Lit.

CHICAGO BRIDGE & IRON COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2481

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

5/31/79

DECISION

Under Section 24(b)(1) of the National Internal Revenue Code, a non-resident foreign corporation not engaged in trade or business in the Philippines is taxable on its gross income without any deductions. On the basis that petitioner Chicago Bridge & Iron Company is a non-resident foreign corporation not engaged in trade or business in the Philippines which is taxable on gross income and, therefore, it is not entitled to claim any deduction for income tax purposes, respondent Commissioner of Internal Revenue assessed against petitioner deficiency income tax for the years 1965, 1966, 1967 and 1968 in the respective amount of ₱95,602.42, ₱118,615.96, ₱125,076.24 and ₱387,577.44, or a total of ₱726,872.06.

Petitioner is a foreign corporation duly organized and existing under the laws of the State of

Illinois, U.S.A., with principal place of business at 1305 West 105th St., Chicago, Illinois, U.S.A. On December 23, 1953 it was licensed by the Securities and Exchange Commission to engage in business in the Philippines, under License No. 263, which license was cancelled on September 5, 1963, after petitioner withdrew from its business. Subsequently, it re-applied, and was issued on March 15, 1965, License No. 428 authorizing it to engage in trade or business in the Philippines, particularly in the "selling of personal property of all kinds, including but not limited to tanks, containers, etc.; to carry on the general construction business and to own and lease construction equipment of all kinds, including but not limited to equipment used to construct, assemble or repair the above-mentioned structures." (Exhs. "A", "A-1", p. 91, BIR Records.)

For income derived by it in the Philippines during the years 1965, 1966, 1967 and 1968, which consisted of rentals and interest, petitioner filed its income tax returns claiming deductions as a foreign corporation engaged in trade or business within the Philippines, pursuant to the provisions of Section 24(b)(2) of the National Internal Revenue Code. (Exhs. "O", "P", "Q" and "R", pp. 41 and 46, 57, BIR Records.) And for dividends received from a domestic corporation in 1968, petitioner in the manner of a foreign corporation engaged in trade or business within the Philippines, reported only 25% of such dividends for purposes of income taxation, in accordance with the then Section 24(a) of the National Internal Revenue Code. (Exh. "O", p. 57, BIR Records.)

Sometime in the year 1970, respondent caused the investigation of the income tax returns and books of accounts of petitioner for the years 1965 to 1968, inclusive. As a result of such investigation, he issued an assessment letter, dated August 17, 1970, which was received by the law firm of Lichauco, Picazo & Agcaoili, to which it was addressed, on September 9, 1970, demanding the payment of the total amount of ₱726,872.06 as deficiency income tax, inclusive of interest, for the entire four-year period, computed as follows: (Par. 2, Petition for Review, admitted under par. II of the Answer.)

1 9 6 5

Net income per return		₱ 49,847.52
Add: Unallowable deductions:		
1. Rentals of machinery		
Per CBI Phils. . . .	₱263,735.44	
Per CBI Illinois .	263,815.38	45.06
2. Interests		
Per CBI Phils. . . .	₱ 42,881.15	
Per CBI Illinois .	37,815.40	5,065.75
3. Selling general adm. expenses, misc.		167,870.14
4. Depreciation		83,788.12
Net income per investigation		₱306,616.59
Tax due thereon		₱ 91,985.00
Less: Amount already paid per letter dated 11-12-69 of Sycip, Gorres, Velayo & Co.		10,966.00
B a l a n c e		₱ 81,019.00
Add: 1/2% mo. int. fr. 4-16-66 to 4-16-69		14,583.42
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 95,602.42

1 9 6 6

Net income per return		₱210,468.37
Add: Unallowable deductions:		
1. Selling general adm. exp. .		200,018.18
2. Depreciation		107,853.79
3. Difference in exchange rate		
Per CBI Phils. ..	₱581,876.21	
Per CBI Illinois..	518,340.34	308,407.84
Net income per investigation		₱518,876.21
Tax due thereon		₱155,663.00
Less: Amount already assessed		55,141.00
B a l a n c e		₱100,522.00
Add: 1/2% mo. int. fr. 4-16-67 to 4-16-70		18,093.96
TOTAL AMOUNT DUE & COLLECTIBLE		₱118,615.96

1 9 6 7

Net income per return			₱268,065.32
Add: Unallowable deductions:			
	1. Selling general adm. exp. .		248,510.12
	2. Depreciation		87,431.92
	3. Difference in exchange rate		
	Per return (CBI Phil.) . .	₱607,120.80	
	Per return (CBI Illinois) .	(604,007.29)	3,113.51
Net income per investigation			₱607,120.87
Tax due thereon			₱182,136.00
Less: Amount already assessed			72,420.00
B a l a n c e			₱109,716.00
Add: 1/2% mo. int. fr. 4-16-68 to 8-17-70			15,360.24
TOTAL AMOUNT DUE & COLLECTIBLE			₱125,076.24

1 9 6 8

Net income per return		₱ 250,436.91
Add: Unallowable deductions & addt'l income:		
	1. Selling general adm. expense	299,036.53
	2. Depreciation	11,290.33
	3. Dividend received	750,000.00
Net income per investigation		₱1,310,763.77
Tax due thereon		425,999.00
Less: Amount already paid		67,131.00
B a l a n c e		₱ 358,868.00
Add: 1/2% mo. int. fr. 4-16-69 to 8-17-70		28,709.44
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 387,577.44

The sole basis of the deficiency assessment is the contention of respondent that petitioner is a non-resident foreign corporation not engaged in trade or business in the Philippines, and, therefore, not entitled to claim any deduction from its gross income derived from Philippine sources nor to exclude from its gross income 75% of the dividends received by it from a domestic corporation. (Par. 3, Petition for Review, admitted in the Answer).

In a letter dated September 17, 1970 and filed with the office of respondent on the same date, petitioner, through its auditors, contested and disputed the said assessment. (Par. 4, Petition for Review, admitted in the Answer). However, in a letter dated November 19, 1972 and received by petitioner's auditors on January 26, 1973, respondent denied petitioner's protest and reiterated his demand for the payment of the alleged deficiency income tax in the total amount of ₱726,872.06. Hence, the instant appeal.

The issues to be resolved in this case, as stated by the parties, are:

(1) Whether, for income tax purposes, petitioner is a non-resident foreign corporation not engaged in trade or business in the Philippines, or a resident foreign corporation engaged in trade or business in the Philippines; and

(2) Assuming that petitioner is a non-resident foreign corporation not engaged in trade or business in the Philippines, whether or not the deficiency

income tax liabilities for the years in question were correctly determined and computed by respondent.

During the years material to this case, a foreign corporation not doing business in the Philippines was taxable on income from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits and income and capital gains. The tax was 30% of such gross income. (Sec. 24(b)(1), National Internal Revenue Code.) On the other hand, a foreign corporation doing business in the Philippines was, and still is, taxable on income solely from sources within the Philippines, and it is permitted to claim deductions from gross income to the extent connected with income earned in the Philippines. The tax was 22%-30% of such net income. (Secs. 24(b)(2) and 37, id.) And dividends received by a domestic or resident foreign corporation from another domestic corporation subject to income tax were taxable only to the extent of 25% of such dividends. (Sec. 24(a), id.) The applicable principles of law are clear and in the end the decision in this case must rest upon its own peculiar facts and circumstances.

In maintaining that petitioner is not engaged in trade or business in the Philippines, respondent relied on the findings of his examiner that (1) petitioner has no office or place of business in the Philippines; (2) petitioner has no books of accounts in the Philippines; (3) petitioner does business only with its subsidiary, Chicago Bridge (Philippines), Inc., strictly on a lessor-lessee basis from which it derives only rental and interest income; and (4) petitioner's claim that it also undertook construction jobs in the Philippines has no basis in truth and in fact.

It is revealing to consider at the outset that in all the income tax returns filed by petitioner for the years involved in this case - 1965, 1966, 1967 and 1968 - the address given by it as its principal place of business for purposes of Philippine income tax is 901 West 22nd Street, Oak Brook, Illinois 60523, United States of America, without any data as to the corresponding number, place of issue and date of issue of the residence certificates of petitioner and the officers filing the returns, although proper spaces for such information have been clearly provided therein. As a matter of fact, the notary public who subscribed or added his jurat to the income tax returns is a notary public in and for Cook County, Illinois, residing in that County. The financial statements and auditor's reports of petitioner as of December 31, 1967, which are the only ones attached to the records, were certified by Arthur Andersen & Co., Chicago, Illinois. And even the letter forwarding petitioner's income tax return for such year to respondent Commissioner of Internal Revenue, together with the payment of the tax due thereon, came direct from Chicago Bridge & Iron Company, 901 West 22nd Street, Oak Brook, Illinois 60521. (pp. 1-66, BIR Records; Exhs. "O", "P", "Q", "R", pp. 41, 46, 57, BIR Records.)

Since petitioner as a foreign corporation having income from sources within the Philippines must make a return of income derived from Philippine sources, did not petitioner during the years involved in this case have an office or place of business in this country which must make and file the returns? Or is petitioner a foreign corporation not engaged in trade or business in this country and having no office, branch, or agency in the Philippines that it, by itself, had to make the returns with respect to income from sources within the Philippines?

Against this backdrop, the Court cannot overlook Section 2 of the Residence Tax Law, Commonwealth Act No. 465, which provides that all corporations, no matter how created or organized, whether domestic or resident foreign, engaged in or doing business in the Philippines are subject to residence taxes. A resident foreign corporation means a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein. (Sec. 84(g), National Internal Revenue Code; BIR Ruling No. 561, November 5, 1959.) And, when a person liable to residence taxes acknowledges any document before a notary public (income tax returns filed during the years involved in this case had to be acknowledged or subscribed before a notary public), the presentation of residence certificate is required. (Sec. 6, Commonwealth Act No. 465.) If all corporations, whether domestic or resident foreign, engaged in or doing business in the Philippines are subject to residence taxes, it seems that petitioner never considered itself a foreign corporation engaged in trade or business within the Philippines because it never bothered itself to comply with the provisions of the Residence Tax Law.

Non-compliance with the provisions of the Residence Tax Law notwithstanding, was petitioner actually engaged in trade or business in the Philippines during the years involved in this case?

No general rule or governing principles can be laid down as to what constitutes "doing " or "engaging" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances. The true tests, however, seem to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned over to another. (Traction Co. vs. Coll. of Int. Revenue, 223 F. 984). The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, or in progressive prosecution of, the purpose and object of its organization. (Mentholatum Co. vs. Mangaliman, 40 Off. Gaz. 1839.) In other words, it appears necessary, at least in our jurisdiction, to constitute "transacting business", that the foreign corporation has (1) continuity of its personality, and (2) continuity of commercial dealings and arrangements, in the Philippines. (See Commentaries and Jurisprudence on the Philippine Commercial Laws, Martin, T.C., 1971 Revised Edition, p. 221).

The records show that petitioner, during the years in question, merely entered into lease contracts with its subsidiary in the Philippines, Chicago Bridge (Philippines), Inc., for the lease of construction equipment. These contracts concerning the lease of construction equipment of all kinds, however, as correctly noted by respondent, were all entered into and consummated in the United States. In fact, the delivery and transfer of possession of the leased equipment were all done in the United States. Indeed, the evidence presented supports the observation made in the report of Bureau of Internal Revenue Senior Examiner Gaudencio L. Villanueva, contained in the 2nd Indorsement to the Commissioner of Internal Revenue dated September 25, 1972, to the effect that: (Exh. "4", pp. 184-196 at p. 190, BIR Records.)

> "In the case at bar, the only participation of CBIC (petitioner herein) in the properties is the act of leasing them. All cost of packing and delivery to the pier in the U.S., ocean freight, insurance, import and export fees and duties, wharfage and landing charges and similar costs both outbound and inbound shipments are for the account of the Lessee. The Lessee defrays for all the operating costs, maintenance and operators of the equipments. The equipments shall be returned to the Lessor in the same condition as received by the Lessee except ordinary wear and tear. In the case of damage or breakage the Lessee is bound either to repair the equipment at its expense or pay the Lessor for its cost of returning the equipment to its previous condition. The Lessee is also bound to indemnify the Lessor against all damages, losses, expenses and fees on account of death, injury, damages or losses to persons, including but not limited to the employees of the Lessee, or property occasioned directly or indirectly by the condition of any of the leased equipment or by the operation, handling or transportation of any of the leased equipment by the Lessee or sublessee or any agent or employee of either during the rental period. In short,

> all the attributes to ownership is dump into the Lessee except the title thereto." (See Exhibits "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N" for pet.)

Thus, it appears that the nature and extent of the business undertaken by petitioner during the period in question was limited to the mere act of leasing its various types of construction equipment to its subsidiary in the Philippines, which were used by the latter in its own construction projects in the Philippines, and deriving rentals therefrom. Such activity amounts to no more than that of receiving in the United States the ordinary fruits that arise from its ownership of the leased equipment. Leasing of different kinds of construction equipment in the United States to a lessee in the Philippines, cannot by any stretch of the imagination be considered on the part of the lessor as engaging or doing business in the Philippines, when the construction work is the business of the lessee in the Philippines. Petitioner as a foreign corporation is not, therefore, continuing in the Philippines the body or substance of the business or enterprise for which it was organized in the United States. And if there is any continuity of commercial dealings and arrangements in the Philippines so as to constitute doing or engaging trade or business in the Philippines, it is on the part of its subsidiary, Chicago Bridge (Philippines) Inc., and certainly not on the part of petitioner.

We likewise find the contention of petitioner to the effect that it has a place of business or office in the Philippines, at Vito Cruz, Manila, without basis. Aside from what has already been stated earlier, the evidence presented discloses that the said address is the business residence of Chicago Bridge (Philippines) Inc., and not that of herein petitioner. What actually appears on record is that petitioner has constituted and appointed the law firm of Lichauco, Picazo and Agcaoili as its attorney-in-fact to act as resident agent for the purpose of accepting service of summons and processes in all legal proceedings against petitioner and all notices affecting the same. (Exh. "4", pp. 184-195, BIR Records.) To our mind, the appointment of an attorney-in-fact to act as resident agent in the Philippines for the purpose of accepting service of summons and legal processes is entirely inconsistent with the existence of a resident foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein. They are obviously opposite sides of the same coin for it seems clear that, in the ordinary course of business, a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein does not have to constitute and appoint an attorney-in-fact to act as its resident agent in the Philippines.

Contrary to the claim of petitioner that it had undertaken certain construction jobs in the Philippines, the testimony of its witness John James Romane discloses that it was the Chicago Bridge (Philippines) Inc. which carried out the construction works, to wit:

"Q. You said that your authority of supervision includes the Philippine Operation of Chicago Bridge & Iron Company.

"A. That is right.

"Q. Now, as such, have you familiarized yourself with the past and present operations of Chicago Bridge & Iron Company in the Philippines?

"A. Yes, I have.

"Q. Now, what did you do to familiarize yourself with Chicago Bridge's past and present operations?

"A. Prior to coming out of Singapore, I was required to review all the records and books of all the companies which are doing business in these parts of the world. That is part of my program with the company. This was a period of about five months - some of the training programs of the company.

"Q. Now, specifically, did you take note of the past and current activities of the Chicago Bridge & Iron Company, Philippine

" branch operations?

"A. Yes, I had to take a number of notes to familiarize myself with the operations of the company, and in this respect I take many notes on the present activities and past activities of this company.

"Q. Can you mention before this Honorable Court some of the contracts that were entered into and undertaken by the Chicago Bridge Philippine branch in the Philippines?

"A. I have a list of the contracts that the company had worked from 1947 through 1972. In the year 1972, Chicago Bridge & Iron Company Philippine branch got some works from Manila Electric Company; in 1971 some work for Manila Electric Company again. In 1962, they performed some work for Pacific Procon; 1961, performed work for Standard-Vacuum Oil Company. In 1960, they performed four contracts for Standard Vacuum Oil Company. In 1958, they performed work for California Texas Oil Company, Ltd.; 1955, performed work for California Texas Oil Company, Ltd. again. In 1954, they performed work for California Texas Oil Company, and in 1947 they performed two contracts for Standard Vacuum Oil Company.

xxx xxx xxx

(Testimony of John James Romane; Hearing, November 13, 1975, pp. 4-6, t.s.n.)

The aforesaid testimony was corroborated by petitioner's other witness, James Cekal, as follows:

"Judge Alvarez.

You stated that the local subsidiary filed its own income tax return. Will you please inform the Court why you consider that the mother company in the United States is engaged in business in the Philippines?

"A. We consider that we are engaged in the

> Philippines because we have performed construction contracts in the Philippines for many years, since our registration in 1953 with the Securities and Exchange Commission. We are still in a position to perform construction contracts here. Additionally, we feel that the renting of equipment is part of our world-wide normal activity; and that, it constitutes doing business.

"Judge Alvarez.

> Is it not a fact that this construction business of the mother company is performed by the subsidiary in the Philippines?

"A. It is a fact that most of the construction business is performed by the subsidiary here. But Chicago Bridge & Iron Company - if, for example, a customer receiving export-import bank financing from the United States, that requires that most of the cost incurred is in U.S. dollars. That customer, perhaps, Manila Electric or some other company, would come to Chicago Bridge; and we have to perform the work"

xxx xxx xxx

(Testimony of James Cekal, Hearing, September 25, 1975, t.s.n., pp. 51-58)

As correctly pointed out by respondent, from the above testimonies of petitioner's own witnesses, it is obvious that the construction projects claimed to have been undertaken by petitioner in the Philippines were actually done by its subsidiary, Chicago Bridge (Philippines), Inc., and not by herein petitioner. Moreover, while petitioner was able to present copies of the equipment rental agreements dating way back from 1965 to 1968 entered into by it with its subsidiary, not a single contract evidencing the alleged construction projects was ever presented by herein petitioner, which only indicates that no such construction jobs were actually undertaken by the latter in the Philippines. As is often said, "nothing is older or commoner in the administration of law in all countries than the submission to the sense of the tribunal itself, whether judge or jury, of objects which furnish evidence." (Gentry vs. McMiniss, 3 Dana, Ky. 382, 386.)

Then, if petitioner was actually engaged in the construction business in the Philippines, with its "many peaks and valleys", why is it that petitioner never indicated in all the income tax returns filed by it for the years involved in this case (Exhs. "O", "P", "Q", & "R", pp. 41-56, BIR records) that it is engaged in such business and reflected the gains or profits derived from or losses sustained by it in any of the taxable years covered by the returns? If the expenses incurred in connection with the business were always in excess of the receipts therefrom, were the entire receipts completely ignored in rendering the returns of income that the construction business of petitioner should not anymore be shown in the returns? Whatever the dialectics employed, the position of petitioner that it is engaged in the construction business in the Philippines is entirely incompatible with the facts, data and information stated by it in its returns; and since under Section 46(a) of the National Internal Revenue Code every corporation, subject to income tax, must render in duplicate, a true and accurate return of its annual net income in the manner and form prescribed, and containing such facts, data and information as are appropriate and necessary to determine the correctness of its net income and to carry out the provisions of the Income Tax Law, the income tax returns filed by petitioner foreclosed all indications that it is engaged in the construction business in the Philippines. The same fallacy is apparent in the failure of petitioner, as already discussed above, to pay the annual basic and additional residence taxes required of every corporation, whether domestic or resident foreign, engaged in or doing business in the Philippines. (Exh. "1", pp. 131-133, BIR Records.)

Petitioner's contention that it maintained books of accounts in the Philippines may be dealt with rather summarily. While its witness testified that petitioner maintained books of accounts in the Philippines, although the same could no longer be presented because of the lapse of the statutory period to keep books of accounts, respondent's examiner Pablo Osorio stated during the hearing of this case that when he went to the offices of Chicago Bridge (Philippines), Inc., at 722 Vito Cruz, Manila, which allegedly are also the offices of petitioner (par. 1, Petition for Review), and asked for the books of accounts and other pertinent papers relating to the business of petitioner in the Philippines, he was given only worksheets pertaining to certain expenses credited to petitioner and was told, at that time, that petitioner did not have books of accounts and personnel in the Philippines. That was sometime in the year 1970 (par. 2, Petition for Review) and the statutory period of 5 years for the preservation of books and records had not yet expired, the years involved in this case being 1965 to 1968, inclusive. If petitioner had no books of accounts in 1970, it necessarily follows that no books of accounts could be presented in 1975 or 1977 when this case was heard by the Court. Thus -

Re-Direct Examination by Atty. Severiano A. De Leon, Jr.

"Q. In the course of your investigation, Mr. Osorio, did you not ask for the books of accounts and other pertinent papers relating to the business of the petitioner in this case from its agent or representatives in the Philippines?

"A. I did but they only gave to me the working sheet and they told me that they don't have any books of accounts, that the Chicago Bridge and Iron Company, Illinois, does not have personnel in the Philippines.

"Q. Do you mean to tell us you did try to dig deeper in the course of your investigation as to the actual business in the Philippines of the petitioner in this case?

"A. I did, but these are the only ones presented to me, and from the working sheets I could not trace all the machineries being shipped through the Chicago Bridge Phil.

"Q. In other words, no evidence were ever presented to you by the representatives of the petitioner in this case regarding those documents mentioned by counsel for the petitioner that the petitioner is engaged in some other construction business in the Philippines prior to the years involved in your investigation?

"A. They did not present any."

(Testimony of Mr. Pablo Osorio, Hearing, February 21, 1977; t.s.n., pp. 81-82)

Read in the light of what has already been discussed earlier that the address of the place of business of petitioner for purposes of Philippine income taxation is 901 West 22nd Street, Oak Brook, Illinois 60521, United States of America (and from all indications the place where its Philippine income tax returns were prepared, including the financial statements and the auditor's report attached to the BIR records), as well as the necessity of appointing a resident agent in the Philippines with power to accept service of summons and legal processes, it seems abundantly clear that petitioner has no books of accounts in the Philippines, much less has office or place of business therein, the self-serving contrary testimony of its international accounting manager notwithstanding.

The net result is that petitioner Chicago Bridge & Iron Company, during the period in question, was a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein. Accordingly, pursuant to the provisions of Section 24(b)(1) of the National Internal Revenue Code, as a non-resident foreign corporation not engaged in trade or business in the Philippines, it is taxable on its gross income during the years covered by the assessment under consideration.

In the computation of its deficiency income tax liabilities as non-resident foreign corporation not engaged in trade or business in the Philippines during the period covered by the assessment, petitioner submits, however, that respondent committed the following errors:

> "For the year 1965, respondent disallowed selling, general and administrative expenses allegedly in the amount of P167,870. The income tax return (Exh. "R"), however, shows that only P52,123.46 was claimed as selling, general and administrative expenses. The deficiency

tax is, therefore, overstated to the extent of the tax on the excess over the amount actually claimed. It is a basic rule that the respondent cannot disallow more than the amount actually claimed as deduction.

For 1966, the same is true for selling, general and administrative expenses. The amount of ₱200,018.18 was disallowed, while only ₱179,115.13 was claimed in the return (Exh. "P"). Moreover, in the case of the alleged difference in exchange rate, it is indicated that the difference between ₱581,876.21 (per CBI Phil.) and ₱518,340.34 (per CBI Illinois) is ₱308,407.84. This is obviously erroneous because no matter how we compute it, the difference is only ₱63,535.87. The alleged deficiency tax is, therefore, grossly overstated on account of these errors.

For 1968, the disallowed selling, general and administrative expenses are again overstated in that while only ₱293,112.88 was claimed in the return (Exh. "O"), ₱299,036.53 was disallowed. Moreover, the tax liability for 1968 was computed by respondent at the flat rate of 35%, when it should be at 30%, pursuant to the decision in the case of Manila Times Publishing Co. vs. Commissioner. The alleged deficiency tax for 1968 is, therefore, overstated on account of these errors.

As correctly pointed out by respondent (p. 13 of his memorandum), no error was committed in the computation of the 1965 income tax deficiency liability of petitioner for the sum of ₱167,870.14 was actually the amount claimed by it as selling, general and administrative expenses in its return, and not the amount of ₱52,123.46, which is nowhere to be found thereon. (Exh. "R".) There is, therefore, no overstatement in the deficiency income tax assessed against petitioner for 1965. Consequently, the amount of ₱95,602.42, as deficiency income tax due from petitioner for 1965, was correctly computed.

The same is true with respect to the 1966 deficiency income tax liability. The disallowances for selling, general and administrative expenses were not overstated as petitioner claimed only the amount of ₱179,115.13 and not ₱200,018.18. (Exh. "Q") The 1966 income tax return of petitioner clearly shows that the amount claimed therein for selling, general and administrative expenses is actually ₱200,018.18 and not ₱179,115.13. And the error relative to the difference in exchange rate between ₱518,876.21 (₱581,876.21) per Chicago Bridge (Philippines) Inc. and ₱518,340.34 per Chicago Bridge & Iron Company, Illinois, as explained by respondent, was attributable to clerical error. The sum of ₱118,615.96 as deficiency income tax of petitioner for 1966 was, therefore, correctly computed.

There is no question as to the 1967 deficiency income tax assessment of ₱125,076.24.

In computing the 1968 deficiency assessment, respondent disallowed the deduction for depreciation allowance in the sum of ₱11,290.33 only, when the correct amount should have been ₱111,290.33. (See Exhibit "O") Having noticed the error, respondent subsequently recomputed the deficiency income tax assessment of petitioner for 1968, and pursuant to the decision of this Court in CTA Case No. 2263, Manila Times Publishing Co. Inc. vs. Commissioner of Internal Revenue, December 17, 1973 (Certiorari denied in L-38154 and L-38476, May 10, 1974), reduced the tax rate from 35% to 30%. Note, however, that the ½% monthly interest imposed by respondent in the recomputation was increased from one year and four months to the maximum of three years, that is up to April 16, 1972. In line with the provisions of 51(d) of the Tax Code, interest on deficiency shall be collected from the date prescribed for the payment of the tax to the date the deficiency is assessed. Inasmuch as the assessment was made on August 17, 1970, the ½% monthly interest on deficiency should be computed only up to that date, as follows:

1 9 6 8

Net income per investigation	P1,410,763.77
30% tax due thereon	P 423,229.00
Less: Amount already paid	67,131.00
Balance	P 356,098.00
Add ½% mo. int. from 4-16-69 to 8-17-70	28,487.84
Total amount due and collectible	P 384,585.84

The additional income tax payable by petitioner for the year 1968 is, therefore, P384,585.84.

In resumé, the deficiency income tax due from petitioner are as follows:

1965	₱ 95,602.42
1966	118,615.96
1967	125,076.24
1968	384,585.84
Total - - -	₱723,880.46

Accordingly, having reached the conclusion that petitioner Chicago Bridge & Iron Company is a non-resident foreign corporation not engaged in trade or business within the Philippines and, therefore, taxable on its gross income, the decision of respondent Commissioner of Internal Revenue appealed from requiring it to pay the amounts of ₱95,602.42, ₱118,615.96 and ₱125,076.24 as deficiency income tax for 1965, 1966 and 1967, respectively, except with respect to the additional income tax for 1968 which is hereby reduced from ₱420,195.64 to ₱384,585.84, or a total of ₱723,880.46, plus 5% surcharge and 1% monthly interest thereon from August 17, 1970 until fully paid, pursuant to the provisions of Section 51(e) of the National Internal Revenue Code, as amended by Republic Act No. 2343, must be sustained.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue is modified as indicated in the above computation of the Court but affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge