REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNITED PRESS INTERNATIONAL,
Petitioner,

- versus - C.T.A. CASE NO. 2178

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/12/74

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DECISION

Petitioner has appealed from the decision of respondent Commissioner of Internal Revenue sustaining a 1959 deficiency income tax assessment of ₱75,341.00, computed as follows:

NET INCOME PER RETURN	₱ 2,076.27
Add: Disallowed deductions - cost of worldwide news report news picture coverage for Manila Jan. 1, 1959 to Dec. 31, 1959	238,943.83
Net income per adjustment	₱241,020.10
Tax due thereon	₱ 64,306.00
Less: Amount already paid	457.00
Balance	₱ 63,849.00
Add: 1/2% monthly interest from 4-19-60 to 4-19-63	11,492.00
Total amount due and collectible	₱ 75,341.00

The facts of the case as stipulated and agreed upon by the opposing parties read as follows:

1. The petitioner is a foreign corporation doing business in the Philippines, duly organized and existing under the laws of State of New York, U. S. A, with office at Suite 701 Trinity Bldg., T. M. Kalaw Street, Ermita, Manila, while the respondent is the duly appointed and qualified Commissioner of Internal Revenue with office at the Finance Building, Manila.

2. Petitioner is a foreign news agency with offices all over the world. As such, it is engaged in the business of gathering and processing news and photo coverages of world events from world-wide sources and transmitting and delivering the same to its clients in

the Philippines and elsewhere.

3. On April 18, 1960, the petitioner filed its Philippines income tax return for the year ended December 31, 1959, declaring a gross income of ₱328,209.87; claiming ₱326,133.60 deductions and ₱456.78 as income tax due (pp. 2-5, BIR records).

4. The petitioner computed its Philippine allocated deductions by applying the formula pursuant to Section 37(b) of the Tax Code and Section 160 of Revenue Regulations No. 2 of the Department of Finance as follows:

$$\frac{\text{Phil. Gross Income}}{\text{World Gross Income}} \times \text{world wide non allocable expenses} = \text{world wide expenses allocable to Philippine income.}$$

In terms of actual figures, the petitioner's computation was:

$$\frac{\$\ 147,036}{\$27,022,250} \times \$26,833,359 = \$146,000 \text{ or } ₱326,133.60.$$

5. The amounts of world gross income and expenses used in the formula were those reflected by the head office books of the petitioner in New York at a time when its U.S. income tax figures were not yet available. However, as a result of further adjustments, the petitioner's income tax figures as presented in its U. S. tax return reflect a world gross income of $26,770,836.43 and expenses of $26,623,553.27 (pp. 58-64 BIR record).

6. After an examination of the petitioner's 1959 income tax return, the respondent sent a demand letter dated December 29, 1964 and an assessment notice (pp. 34-36, BIR record) to the petitioner assessing the latter an amount of ₱75,341.00 as deficiency income tax and interest plus compromise penalty in the total amount of ₱600.00 for failure to attach a schedule of taxes paid, balance sheet and 17.01-B, penalized under Section 352 of the Tax Code (p. 33, BIR record), which letter and notice were received by petitioner on January 5, 1965.

7. The deficiency resulted from the respondent's disallowance of ₱238,943.83 out of the total sum of ₱326,133.60 deduction for costs and expenses claimed by the petitioner, and allowed the balance of ₱87,189.77 (₱326,133.60 minus ₱238,943.83) which were strictly Manila incurred expenses.

8. In a letter dated January 18, 1965, received by the respondent on the same date, the petitioner protested the deficiency assessment (p. 39, BIR record).

9. In the course of a review of the assessment conducted by the respondent and pursuant to the letters of the respondent dated July 9, 1965 and August 25, 1965, which letters requested the petitioner to submit additional evidence to support its disallowed deductions, (pp. 46-50, BIR record) the petitioner wrote the respondent on September 15, 1965 explaining how its Philippine allocated deductions were arrived at and enclosed therewith copies of:

a) a letter dated July 22, 1960 of Haskins and Sells, the Certified Public Accountants of the petitioner, together with

b) the petitioner's balance sheet for 1959, and

c) a summary of petitioner's taxable income for 1959 (pp. 56-63, BIR record).

10. The respondent also received from the petitioner a duly authenticated copy of its 1959 U. S. income tax return, (pp. 64-69 BIR record). The authenticated U. S. tax return was enclosed in petitioner's letter to the respondent dated September 30, 1965 which indicates the petitioner's world wide gross income and expenses (p. 73, BIR record).

The only issue submitted to the Tax Court for resolution is whether or not the sum of ₱238,943.83, the share of petitioner's Manila office in the New York office expenses around the world, is deductible from the petitioner's gross income in the Philippines.

The law applicable to the question at issue reads as follows:

Sec. 37. Income from sources within the Philippines. - xx xx xx xx xx xx

(b) Net income from sources in the Philippines. - From the items of gross income specishall be deducted the expenses, losses, and other deductions properly apportioned or allocable thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the Philippines. (National Internal Revenue Code.)

Revenue Regulations No. 2, otherwise known as the Income Tax Regulations, implementing the provisions of Section 37(b) of the Tax Code, supra, read as follows:

> Sec. 160. - Apportionment of deductions. - From the items specified in Section 37(a) as being derived specifically from sources within the Philippines there shall be deducted the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses or deductions which cannot definitely be allocated to some item or class of gross income. The remainder shall be included in full as net income from sources within the Philippines. The ratable part is based upon the ratio of gross income from sources within the Philippines to the total gross income.
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> Sec. 161. - Other income from sources within the Philippines. - Items of gross income other than those specified in Section 37(a) and (c) shall be allocated or apportioned to sources within or without the Philippines as provided in Section 37(e). xx xx xx xx
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> Where items of gross income are separately allocated to sources within the Philippines, there shall be deducted therefrom, in computing net income, the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which cannot definitely be allocated to some item or class of gross income.

From petitioner's 1959 gross income in the Philippines, it claimed a total deduction of ₱326,133.60 computed in accordance with the general formula of apportionment under the above-cited law and regulations, to wit:

$$\frac{\text{Philippine gross income}}{\text{World's gross income}} \times \begin{array}{l}\text{World wide non allocable expenses,} \\ \text{or} \\ \text{World wide expenses allocable to Philippine income}\end{array}$$

Out of the deductible expenses of ₱326,133.60 claimed by petitioner's Manila office, respondent disallowed ₱238,943.83 representing a ratable portion of petitioner's Head Office expenses around the world. However, only the amount of ₱87,189.77, expenses incurred by petitioner's Manila Office, was allowed as a deduction from petitioner's gross income in the Philippines.

The denial of the deduction of ₱238,943.83 from petitioner's gross income in the Philippines is predicated principally on the alleged lack of evidence showing that petitioner's world wide expenses are allocable to some item or class of petitioner's gross income in this country.

At the outset, it may be stated that petitioner is a foreign corporation doing business in the Philippines. It is an international news and press agency with head office in New York and branch offices in Manila and other major cities around the world. It is engaged in gathering and processing news and photo coverages of world-wide events and distributing and selling the same to its media clients around the world.

Petitioner's stories, pictures and news sold and distributed in the Philippines are gathered by its offices around the world. The expenses of gathering the information, taking the pictures, editing and re-editing the news and delivering and transmitting the same are all incurred by petitioner's branch offices abroad. In fact, petitioner's expenses abroad include salaries of correspondents, journalists, editors, photographers, office rentals, wire services, and other expenses in the operations of its world wide offices. It is evident, therefore, that petitioner's expenses around the world have a direct bearing in the production of Philippine income.

The world wide expenses of petitioner cannot be allocated to Philippine income alone. By the very nature of petitioner's business as an international news and press agency, its world wide expenses cannot definitely be allocated to some item or class of gross income in the Philippines. However, Section 37(b) of the National Internal Revenue Code, in relation to Sections 160 and 161 of the Income Tax Regulations, _supra_, allows the deduction of a ratable part of the total expenses of its entire business based upon the ratio of Philippine income to total world gross income times world wide non-allocable expenses. In justifying the deduction from the Philippine gross income of the world wide non-allocable expenses of petitioner, Mr. Lino Ampol, business manager of petitioner's Manila Office, testified, among others, as follows:

> Q. Why is it necessary for your company to use the formula in allocating the expenses pertaining to Philippine income?
>
> A. Because it is not feasible for United Press International to pinpoint to any single particular area where the news pictures are being received and used. This news distribution which is sent worldwide is not at all given to any particular area. So, consequently, expenses incurred and the gathering, editing and distribution of these materials could not just be allocated to any single particular area (t.s.n. pp. 26-27).

Considering that petitioner sells and distributes stories, news, photos and feature articles to most countries around the world, maintains offices in its major cities, and gathers, processes, edits and transmits yearly thousands of news items to and from its offices around the world, it is impossible to definitely allocate world expenses to a particular office on a country to country basis.

At any rate, in the case of Ginn and Co. vs. Commissioner of Internal Revenue, CTA Case No. 674, May 21, 1962, this Court ruled that the petitioner, a foreign corporation doing business in the Philippines, properly deducted a ratable part of the total expenses of its entire business based upon the ratio of Philippine income to the total of petitioner's gross income. Thus, it was held:

> It is, therefore, clear that expenditures made by a foreign corporation in conducting its business are deductible in computing its taxable income from sources within the Philippines only when allocable to the production of income from sources within the Philippines or where a ratable part of general expenditures is apportioned to income from sources within the Philippines. (See The Fajardo Sugar Co. of Porto Rico, 20 BTA 980, cited in Par. 16,625, P-H Federal Taxes, 1955.) The contention of respondent that the deduction of a proportionate home office expenses of petitioner cannot be allowed as a deduction because "in the very nature of things, it is impossible to check and verify said expenses" is without merit. The fact that is is difficult for respondent to check and verify the alleged expenses because the records concerning the same are kept in a foreign country is no justification for the denial of the deduction, otherwise the law would be rendered meaningless. It is, however, essential that there be proof that a portion of such home office expenses is allocable to income from sources within the Philippines.

At the hearing of this case on the merits, petitioner has submitted sufficient evidence of its world wide expenses and income, such as petitioner's 1959 U. S. income tax return duly authenticated by the Philippine Consul in New York, petitioner's audited world wide financial statements prepared by the accounting firm of Haskins and Sells, showing the amount of ₱238,943.83 as world wide expenses from

January 1, 1959 to December 31, 1959, balance sheet for 1959, and summary of petitioner's taxable income for 1959.

We are satisfied from the evidence adduced by petitioner that its world wide expenses of ₱238,943.83 as an international news and press agency have a direct bearing in the production of its Philippine income. Consequently, it should be allowed a proportionate deduction of its world-wide expenses from its Philippine gross income, pursuant to Section 37(b) of the National Internal Revenue Code, in relation to Sections 160 and 161 of the Income Tax Regulations, supra.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is reversed and the 1959 deficiency income tax assessment of ₱75,341.00 issued by said respondent against petitioner is hereby withdrawn, cancelled, and declared of no force and effect. No costs.

SO ORDERED.

Quezon City, August 12, 1974.

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali

ROMAN M. UMALI
Presiding Judge

Ram L Avan

RAMON L. AVANCEÑA
Associate Judge

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