LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISHWAR JETHMAL RAMNANI AND
SONYA JETHMAL RAMNANI,
Petitioners,

- versus -

C.T.A. CASE NO. 5108

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 13 1996

x - x

DECISION

This is a Petition for review filed on May 12, 1994 by spouses Ishwar Jethmal Ramnani and Sonya Jethmal Ramnani praying for two kinds of relief, thus:

a) For the annulment and setting aside of Rulings issued by the BIR dated August 6, 1993, October 6, 1993 and March 22, 1994; and

b) For a court declaration stating that the money judgment rendered by the Regional Trial Court of Pasay, is not subject to income tax.

Petitioner spouses were also parties in a case decided by the Supreme Court on May 7, 1991 (196 SCRA 731) and which was entitled Choithram Jethmal Ramnani and/or Nirmla V. Ramnani and Moti G. Ramnani, vs. Court of Appeals, Spouses Ishwar Jethmal Ramnani, Sonya Jethmal

Ramnani and Overseas Holding Co., Ltd., G.R. No. 85494; Spouses Ishwar Jethmal Ramnani and Sonya Jethmal Ramnani vs. The Honorable Court of Appeals, Ortigas and Co., Ltd. Partnership, and Overseas Holding Co., Ltd., G.R. No. 85496. The Supreme Court in this particular case decided in favor of herein petitioners and against Choithram C. Ramnani, Moti C. Ramnani, Nirmla V. Ramnani and Ortigas and Co. Ltd. Partnership, the dispositive portion of said decision is quoted hereunder, thus:

> "WHEREFORE, the petition in G.R. No. 85494 is DENIED, while the petition in G.R. No. 85496 is hereby given due course and GRANTED. The judgment of the Court of Appeals dated October 18, 1988 is hereby modified as follows:
>
> 1. Dividing equally between respondents spouses Ishwar, on the one hand, and petitioner Choithram Ramnani, on the other, (in G.R. No. 85494) the two parcels of land subject of this litigation, including all the improvements thereon, presently covered by Transfer Certificates of Title Nos. 403150 and 403152 of the Registry of Deeds, as well as the rental income of the property from 1967 to the present.
>
> 2. Petitioner Choithram Jethmal Ramnani, Nirmla V. Ramnani, Moti C. Ramnani and respondent Ortigas and Company, Limited Partnership (in G.R. No. 85496) are ordered solidarily to pay in cash the value of said one-half (½) share in the said land and improvements pertaining to respondents spouses Ishwar and Sonya at their fair market value at the time of the satisfaction of this judgment but in no case less than their value as

appraised by the Asian Appraisal, Inc. in its Appraisal Report dated August 1985 (Exhibits T to T-14, inclusive).

3. Petitioners Choithram, Nirmla and Moti Ramnani and respondent Ortigas and Co., Ltd. Partnership shall also be jointly and severally liable to pay to said respondents spouses Ishwar and Sonya Ramnani one-half (1/2) of the total rental income of said properties and improvements from 1967 up to the date of satisfaction of the judgment to be computed as follows:

a. On Building C occupied by Eppie's Creation and Jethmal Industries from 1967 to 1973, inclusive, based on the 1967 to 1973 monthly rentals paid by Eppie's Creation;

b. Also on Building C above, occupied by Jethmal Industries and Lavine from 1974 to 1978, the rental incomes based on then rates prevailing as shown under Exhibit 'P'; and from 1979 to 1981, based on then prevailing rates as indicated under Exhibit 'Q';

c. On Building A occupied by Transworld Knitting Mills from 1972 to 1978, the rental incomes based upon then prevailing rates shown under Exhibit 'P', and from 1979 to 1981, based on prevailing rates per Exhibit 'Q'.

d. On the two-Bays Buildings occupied by Sigma-Mariwasa from 1972 to 1978, the rentals based on the Lease Contract, Exhibit 'P', and from 1979 to 1980, the rentals based on the Lease Contract, Exhibit 'Q'.

and thereafter commencing 1982, to account for and turn over the rental

> incomes paid or ought to be paid for the use and occupancy of the properties and all improvements totalling 10,048 sq. m., based on the rate per square meter prevailing in 1981 as indicated annually cumulative up to 1984. Then, commencing 1985 and up to the satisfaction of the judgment, rentals shall be computed at ten percent (10%) annually of the fair market values of the properties as appraised by the Asian Appraisals, Inc. in August 1985. (Exhibits T to T-14, inclusive.)

4. To determine the market value of the properties at the time of the satisfaction of this judgment and the total rental incomes thereof, the trial court is hereby directed to hold a hearing with deliberate dispatch for this purpose only and to have the judgment immediately executed after such determination.

5. Petitioners Choithram, Nirmla and Moti, all surnamed Ramnani, are also jointly and severally liable to pay respondents Ishwar and Sonya Ramnani the amount of P500,000.00 as moral damages, P200,000.00 as exemplary damages and attorney's fees equal to 10% of the total award to said respondents spouses.

6. The motion to dissolve the writ of preliminary injunction dated December 10, 1990 filed by petitioners Choithram, Nirmla and Moti, all surnamed Ramnani, is hereby DENIED and the said injunction is hereby made permanent. Let a writ of attachment be issued and levied against the properties and improvements subject of this litigation to secure the payment of the above awards to spouses Ishwar and Sonya.

7. The mortgage constituted on the subject property dated June 20, 1989 by petitioners Choithram and Nirmla, both surnamed Ramnani in favor of respondent Overseas Holding, Co. Ltd. (in G.R. No. 85496) for the

amount of $3M is hereby declared null and void. The Register of Deeds of Pasig, Rizal, is directed to cancel the annotation of said mortgage on the titles of the properties in question.

8. Should respondent Ortigas Co., Ltd. Partnership pay the awards to Ishwar and Sonya Ramnani under this judgment, it shall be entitled to reimbursement from petitioners Choithram, Nirmla and Moti, all surnamed Ramnani.

9. The above awards shall bear legal rate of interest of six percent (6%) per annum from the time this judgment becomes final until they are fully paid by petitioners Choithram Ramnani, Nirmla V. Ramnani, Moti C. Ramnani and Ortigas, Co., Ltd. Partnership. Said petitioners Choithram, et al. and respondent Ortigas shall also pay the costs.

SO ORDERED." (Annex "B", Petition for Review, pp. 55-58, CTA record)

The Motion for Reconsideration of the aforequoted decision filed by the losing parties, Choithram C. Ramnani, Moti C. Ramnani, Nirmla V. Ramnani and Ortigas and Co. Ltd. Partnership, was subsequently denied by the Supreme Court in the following manner, thus:

"CONSIDERING THE FOREGOING, the COURT RESOLVED to DENY the motions for reconsideration filed by the petitioners in G.R. No. 85494 and the respondents in G.R. No. 85496. This denial is FINAL. The partial motion for reconsideration filed by the petitioners in G.R. No. 85494 is GRANTED. The portion of our May 7, 1991 decision dividing the two parcels of land, improvements, and rentals equally between petitioner Choithram J.

> Ramnani and respondents Mr. and Mrs. Ishwar J. Ramnani is deleted and these properties are declared solely owned by the latter respondents." (Supreme Court Resolution dated Feb. 26, 1992, Annex "C", Ibid., pp. 70-71, CTA record.)

On September 17, 1992, the Regional Trial Court of Pasay, designated by the Supreme Court to execute the judgment in G.R. Nos. 85494 and 85496, issued an Order of partial writ of execution (Exhibit "H"), containing the following pertinent data, thus:

> "Wherefore, in consonance with the judgment of the Supreme Court dated May 7, 1991, as amended by its resolution dated February 26, 1992 and as prayed for by plaintiffs, let the corresponding partial writ of execution issue with respect to the following:
>
> a) the rental income of the properties and improvements from 1967 up to May 31, 1992 in the amount of P24,879,365.00; and
>
> b) the 1985 appraised value of the properties in the amount of P22,364,000.00; P500,000.00 moral damages; P200,000.00 exemplary damages and 10% of said amounts as attorney's fees, plus 6% legal interest on the totality of the amounts from the time the judgment became final until fully paid.
>
> Pursuant to paragraph 6 of the dispositive portion of the May 7, 1991 Supreme Court decision, let a writ of attachment be issued and levied against the properties and improvements subject of this litigation to

> secure the payment of the awards to the spouses Ishwar and Sonya, in the aforementioned decision.
>
> xxx xxx xxx
>
> In the meantime to determine the market value of the properties at the time of the satisfaction of judgment and the total rental the parties are enjoined to appear before this Court for hearing thereon on September 29, 1992 at 8:30 in the morning.
>
> SO ORDERED."

On July 19, 1993, the parties, pursuant to the Supreme Court case aforecited, entered into a tripartite agreement (Exhibit "I"), setting forth the following terms:

> "2. To expeditiously terminate said proceedings, the parties (excluding Moti and Nirmla Ramnani) hereby set the money value of the said judgment, including the other monetary awards due Sps. Ishwar provisionally at P65 Million. The final and total monetary awards to Sps. Ishwar could be more than P65 Million. It could also be less than said amount. Consequently, without waiting for the Court's determination aforesaid, parties agree to suspend hearings on valuation and proceedings in execution of the judgment in G.R. No. 85494 and G.R. No. 85496, under the following terms:
>
> The judgment debt provisionally set at P65 Million shall be paid jointly and severally by defendants Ortigas and Choithram Jethmal Ramnani to plaintiffs Sps. Ishwar Jethmal Ramnani and Sonya Jethmal Ramnani, as follows:
>
> a. P40 Million upon the signing hereof by the parties;

> b. P10 Million within thirty (30) days from July 5, 1993 or on or before August 4, 1993;
>
> c. P15 Million within sixty (60) days from July 5, 1993 or on or before September 3, 1993.
>
> Choithram and/or Harish Ramnani shall issue to plaintiffs postdated checks on the amounts covered by paragraph 2 (b and c above), immediately encashable on due dates."

In accordance with par. 2(a) thereof, petitioners received the amount of P40 Million from Ortigas & Co. Ltd., Partnership, Choithram Jethmal Ramnani (through Harish Ramnani, son of Choithram. In connection with the foregoing agreement, the counsel of Harish Jethmal Ramnani and Choithram Jethmal Ramnani, as payors of the said money judgment, requested the Commissioner of Internal Revenue for a clarificatory ruling with regard to the tax implications of such an agreement (Exhibit "J").

In a letter dated August 6, 1993 (Exhibit "K") and signed by Commissioner Liwayway Vinzons-Chato, the Bureau of Internal Revenue issued the following clarification quoted in full:

> "Dear Atty. Ongkiko,
>
> In reply to your letter dated 3 August 1993, please be informed that your clients,

Messrs. Harish Ramnani and Ortigas and Co., Ltd. Partnership, as payors of the P65 Million, are constituted as the withholding agents of the 30% final income tax provided in Section 22(b), in relation to Sections 50(a) and 51(a) of the Tax Code. The amount to be withheld is Twenty Million One Hundred Fifty Thousand (P20,150,000.00) Pesos, broken down as follows:

30% final income tax on P65,000,000.00	-	P19,500,000.00
1% documentary stamp tax on P65,000,000.00	-	650,000.00
Total	-	P20,150,000.00

Section 22(b) of the Tax Code is the applicable provision of taxing the receipt of the income by non-resident American citizen, such as rents, casual gains, profits, and income. Inasmuch as the compromise settlement arose from a money judgment involving ownership over real property, the income is taxable in the Philippines notwithstanding the fact that the recipients thereof are American citizens, as provided in Article 7(1) of the RP-US Tax Treaty where the location of the real property is the situs of income taxation and not the residence of the alienator. (Underlining ours.)

Accordingly, you are hereby requested to advise your clients to pay once only the amounts of P19,500,000.00 and P650,000.00, representing the 30% final income tax and the 1% documentary stamps tax, respectively, to any accredited commercial banks nearest the legal residence or principal place of business of the taxpayers. Insofar as the facts as herein represented, this case shall be considered closed upon full payment of the aforementioned amounts.

Very truly yours:

(Sgd.)
LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue"

Petitioners herein did not agree with the contents of the aforequoted letter issued by the BIR so in a letter, dated September 16, 1993, they requested the respondent to reconsider the opinions embodied in the letter, dated August 6, 1993, maintaining that they are resident aliens contrary to the ruling's declaration that they are non-resident aliens not doing business in the Philippines. Furthermore, petitioners insist that the money judgment rendered in their favor is in the nature of a mere return of capital/investment and hence must not be subject to the income tax.

In a Bureau of Internal Revenue Ruling No. 22(b) 000-00-417-93, dated October 20, 1993 (Exhibit "M"), the respondent denied the petitioners' request for reconsideration and reiterated her earlier stance embodied in her letter, dated August 6, 1993 (Exhibit "K"), with certain modifications, the last portions of which are quoted hereunder, thus:

> "In view thereof, this Office is of the opinion, as it hereby holds that you are a non-resident alien not engaged in trade or business in the Philippines hence the rental income and interest income awarded to you by the Court are both subject to the 30% final income tax provided for under Section 22(b) of the Tax Code, as amended, in relation to Sections 50(a) and 51(a) of the same Code. We would like to

reiterate our opinion that Section 22(b) of the Tax Code is the applicable provision of taxing the receipt of income by a non-resident alien, such as rents, casual gains, profits, and income. Inasmuch as the compromise settlement arose from a money judgment involving ownership over real property, the income is taxable in the Philippines notwithstanding the fact that the recipients thereof are American citizens, as provided in Article 7(1) of the RP-US Tax Treaty where the location of the real property is the situs of income taxation. However, the award of damages, such as moral, exemplary and attorney's fees are not subject to income tax and consequently to the withholding tax, the same being merely reimbursement of your expenses/advances in the course of the hearing of your case. Consequently, Messrs. Harish Ramnani and ORTIGAS, as payors of the P65,000,000.00 money judgment, are constituted as the withholding agents of the 30% final income tax due from you, insofar as the taxable income portion of the aforesaid award is concerned, pursuant to Section 22(b), in relation to Section 50(a) and 51(a) of the Tax Code, as amended. Therefore, the amount to be withheld from the aforesaid taxable income portion of the money judgment is P17,340,000.00 broken down as follows:

Total money judgment		P65,000,000.00
Less:		
Exemplary damages	P 200,000	
Moral damages	500,000	
Attorney's fees	6,500,000	7,200,000.00
		P57,800,000.00
		x .30
FINAL INCOME TAX		P17,340,000.00

This letter modifies our opinion in our letter-reply to Atty. Mario Ongkiko, on the same subject matter, dated August 6, 1993."

In an effort to put more teeth to this aforequoted BIR ruling, respondent served a Warrant of Garnishment to the Equitable Banking Corporation, the drawee bank, to distrain and garnish the cheques issued in favor to herein petitioners in the amounts of P10,000,000.00 (EBC Check No. 45035755C, dated August 12, 1993) and P15,000,000.00 (EBC Check No. 45035756C, dated September 12, 1993) to cover the payment of the final income tax of P17,340,000.00 [p. 460, Folder III, BIR rec.].

Petitioners then filed a petition for review with this Court assailing the BIR Ruling, dated October 20, 1993. Petitioners are asking this Court to set aside the questioned BIR ruling declaring them to be non-resident aliens not doing business in the Philippines and subjecting the money judgment, excluding the award for damages, to the income tax.

Respondent advanced the following Special and Affirmative Defenses, in answer to the petition for review, thus:

"<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>

6. Petitioners have no cause of action.

7. The rental income from the subject properties and the 6% interest per annum on the total sum of the awards fall within the purview

> of the phrase "rents, casual gains, profits and income" in Section 22(b) of the Tax Code, as amended, in relation to Sections 50(a) and 51(a) of the same Code. Both are income which are subject to the 30% final income tax in accordance with the Tax Code.
>
> 8. Since the compromise agreement arose from a money judgment involving ownership over real property, the income is taxable within the Philippines notwithstanding the fact that the recipients are American citizens, as provided in Article 7(1) of the RP-US Tax Treaty where the location of the real property is the situs of income taxation.
>
> 9. In construing tax statutes, exemptions are not favored - they are construed <u>strictissimi juris</u> against the taxpayer. (<u>Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue,</u> 31 SCRA 520; <u>Commissioner of Customs vs. Phil. Acetylene Co.</u>, 39 SCRA 968)."

The events preceding the filing of the petition for review have so transpired that it now becomes necessary to have a final declaration on the legal soundness of the questioned BIR ruling. This is a fact acknowledged by the judge of the Regional Trial Court of Pasay when she issued an order which contained the following statement:

> "At this stage of the execution of judgment there are still unresolved incidents and/or issues which arose in the course of the implementation of the Tripartite Agreement as follows: whether or not defendants are in default; whether or not defendants made a valid tender of payment; whether or not defendants fully complied with their obligations under the Tripartite Agreement; <u>whether or not the settlement amount of P65 million is subject to</u>

> a 30% final income tax; whether or not the BIR Commissioner's letter of August 6, 1993 constituting Harish Ramnani and Ortigas and Co. Ltd. Partnership as withholding agents is correct considering that plaintiff Ishwar Jethmal Ramnani is a permanent resident alien (American), and the judgment rendered by the Supreme Court in favor of plaintiff is a money judgment for actual and compensatory damages and attorney's fees." (p. 235, Folder 1, BIR records)

This Court is now faced with the task of determining whether or not the BIR ruling, dated October 20, 1993, conforms with the facts of this case and with the applicable law and jurisprudence.

We have two items in issue in this case:

(1) whether or not petitioners are resident aliens; and

(2) whether or not the money judgment issued in their favor are subject to income tax.

We agree with the petitioner that he is a resident alien for income tax purposes. Section 20(f) of the National Internal Revenue Code (NIRC) defines a resident alien as an "individual whose residence is within the Philippines and who is not a citizen thereof".

Evidence adduced during the trial convinced this Court that petitioner Ishwar Ramnani's stay in the Philippines can no longer be considered as transient.

Section 5 of Revenue Regulations No. 2 delineates the distinction between a person who can be considered a resident and one who is not by the following description:

> "SEC. 5. *Definition.* - A 'non-resident alien individual' means an individual -
>
> (a) Whose residence is not within the Philippines; and
>
> (b) Who is not a citizen of the Philippines.
>
> An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the Philippines and has no definite intention as to stay, he is a resident. One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient. But if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the Philippines, he becomes a resident though it may his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned."

It can be gleaned from the above description that the law on Income Taxation provides a more liberal interpretation of who may be considered a resident alien.

The establishment of a home even temporarily here in the Philippines for the accomplishment of a purpose even if he has the intention to return to his domicile abroad categorizes an individual as a resident. There is no doubt that petitioner Ishwar Ramnani is an American citizen who frequently comes to the Philippines for the most part of the year to oversee his various investments as shown by his passport entries. The then Commissioner of Immigration even approved the change of his status of admission from temporary visitor to immigrant/resident alien under Section 13(e) of the Philippine Immigration Act (Exhibit "B"). Petitioner has paid his Community Residence Certificates for the years 1987, 1988, 1989, 1990, 1991, 1992, 1993 and 1994 (Exhibits R, R-1 to R-7, inclusive). The statement of respondent in her Ruling, dated October 20, 1993, that "since you just came to the Philippines last September 10, 1993 and you are set to leave the country very soon, it is very clear that you are a non-resident alien not engaged in trade or business in the Philippines" is not supported by evidence and the records of this case.

The next question to be determined is whether or not the money judgment rendered in favor of herein petitioners is subject to the income tax.

The answer to this issue requires a review of the Supreme Court decision (196 SCRA 731) and the subsequent Supreme Court resolution, which awarded the following to herein petitioners:

> 1) rental income of subject properties and improvements from 1967 up to the time of the satisfaction of the judgment;
>
> 2) payment of the cash value of the subject two parcels of land and their improvements;
>
> 3) moral damages of P500,000.00;
>
> 4) exemplary damages of P200,000.00;
>
> 5) Attorney's fees equal to 10% of the total award; and
>
> 6) Legal interest of 6% per annum from the time this judgment becomes final until they are fully paid.

Thereafter the Regional Trial Court (Branch 119) of Pasay City, issued an Order on September 17, 1992 for the partial writ of execution of said judgment, to wit:

> 1) the rental income of the properties and improvements from 1967 up to May 31, 1992 in the amount of P24,879,265.00; and
>
> 2) the 1985 appraised value of the properties in the amount of P22,364,000.00; P500,000.00 moral damages; P200,000.00

> exemplary damages and 10% of said amounts as attorney's fees, plus 6% legal interest on the totality of the amounts from the time judgment becomes final until fully paid.

However, on July 19, 1993 a Tripartite Agreement was entered into by the parties to finally settle the award for money judgment at P65 Million, under the following terms:

> "a. P40 Million upon the signing hereof by the parties;
>
> b. P10 Million within thirty (30) days from July 5, 1993 or on or before August 4, 1993;
>
> c. P15 Million within sixty (60) days from July 5, 1993 or on or before September 3, 1993."

It is clear from the foregoing that only the amount of P24,879,265.00 represents rental income from the lease of the subject properties and improvements of petitioners. As correctly pointed by petitioners' counsel in its letter, dated November 9, 1993, the rental income from 1967 to May 31, 1992 amounted to P24,879,265.00 only; and the appraised value of the properties and improvements as of 1985 amounted to P22,364,000.00 (Exh. N, p. 326, CTA rec.). Petitioners admitted the receipt of rental income amounting to P24,879,265.00. Rental income is subject to 5%

withholding tax. Thus, the amount of P24,879,265.00, representing rental income, should be subject to the 5% withholding tax pursuant to Section 50(b) of the NIRC, in relation to Section 1(c) of Revenue Regulations No. 6-85, as amended.

From the facts presented by the Supreme Court, it has been established that in 1966 petitioners have invested US$150,000.00 or about P600,000.00 (US$150,000.00 x P4.00/US$1.00 in 1966) in real estate in the Philippines. Choithram Ramnani, as attorney-in-fact of petitioner Ishwar, bought two parcels of land and erected several buildings thereon which earned income through the years by leasing these buildings to various companies. The amount of P600,000.00, representing the capital invested in the real estate business in the Philippines in 1966, formed part of the money judgment when the court declared and awarded the appraised value of the properties and improvements as of 1985 in the amount of P22,364,000.00. Thus, the capital investment of P600,000.00 (US$150,000.00) should not therefore form part of the taxable base for income tax purposes since this is not income but a mere return of capital.

The Supreme Court in the leading case of **Madrigal vs. Rafferty, (38 Phil. 414)**, distinguished capital from income in this manner.

> "The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. Capital is wealth, while income is the service of wealth."

We agree with the respondent that the moral and exemplary damages as well as the attorney's fees are <u>not</u> subject to income tax. However, respondent failed to recognize that the capital investment of P600,000.00 should likewise be excluded from the computation of the gross income for 1993.

The 5% withholding tax on the rental income of P24,879,265.00 or the amount of P1,243,963.25 should be withheld by the payors, Harish Ramnani, as assignor of Choithram Ramnani, and Ortigas & Company Ltd., as withholding agents of petitioners pursuant to Sec. 1(c) of Rev. Regs. No. 6-85, as amended by Rev. Regs. No. 8-90. The rest of the income earned by way of money judgment per agreement of the parties constitutes taxable income to petitioners subject to the income tax under Section 21(f) in the same manner as citizens of the Philippines.

As a resident alien, petitioner is also entitled to deductions and personal and additional exemptions. Furthermore, as a resident alien, petitioner is required to file his income tax return declaring therein the income awarded to him by the Court's judgment, amounting to P57,200,000.00 in the year he received such income. The amount of P57,200,000.00 less allowable deductions, either itemized or optional standard deductions (40%), personal and additional exemptions if any, shall be the net taxable income subject to the income tax under Section 21(f) of the NIRC. The income tax due and payable shall be net of the creditable withholding tax on rental income amounting to P1,243,963.25 and the income tax paid on April 15, 1994 amounting to P3,823,021.22 (Exhs. S, S-1 and S-2).

Based on the above discussion and in reference to the amounts awarded to herein petitioner by the Regional Trial Court of Pasay, the income tax liability of petitioner is computed hereinbelow as follows:

Total Money Judgment (1993)		P65,000,000.00
Less:		
1) capital investment	P 600,000.00	
2) moral damages	500,000.00	
3) exemplary damages	200,000.00	
4) attorney's fees	6,500,000.00	7,800,000.00
Gross Income		P57,200,000.00
Less: 40% Optional Standard Deductions		22,880,000.00
Net Income		P34,320,000.00
Less: Personal Exemptions (RA 7167)		18,000.00
Net Taxable Income		P34,302,000.00
Income Tax Due		P10,247,200.00
Less: Income Tax paid on 4/15/94		3,823,021.22
5% Withholding tax on rentals		1,243,963.25
Income Tax Payable		P 5,180,215.53

WHEREFORE, in view of the foregoing, the subject BIR Rulings, dated August 6, 1993, October 6, 1993 and March 22, 1994, are hereby **SET ASIDE**. Petitioner is considered a resident alien taxable in the same manner as a resident citizen under Section 21(f) of the NIRC. Harish Ramnani, assignor of Choithram Ramnani, and Ortigas & Co. Ltd., Partnership, are hereby **ORDERED TO WITHHOLD** the amount of P1,243,968.25, representing the 5% withholding tax on the rental income earned from 1967 to May 31, 1992 in the amount of P24,879,365.00. The withholding tax of P1,243,968.25 shall be creditable from the income tax due and payable by petitioners in the year said income was received. Petitioner is hereby **ORDERED** to pay an additional income tax as determine by this Court in the amount of P5,180,215.53 plus interest computed from the promulgation of decision until fully paid.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals