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SECOND DIVISION

[G.R. Nos. 70116-19. August 12, 1986]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FRANK ROBERTSON, JAMES W. ROBERTSON, ROBERT H. CATHEY, JOHN L. GARRISON AND THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

TAXATION; TAX EXEMPTION UNDER THE R.P.-U.S. MILITARY BASES AGREEMENT; RULE TO AVAIL THEREOF.— In order to avail oneself of the tax exemption under the RP-US Military Bases Agreement: he must be a national of the United States employed in connection with the construction, maintenance, operation or defense, of the bases, residing in the Philippines by reason of such employment, and the income derived is from the U.S. Government (Art. XII par. 2 of PI-US Military Bases Agreement of 1947).

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Quasha Asperilla Ancheta Valmonte Peña & Marcos for private respondents.

D E C I S I O N

PARAS, *J.*:

This is a Petition for Review of the consolidated decision dated 14 December 1984 of the Court of Tax Appeals (C.T.A.) in C.T.A. Case No. 2735, entitled "*Frank Robertson vs. Commissioner of Internal Revenue*;" C.T.A. Case No. 2736, entitled "*James W. Robertson vs. Commissioner of Internal Revenue*;" C.T.A. Case No. 2738, entitled "*Robert H. Cathey vs. Commissioner of Internal Revenue*" and C.T.A. Case No. 2739, entitled "John L. *Garrison vs. Commissioner of Internal*

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Revenue," cancelling the assessments for deficiency income tax for taxable years 1969-1972, inclusive of interests and penalties against:

Frank Robertson (CTA Case No. 2735) — P132,750.65
James W. Robertson (CTA Case No. 2736) — 190,433.17
Robert H. Cathey (CTA Case No. 2738) — 92,013.17
John L. Garrison (CTA Case No. 2739) — 196,754.32

The above-entitled cases are consolidated as these involve similar or identical fact situations on a question involving the scope of the tax exemption provision in Article XII, Par. 2, of the RP-US Military Bases Agreement of 1947, quoted as follows:

"2. No national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States sources."

The Court of Tax Appeals found the following undisputed antecedent facts:

"Petitioner Frank Robertson (*CTA Case No. 2735*) is an American citizen born in the Philippines on July 8, 1924. He resided in the Philippines until repatriated to the United States in 1945 and took residence at Long Beach, California. Soon after he was employed by the U.S. Federal Government with a job at the U.S. Navy. His work brought him to the U.S. Navy's various installations overseas with eventual assignment at the U.S. Naval Ship Repair Facility at Subic Bay, Olongapo, Philippines, in 1962.

"Like his brother Frank Robertson, petitioner James Robertson (*CTA Case No. 2736*) was born in the Philippines on December 22, 1918 and had since resided in this country until repatriated to the United States in 1945 and there, established his domicile. He landed a job with the U.S. Navy Shipyard at Long Beach, California as a U.S. Federal Civil Service employee. He returned to the Philippines in 1958 with assignment at the U.S. Naval Base at Subic Bay, Olongapo, and has since remained thru 1972.

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In *CTA Case No. 2738*, petitioner Robert H. Cathey is a United States born citizen who first came to the Philippines with the U.S. liberation force in 1944, and upon discharge from the military service in 1946 turned a U.S. Navy's civilian employee with station at Makati, Metro Manila.

"Petitioner John Garrison (CTA Case No. 2739) is a Philippine born American citizen also repatriated to the United States in 1945 establishing his domicile at San Francisco, California. Soon after he was employed by the U.S. Federal Government in its military installations. He returned to the Philippines in 1952 assigned at the U.S. Naval Base, Subic Bay, Philippines.

"All told, the petitioners are citizens of the United States; holders of American passports and admitted as Special Temporary Visitors under Section 9 (a) visa of the Philippine Immigration Act of 1940, as amended; civilian employees in the U.S. Military Base in the Philippines in connection with its construction, maintenance, operation, and defense; and incomes are solely derived from salaries from the U.S. government by reason of their employment in the U.S. Bases in the Philippines." (pp. 76-78, Record).

The Court *a quo* after due hearing, rendered its judgment in favor of respondents cancelling and setting aside the assessments for deficiency income taxes of respondents for the taxable years 1969-1972, inclusive of interests and penalties.

Petitioner Commissioner of Internal Revenue now comes before Us assigning one alleged error, to wit:

"The Court of Tax Appeals erred in holding that private respondents are, by virtue of Article XII, Par 2 of the RP-US Military Bases Agreement of 1947, exempt from Philippine income tax."

Petitioner, to support his contentions, argues that the laws granting tax exemptions must be construed in *strictissimi juris* against the taxpayer, and that the burden of proof is on private respondents, Frank Robertson, James W. Robertson, Robert J. Cathey and John L. Garrison to establish that their residence in the country is by reason *only* of their employment in connection with the construction, maintenance, operation or defense of the U.S. Bases in the Philippines as provided for under Article XII, Par. 2 of the RP-US Military Bases Agreement

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of 1947 (*supra*). Petitioner avers in his Brief, dated February 4, 1986, filed before this Court, that private respondents have failed to discharge this burden, alleging, among other things, (1) that both respondents Frank Robertson and James Robertson, who are brothers, own residential properties respectively declared in the name of James Robertson and in the name of Frank Robertson's wife for taxation purposes; (2) that James Robertson is now a retired Federal Civil Service employee and presently living with his family in Olongapo City, which circumstance indicate that respondents' residence in this country is not by reason *only* of his employment in the U.S. naval base; (4) that respondent Robert H. Cathey owns the house at Quezon City where he presently resides; (5) that the stay of respondent John Garrison who returned to the Philippines in the year 1948 is uninterrupted except for a two-year stint in Okinawa in the years 1950 to 1952; (6) that the issuance in San Francisco, California of a Voter's Certificate to respondent John Garrison in 1945 does not in any way indicate that he was a U.S. resident, in the years 1969 to 1972.

The aforegoing facts were the main argument of petitioner in support of his contentions against respondents. Such contentions do not impress Us as meritorious.

The law and the facts of the case are so clear that there is no room left for Us to doubt the validity of private respondents' defense. In order to avail oneself of the tax exemption under the RP-US Military Bases Agreement: he must be a national of the United States employed in connection with the construction, maintenance, operation or defense, of the bases, residing in the Philippines by reason of such employment, and the income derived is from the U.S. Government (Art. XII par. 2 of PI-US Military Bases Agreement of 1947). Said circumstances are all present in the case at bar. Likewise, We find no justifiable reason to disturb the findings and rulings of the lower court in its decision reading as follows:

"We find nothing in the said treaty provision that justified the lifting of the tax exemption privilege of the petitioners (private respondents herein). Respondent (petitioner herein) has grafted a

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meaning other than that conveyed by the plain and clear tenor of the Agreement. An examination of the words used and the circumstances in which they were used, shows the basic intendment "to exempt all U.S. citizens working in the Military Bases from the burden of paying Philippine Income Tax without distinction as to whether born locally or born in their country of origin." *Ubi lex non distinguit nec nos distinguere debemos* (one must not distinguish where the law does not distinguish) (Translation ours). Moreover, the ruling has altered a satisfactorily settled application of the exemption clause and has fallen short of measuring up to the familiar principle of International Law that, "The obligation to fulfill in good faith a treaty engagement requires that the stipulations be observed in their spirit as well as according to their letter and that what has been promised be performed without evasion, or subterfuge, honestly and to the best of the ability of the party which made the promise." (Kunz, The Meaning and Range of the Norm (*Pacta Sunt Servanda,* 29 A.J.I.L. 180 (1945); cited in Freidmann, Lisstzyn, Pugh, International Law (1969) 329). Somehow, the ruling becomes an anacoluthon and a persiflage.

"It bears repeating as so disclosed in the records that the petitioners together with families upon repatriation in 1945 had since acquired domicile and residency in the United States. And, obtained employment with the United States Federal Service. Not until after several years of a hiatus, petitioners did return to the Philippines not so much of honoring a pledge nor of sentimental journey but by reason of taking up assigned duties with the United States military bases in the Philippines where they were gainfully employed by the U.S. Federal Government. The situation of the petitioners is of no different mold as of the rest of the U.S. civilian employees who continued to enjoy the benefits of tax exemption under the Agreement. Petitioners' circumstances before the questioned ruling remained obtaining thru the taxable years 1969-1972. It appears too much of a stretch to hold petitioners straight-jacketed to an irreversible situs of birth constraint and by reason thereof deny altogether any opportunity to a serendipitous enjoyment of a tax relief accorded in the Agreement. Such a random quirk of pirouette in the tax treatment falls sharply at odds with the shared expectations of the high contracting parties. *This Court will not deem itself authorized to depart from the plain meaning of the tax exemption provision, so explicit in terms and so searching in extent.* (Italicss ours) This does not however foreclose the possibility of petitioners' coming to roost in the country contingent upon the termination of their tour of duty, but only then may the bridge be crossed for tax purposes." (pp. 82-84, Record)

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The circumstances in the case of *Reagan vs. Commissioner of Internal Revenue* (30 SCRA 968) relied upon by petitioner in support of the government's claim are different from the circumstances of the case herein and the ruling obtained in the former case cannot be invoked or applied in support of petitioner's contention. A cursory reading of said case shows that William Reagan was at one time a civilian employee of an American corporation providing technical assistance to the U.S. Air Force in the Philippines. He questioned the payment of the income tax assessed on him by respondent Commissioner of Internal Revenue on an amount realized by him on a sale of his automobile to a member of the US Marine Corps., the transaction having taken place at the Clark Field Air Base in Pampanga. It was his contention that in legal contemplation the sale was made outside Philippine territory and therefore beyond our jurisdictional power to tax. Clearly, the facts in said case are different from those obtaining in the present suit.

WHEREFORE, premises considered, the appealed decision of the Court of Tax Appeals is AFFIRMED and the petition for review is hereby DISMISSED. No costs.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.,* concur.