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FIRST DIVISION

[G.R. Nos. L-28508-9. July 7, 1989]

ESSO STANDARD EASTERN, INC. (formerly, Standard-Vacuum Oil Company), *petitioner, vs.* **THE COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. STATUTORY CONSTRUCTION; LEGISLATIVE HISTORY OF AN ACT RESORTED TO ONLY WHERE THE LANGUAGE OF THE STATUTE IS AMBIGUOUS. — Only in extremely doubtful matters of interpretation does the legislative history of an act of Congress become important. As a matter of fact, there may be no resort to the legislative history of the enactment of a statute, the language of which is plain and unambiguous, since such legislative history may only be resorted to for the purpose of solving doubt, not for the purpose of creating it.

2. TAXATION; REPUBLIC ACT NO. 2009; MARGIN FEE; NOT A TAX BUT AN EXACTION. — A margin fee is not a tax but an exaction designed to curb the excessive demands upon our international reserve.

3. ID.; ID.; MARGIN FEE THEREUNDER, AN EXERCISE OF POLICE POWER. — The margin fee under Republic Act No. 2009 was imposed by the State in the exercise of its police power and not the power of taxation.

4. ID.; ID.; MARGIN FEE; NOT A DEDUCTIBLE EXPENSE; REASON. — The fees were paid for the remittance by ESSO as part of the profits to the head office in the United States. Such remittance was an expenditure necessary and proper for the conduct of its corporate affairs. As stated in the Lopez case, the margin fees are not expenses in connection with the production or earning of petitioner's incomes in the Philippines. They were expenses incurred in the disposition of said incomes; expenses for the remittance of funds after they have already been earned by petitioner's branch in the Philippines for the disposal of its Head Office in New York which is already another distinct and separate income taxpayer.

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5. ID.; NATIONAL INTERNAL REVENUE CODE; INCOME TAX ON BUSINESS; CONDITIONS FOR DEDUCTIBILITY OF EXPENSE. — We come, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying on a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

6. ID.; ID.; CLAIMS FOR DEDUCTIONS, A MATTER OF LEGISLATIVE GRACE AND CONSTRUED STRICTLY AGAINST THE TAXPAYER. — The paramount rule is that claims for deductions are a matter of legislative grace and do not turn on mere equitable considerations x x x. The taxpayer in every instance has the burden of justifying the allowance of any deduction claimed.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.

D E C I S I O N

CRUZ, *J.*:

On appeal before us is the decision of the Court of Tax Appeals[1] denying petitioner's claims for refund of overpaid income taxes of ₱102,246.00 for 1959 and ₱434,234.93 for 1960 in CTA Cases No. 1251 and 1558 respectively.

I

In CTA Case No. 1251, petitioner ESSO deducted from its gross income for 1959, as part of its ordinary and necessary

[1] Penned by Associate Judge E. Alvarez, with Presiding Judge Umali and Associate Judge Avanceña, concurring.

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business expenses, the amount it had spent for drilling and exploration of its petroleum concessions. This claim was disallowed by the respondent Commissioner of Internal Revenue on the ground that the expenses should be capitalized and might be written off as a loss only when a "dry hole" should result. ESSO then filed an amended return where it asked for the refund of ₱323,279.00 by reason of its abandonment as dry holes of several of its oil wells. Also claimed as ordinary and necessary expenses in the same return was the amount of ₱340,822.04, representing margin fees it had paid to the Central Bank on its profit remittances to its New York head office.

On August 5, 1964, the CIR granted a tax credit of ₱221,033.00 only, disallowing the claimed deduction for the margin fees paid.

In CTA Case No. 1558, the CR assessed ESSO a deficiency income tax for the year 1960, in the amount of ₱367,994.00, plus 18% interest thereon of ₱66,238.92 for the period from April 18, 1961 to April 18, 1964, for a total of ₱434,232.92. The deficiency arose from the disallowance of the margin fees of ₱1,226,647.72 paid by ESSO to the Central Bank on its profit remittances to its New York head office.

ESSO settled this deficiency assessment on August 10, 1964, by applying the tax credit of ₱221,033.00 representing its overpayment on its income tax for 1959 and paying under protest the additional amount of ₱213,201.92. On August 13, 1964, it claimed the refund of ₱39,787.94 as overpayment on the interest on its deficiency income tax. It argued that the 18% interest should have been imposed not on the total deficiency of ₱367,944.00 but only on the amount of ₱146,961.00, the difference between the total deficiency and its tax credit of ₱221,033.00.

This claim was denied by the CIR, who insisted on charging the 18% interest on the entire amount of the deficiency tax. On May 4, 1965, the CIR also denied the claims of ESSO for refund of the overpayment of its 1959 and 1960 income taxes, holding that the margin fees paid to the Central Bank could not be considered taxes or allowed as deductible business expenses.

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ESSO appealed to the CTA and sought the refund of ₱102,246.00 for 1959, contending that the margin fees were deductible from gross income either as a tax or as an ordinary and necessary business expense. It also claimed an overpayment of its tax by ₱434,232.92 in 1960, for the same reason. Additionally, ESSO argued that even if the amount paid as margin fees were not legally deductible, there was still an overpayment by ₱39,787.94 for 1960, representing excess interest.

After trial, the CTA denied petitioner's claim for refund of ₱102,246.00 for 1959 and ₱434,234.92 for 1960 but sustained its claim for ₱39,787.94 as excess interest. This portion of the decision was appealed by the CIR but was affirmed by this Court in *Commissioner of Internal Revenue v. ESSO*, G.R. No. L-28502-03, promulgated on April 18, 1989. ESSO for its part appealed the CTA decision denying its claims for the refund of the margin fees ₱102,246.00 for 1959 and ₱434,234.92 for 1960. That is the issue now before us.

II

The first question we must settle is whether R.A. 2009, entitled An Act to Authorize the Central Bank of the Philippines to Establish a Margin Over Banks' Selling Rates of Foreign Exchange, is a police measure or a revenue measure. If it is a revenue measure, the margin fees paid by the petitioner to the Central Bank on its profit remittances to its New York head office should be deductible from ESSO's gross income under Sec. 30(c) of the National Internal Revenue Code. This provides that all taxes paid or accrued during or within the taxable year and which are related to the taxpayer's trade, business or profession are deductible from gross income.

The petitioner maintains that margin fees are taxes and cites the background and legislative history of the Margin Fee Law showing that R.A. 2609 was nothing less than a revival of the 17% excise tax on foreign exchange imposed by R.A. 601. This was a revenue measure formally proposed by President Carlos P. Garcia to Congress as part of, and in order to balance, the budget for 1959-1960. It was enacted by Congress as such and, significantly, properly originated in the House of

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Representatives. During its two and a half years of existence, the measure was one of the major sources of revenue used to finance the ordinary operating expenditures of the government. It was, moreover, payable out of the General Fund.

On the claimed legislative intent, the Court of Tax Appeals, quoting established principles, pointed out that —

> We are not unmindful of the rule that opinions expressed in debates, actual proceedings of the legislature, steps taken in the enactment of a law, or the history of the passage of the law through the legislature, may be resorted to as an aid in the interpretation of a statute which is ambiguous or of doubtful meaning. The courts may take into consideration the facts leading up to, coincident with, and in any way connected with, the passage of the act, in order that they may properly interpret the legislative intent. But it is also well-settled jurisprudence that only in extremely doubtful matters of interpretation does the legislative history of an act of Congress become important. As a matter of fact, there may be no resort to the legislative history of the enactment of a statute, the language of which is plain and unambiguous, since such legislative history may only be resorted to for the purpose of solving doubt, not for the purpose of creating it. [50 Am. Jur. 328.]

Apart from the above consideration, there are at least two cases where we have held that a margin fee is not a tax but an exaction designed to curb the excessive demands upon our international reserve.

In *Caltex (Phils.) Inc. v. Acting Commissioner of Customs,*[2] the Court stated through Justice Jose P. Bengzon:

> A margin levy on foreign exchange is a form of exchange control or restriction designed to discourage imports and encourage exports, and ultimately, 'curtail any excessive demand upon the international reserve' in order to stabilize the currency. Originally adopted to cope with balance of payment pressures, exchange restrictions have come to serve various purposes, such as limiting non-essential imports, protecting domestic industry — and when combined with the use of multiple currency rates — providing a source of revenue to the

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[2] 22 SCRA 779.

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government, and are in many developing countries regarded as a more or less inevitable concomitant of their economic development programs. The different measures of exchange control or restriction cover different phases of foreign exchange transactions, *i.e.*, in quantitative restriction, the control is on the amount of foreign exchange allowable. In the case of the margin levy, the immediate impact is on the rate of foreign exchange; in fact, its main function is to control the exchange rate without changing the par value of the peso as fixed in the Bretton Woods Agreement Act. For a member nation is not supposed to alter its exchange rate (at par value) to correct a merely temporary disequilibrium in its balance of payments. By its nature, the margin levy is part of the rate of exchange as fixed by the government.

As to the contention that the margin levy is a tax on the purchase of foreign exchange and hence should not form part of the exchange rate, suffice it to state that We have already held the contrary for the reason that a tax is levied to provide revenue for government operations, while the proceeds of the margin fee are applied to strengthen our country's international reserves.

Earlier, in *Chamber of Agriculture and Natural Resources of the Philippines v. Central Bank,*[3] the same idea was expressed, though in connection with a different levy, through Justice J.B.L. Reyes:

Neither do we find merit in the argument that the 20% retention of exporter's foreign exchange constitutes an export tax. A tax is a levy for the purpose of providing revenue for government operations, while the proceeds of the 20% retention, as we have seen, are applied to strengthen the Central Bank's international reserve.

We conclude then that the margin fee was imposed by the State in the exercise of its police power and not the power of taxation.

Alternatively, ESSO prays that if margin fees are not taxes, they should nevertheless be considered necessary and ordinary business expenses and therefore still deductible from its gross income. The fees were paid for the remittance by ESSO as

[3] 14 SCRA 630.

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part of the profits to the head office in the United States. Such remittance was an expenditure necessary and proper for the conduct of its corporate affairs.

The applicable provision is Section 30(a) of the National Internal Revenue Code reading as follows:

SEC. 30. Deductions from gross income.— In computing net income there shall be allowed as deductions —

(a) Expenses:

(1) In general. — All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) Expenses allowable to non-resident alien individuals and foreign corporations. — In the case of a non-resident alien individual or a foreign corporation, the expenses deductible are the necessary expenses paid or incurred in carrying on any business or trade conducted within the Philippines exclusively.

In the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[4] the Court laid down the rules on the deductibility of business expenses, thus:

The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30(a) (1) of the National Internal Revenue which allows a deduction of 'all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.' An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within its language.

[4] 102 SCRA 246.

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We come, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying on a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

While it is true that there is a number of decisions in the United States delving on the interpretation of the terms 'ordinary and necessary, as used in the federal tax laws, no adequate or satisfactory definition of those terms is possible. Similarly, this Court has never attempted to define with precision the terms 'ordinary and necessary.' There are however, certain guiding principles worthy of serious consideration in the proper adjudication of conflicting claims. Ordinarily, an expense will be considered 'necessary,' where the expenditure is appropriate and helpful in the development of the taxpayer's business. It is 'ordinary' when it connotes a payment which is normal in relation to the business of the taxpayer and the surrounding circumstances. The term 'ordinary' does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.

There is thus no hard and fast rule on the matter. The right to a deduction depends in each case on the particular facts and the relation of the payment to the type of business in which the taxpayer is engaged. The intention of the taxpayer often may be the controlling fact in making the determination. Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.

In the light of the above explanation, we hold that the Court of Tax Appeals did not err when it held on this issue as follows:

Considering the foregoing test of what constitutes an ordinary and necessary deductible expense, it may be asked: Were the margin

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fees paid by petitioner on its profit remittances to its Head Office in New York appropriate and helpful in the taxpayer's business in the Philippines? Were the margin fees incurred for purposes proper to the conduct of the affairs of petitioner's branch in the Philippines? Or were the margin fees incurred for the purpose of realizing a profit or of minimizing a loss in the Philippines? Obviously not. As stated in the Lopez case, the margin fees are not expenses in connection with the production or earning of petitioner's incomes in the Philippines. They were expenses incurred in the disposition of said incomes; expenses for the remittance of funds after they have already been earned by petitioner's branch in the Philippines for the disposal of its Head Office in New York which is already another distinct and separate income taxpayer.

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Since the margin fees in question were incurred for the remittance of funds to petitioner's Head Office in New York, which is a separate and distinct income taxpayer from the branch in the Philippines, for its disposal abroad, it can never be said therefore that the margin fees were appropriate and helpful in the development of petitioner's business in the Philippines exclusively or were incurred for purposes proper to the conduct of the affairs of petitioner's branch in the Philippines exclusively or for the purpose of realizing a profit or of minimizing a loss in the Philippines exclusively. If at all, the margin fees were incurred for purposes proper to the conduct of the corporate affairs of Standard Vacuum Oil Company in New York, but certainly not in the Philippines.

ESSO has not shown that the remittance to the head office of part of its profits was made in furtherance of its own trade or business. The petitioner merely presumed that all corporate expenses are necessary and appropriate in the absence of a showing that they are illegal or *ultra vires*. This is error. The public respondent is correct when it asserts that "the paramount rule is that claims for deductions are a matter of legislative grace and do not turn on mere equitable considerations x x x. The taxpayer in every instance has the burden of justifying the allowance of any deduction claimed."[5]

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[5] Merten's, *Law of Federal Income Taxation*, Section 25.03.

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It is clear that ESSO, having assumed an expense properly attributable to its head office, cannot now claim this as an ordinary and necessary expense paid or incurred in carrying on its own trade or business.

WHEREFORE, the decision of the Court of Tax Appeals denying the petitioner's claims for refund of ₱102,246.00 for 1959 and ₱434,234.92 for 1960, is AFFIRMED, with costs against the petitioner.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

FIRST DIVISION

[G.R. No. 70037. July 7, 1989]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEOFISTA BRAGAT *VDA. DE* CABANGAHAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSION MADE BY AN ACCUSED AS TESTIFIED TO BY THE INVESTIGATING OFFICER, HEARSAY. — Testimony as to the admission of an accused which was not made in the presence of the witness and of which the latter only learned from another person who was never presented to testify, is hearsay.

2. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO REMAIN SILENT AND TO COUNSEL; ADMISSION MADE WITHOUT BEING INFORMED OF SUCH RIGHTS, INADMISSIBLE. — Admissions made during custodial investigation by an accused who had not been given cautionary