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WILLIAM N. SEMINOFF,
Petitioner,

\- versus -

C.T.A. CASE NO. 2952

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

8/30/82

D E C I S I O N

This action involving a claim for a tax refund is nothing more than a question of the legality of a deficiency assessment for disallowed deductions amounting to ₱6,400.00 in petitioner's income tax return for the year 1975.

As represented, petitioner, a Canadian, arrived in the Philippines on February 5, 1974 as a Procurement Consultant in the Marcopper Mining Corporation on a pre-arranged employment basis under Section 9(g) of the Immigration Act, as amended, (Exh. "F") for a minimum period of three (3) years stay but extendible every year upon applicant's request (Annex "E"), which of late was extended to March 14, 1982 (Exh. "H"). The employment was authorized under the Anti-Dummy Law by the Office of the President (Exh. "G").

On May 14, 1976, petitioner was audited and assessed by the respondent Commissioner of Internal Revenue for income tax liabilities in the amount of ₱33,591.00, represented as follows:

Balance of petitioner's income tax for 1975	₱27,591.00
Deficiency assessment for disallowed deductions ...	6,400.00
	₱33,991.00

Respondent maintains that petitioner is a non-resident alien engaged in trade or business in the Philippines and may not avail of the deductions normally accorded residents and citizens in their income tax returns, thus the disallowance and subsequent deficiency of ₱6,400.00 representing optional and standard deduction and the claimed personal and additional exemptions. And, stressing that petitioner's intended stay in the Philippines is temporary and the pertinent provisions of law and regulations provide that, "One who comes to the Philippines for a definite purpose which in its nature may be promptly accomplished is a transient" (Sec. 5, Income Tax Regulations) but, by having stayed in the Philippines for an aggregate period of more than one hundred eighty days during any calendar year shall be deemed a non-resident alien doing business in the Philippines (Sec. 22(a), Tax Code).

Petitioner of even date paid the full assessed amount under Official Receipt No. 654654 (Exh. "B") but submitted the necessary protest relative to the legality of the additional income tax assessment of ₱6,400.00 and sought the refund therefor in a letter dated May 28, 1976 to the respondent Commissioner of Internal Revenue (Exh. "D"). Petitioner holds himself out as resident alien within the legal contemplation of the Income Tax Regulations, which provides that, an alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines (Sec. 5) and retains his status as a resident until he abandons the same and actually departs from the Philippines (Sec. 6). And being such, he is entitled to claim personal and additional exemptions (Sec. 23) and optional standard deductions (Sec. 30) under the rates prescribed in Section 21, all of the Tax Code, which petitioner availed of in his income tax return for calendar year 1975.

Respondent denied petitioner's claim, hence this recourse.

In the instant case, we are concerned only in the matter of the residency status of petitioner as it affects the question of his income tax liability.

For purposes of income tax, alien individuals are divided generally into two classes, namely, resident aliens and non-resident aliens. Resident aliens are taxable in the same manner as citizens of the Philippines, i.e., taxable on income derived trom all sources including sources without the Philippines and access to the benefits of allowable deductions as invoked by herein petitioner. Non-resident aliens are those (1) engaged in trade or business who may avail of itemized but not optional standard deductions pursuant to Section 30, as well as personal exemptions upon proof of reciprocity as provided in Section 23, and (2) not engaged in trade or business, taxed on a flat rate basis on gross income derived from Philippine sources under Section 22(a) and (b), all of the Tax Code. The governing Income Tax Regulations (Revenue Regulations No. 2), insofar as pertinent, provides:

> "Sec. 5. Definition. - A 'non-resident 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 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 his 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 be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned."
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> "Sec. 6. Loss of residence by alien. - An alien who has acquired residence in the Philippines retains his status as a resident until he abandons the same and actually departs from the Philippines. An intention to change his residence does not change his status as a resident alien to that of a non-resident alien. Thus an alien who acquired a residence in the Philippines is taxable as a resident for the remainder of his stay in the Philippines."
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> (Underscoring supplied)

There is nothing ambiguous nor obscure in the language of the aforesaid regulations insofar as the same is brought to bear upon the circumstances of the petitioner. The facts as outlined above amply demonstrate that petitioner had a firm and continuing purpose to reside in the Philippines for such time required by the exigence of the service as an expatriate of the Marcopper Mining Corporation. In point of fact, petitioner's tenure for an initial minimum period of three (3) years (Exh. "E") which commenced in 1974 had been rolled over many a time up to March 14, 1982 (Exh. "H"). His stay could but connote something different from and more than a mere transient or sojourner in the Philippines. And we do not regard it necessary that petitioner should have intended to reside permanently. It is enough that he made his temporary home in the Philippines though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated. (Sec. 5, supra).

This Court in a case of the mold as petitioner's did rule that,

> "As disclosed in the records, the conversion of the temporary visitor's visa issued on March 20, 1975, by the Philippine Embassy in Tokyo, Japan, into a category of a pre-arranged employment under Section 9(g), supra, granted by the Commission on Immigration and Deportation on July 23, 1975, gave a more definite shape to petitioner's intended stay, so to speak. He had now that involvement for the specific purpose of a continued employment and for such indefinite time as may be required by the exigency of his position as Assistant Manager for Maintenance in the Manila Office of the Japan Air Lines. The locus of the undertaking established, petitioner did take his home and continued to reside and live with his family in the Philippines through the years 1975 to 1979

until transferred to another foreign station. We think such circumstances found for petitioner an appropriate legal cubby-hole fit for a resident status vis a vis a mere transient or sojourner within the contemplation of Section 5 and 6 of the Regulations, supra, aptly ensconced in a holding that, 'As used in the statute and as interpreted by regulations, 'residence' means broadly, presence as an inhabitant in a given place, not as a mere transient, but either indefinite as to time or for a purpose that is such a nature that an extended stay may be necessary for its accomplishment.' (Jones v. Kyle, 10 Circuit 191, 190 F 2d 353). We see no treat of ambiguity arising from petitioner's intention which appears amply sufficient to dispel any pall of uncertainty cast over his status as a resident alien.

"Petitioner's status as a resident alien need not possibly result in an inconclusive dithering yet loose to run the gauntlet of respondent's rulings fashioned for non-resident aliens engaged in trade or business. It does not need to be. It is beyond the reach of the issue in the instant case, which as earlier stated, is nothing but simply a question of distinguishing a resident alien from a mere transient or sojourner for income tax purposes as conceived and defined in the Income Tax Regulations. Significantly noted, moreover, is the fact that 'petitioner has consistently filed his income tax returns in 1976, 1977, 1978 and 1979, as a resident alien, availing of the optional standard deduction as well as personal and additional exemptions and until now the same have never been questioned.' (Memorandum for Petitioner, p. 7). The situation where petitioner stood during the calendar year 1975 remained obtaining through the subsequent taxable years 1976-1979. We see no reason and none

> is offered for such a quirk of a variance in the treatment of petitioner's income tax return for the year 1975. We hold that petitioner stands relieved of the tax liabilities for the calendar year 1975 consequenced by the deficiency assessment, a contradiction by fiat with the unquestioned income tax returns for the taxable years 1976 through 1979." (Ota v. Commissioner of Internal Revenue, CTA Case No. 3161, March 31, 1982).

We do not think any different conclusion ought be reached in the case at bar.

Even more significant is the fact that "for the year 1974, Mr. Seminoff (petitioner) has been treated by the BIR, as a resident for income tax purposes when he filed his return and paid his income for the same year as such. Mr. Seminoff therefore has already acquired the status of a resident alien for income tax purposes. <u>An alien who has acquired residence in the Philippines retains his status as a resident until he abandons the same and actually departs from the Philippines</u>. An intention to change his residence does not change his status as a resident to that of a non-resident alien. Thus, an alien who has acquired a residence in the Philippines is taxable as a resident for the remainder of his stay in the Philippines. (Sec. 6, Rev. Reg. No. 2, underscoring supplied)." (Exh. "D") Respondent has not shown any exceptional syndrome of change in the petitioner's circumstances as to warrant a volte-face on a status then obtaining. We distrust the logic that leads to such a quick shuttle in respondent's posture.

WHEREFORE, finding the petition to be well taken, the same is granted, and the refund of the amount sought is hereby ordered. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 30, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge