x x x

Provided, further, That on the income of non-resident citizens from all sources without the Philippines, there is hereby imposed a tax on the gross amount of such income after deducting therefrom the following:

(a) An allowance for personal exemption in the amount of two thousand dollars (U.S. $2,000.00), if the person making the return is a single person or a married person legally separated from his or her spouse; or four thousand dollars (U.S. $4,000.00), if the person making the return is a married man or a head of the family, as defined in section 23 of this Code; and

(b) The total amount of the national income tax actually paid to the government of the foreign country of his residence. The Philippine income tax on the adjusted gross income shall be computed in accordance with the following schedule:

If the amount subject to tax is:
Not over $6,000.00 . . . . 1%
Over $6,000.00 but not over $20,000.00 2%
Over $20,000.00 . . . . 3%

Provided, furthermore, That for purposes of this section, a non-resident citizen is one who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad for an uninterrupted period which includes an entire taxable year. (Underlining supplied.)

x x x x x x x x x

Petitioner contends that she is a non-resident Filipino inasmuch as the "only requisite to be a non-resident citizen is that the citizen establishes to the satisfaction of the Commissioner (of Internal Revenue) the fact of his (her) physical presence abroad for an uninterrupted period which includes an entire taxable year" and having established that fact, the act of respondent, therefore, in assessing her income tax liability in the sum of ₱1,247.26 runs counter to the provisions of Section 21, as amended by P.D. 323.

On the other hand, respondent contends that during the period in controversy, petitioner have not qualified as a non-resident citizen because "her physical presence abroad for 1975 was less than an entire taxable year."

We agree with respondent. The law is clear that in order to qualify as a non-resident citizen and avail of the preferential income tax rates under Section 21, one must have actually and physically stayed or resided abroad for an uninterrupted period of one entire taxable year, i.e. for the period starting from January 1 and ending December 31, of a given year. Otherwise, if the period of the taxpayer's stay abroad is less than one year, the income earned abroad during that period of less than one year will subject the same to the progressive income tax rates of 3% to 70%, and to this income abroad shall be included the income earned in the Philippines during that same period of less than one year, just like the incomes of petitioner in question. This must be so because the term "taxable year" in Section 21, as amended by P.D. 323, means the calendar year, which begins on January 1 and ends on December 31, of each year. Petitioner, not being considered a non-resident citizen who had established her physical presence abroad for an uninterrupted period of an entire taxable year, her income earned abroad for the period of less than one taxable year, or from May 1, 1975 to December 31, 1975, including that income earned in the Philippines for the period from January 1 to February 27, 1975, should be subjected to the progressive tax rates of from 3% to 70% pursuant to Section 21, as amended by P.D. 323.

There being no dispute as to the mathematical computation made by respondent of the income tax liability of petitioner based on the progressive income tax rates imposed on the net income earned from the Philippines of ₱580.00, and from abroad or Austria, in the sum of $3,843.76 (should be $3,653.54, as shown in the assessment which is presumed to be correct), petitioner is, therefore, liable for the payment of the sum of ₱1,247.26.

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner is hereby ordered to pay within 30 days from receipt of this decision, the amount of ₱1,247.26 as deficiency income tax for the year 1975, and 5% surcharge thereon, plus 14% interest per annum from September 1, 1977 until the basic deficiency income tax and the 5% surcharge thereon is paid, but said interest should not exceed a period of three years, pursuant to Section 51 (d) and (e) (3) of the National Internal Revenue Code, as amended.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 26, 1981.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge