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information sufficiently charge an offense defined and penalized in P.D.No. 1613. Hence, having voluntarily pleaded thereto without any question, the accused could be convicted for the violation of P.D. No. 1613. The inaccuracy or error committed by the Fiscal was not a fatal defect. We take this opportunity, however, to advise Prosecutors to exercise utmost care in the preparation of Informations to the end that no injustice would be done to the accused and no prejudice would befall the State whose interest they are bound to protect.

WHEREFORE, the decision appealed from in Criminal Case No. D-5402 of Branch XLIV of the Regional Trial Court of Dagupan City is REVERSED and the accused-appellant is hereby ACQUITTED of the crime charged with costs *de officio*.

SO ORDERED.

Gutierrez, Jr. (Chairman), Bidin, and *Romero, JJ.*, concur.

Feliciano, J., on official leave.

SECOND DIVISION

[G.R. No. 48532. August 31, 1992]

HERNANDO B. CONWI, JAIME E. DY-LIACCO, VICENTE D. HERRERA, BENJAMIN T. ILDEFONSO, ALEXANDER LACSON, JR., ADRIAN O. MICIANO, EDUARDO A. RIALP, LEANDRO G. SANTILLAN, and JAIME A. SOQUES, *petitioners, vs.* **THE HONORABLE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents*.

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[G.R. No. 48533. August 31, 1992]

ENRIQUE R. ABAD SANTOS, HERNANDO B. CONWI, TEDDY L. DIMAYUGA, JAIME E. DY-LIACCO, MELQUIADES J. GAMBOA, JR., MANUEL L. GUZMAN, VICENTE D. HERRERA, BENJAMIN T. ILDEFONSO, ALEXANDER LACSON, JR., ADRIAN O. MICIANO, EDUARDO A. RIALP and JAIME A. SOQUES, *petitioners, vs.* **THE HONORABLE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. TAXATION; INCOME TAX; INCOME; DEFINED.— Income may be defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor.

2. ID.; ID.; FOREIGN EXCHANGE TRANSACTION; DOLLARS EARNED ARE NOT RECEIPTS DERIVED THEREFROM. — Petitioners are correct as to their claim that their dollar earnings are not receipts derived from foreign exchange transactions. For a foreign exchange transaction is simply that — a transaction in foreign exchange, foreign exchange being "the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another." When petitioners were assigned to the foreign subsidiaries of Procter & Gamble, they were earning in their assigned nation's currency and were ALSO spending in said currency. There was no conversion, therefore, from one currency to another.

3. ID.; ID.; EXCHANGE RATE TO DETERMINE THE PESO EQUIVALENT OF FOREIGN EARNINGS; RULE. — What exchange rate should be used to determine the peso equivalent of the foreign earnings of petitioners for income tax purposes. Petitioners claim that since the dollar earnings do not fall within the classification of foreign exchange transactions, there

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occurred no actual inward remittances, and, therefore, they are not included in the coverage of Central Bank Circular No. 289 which provides for the specific instances when the par value of the peso shall not be the conversion rate used. They conclude that their earnings should be converted for income tax purposes using the par value of the Philippine peso. Respondent Commissioner argues that CB Circular No. 289 speaks of receipts for export products, receipts of sale of foreign exchange or foreign borrowings and investments but not income tax. He also claims that he had to use the prevailing free market rate of exchange in these cases because of the need to ascertain the true and correct amount of income in Philippine peso of dollar earners for Philippine income tax purposes. A careful reading of said CB Circular No. 289 shows that the subject matters involved therein are export products, invisibles, receipts of foreign exchange, foreign exchange payments, new foreign borrowing and investments — nothing by way of income tax payments. Thus, petitioners are in error by concluding that since C.B. Circular No. 289 does not apply to them, the par value of the peso should be the guiding rate used for income tax purposes. The dollar earnings of petitioners are the fruits of their labors in the foreign subsidiaries of Procter & Gamble. It was a definite amount of money which came to them within a specified period of time of two years as payment for their services.

4. ID.; SECRETARY OF FINANCE; EMPOWERED TO PROMULGATE RULES AND REGULATIONS FOR THE PROPER ENFORCEMENT OF THE NATIONAL INTERNAL REVENUE CODE. — And in the implementation for the proper enforcement of the National Internal Revenue Code, Section 338 thereof empowers the Secretary of Finance to "promulgate all needful rules and regulations" to effectively enforce its provisions. Pursuant to this authority, Revenue Memorandum Circular Nos. 7-71 and 41-71 were issued to prescribe a uniform rate of exchange from US dollars to Philippine pesos for INTERNAL REVENUE TAX PURPOSES for the years 1970 and 1971, respectively. Said revenue circulars were a valid exercise of the authority given to the Secretary of Finance by the Legislature which enacted the Internal Revenue Code. And these are presumed to be a valid interpretation of said code until revoked by the Secretary of Finance himself.

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APPEARANCES OF COUNSEL

Angara, Abello, Concepcion, Regala & Cruz for petitioners.

D E C I S I O N

NOCON, *J.*:

Petitioners pray that this Court reverse the Decision of the public respondent Court of Tax Appeals, promulgated September 26, 1977[1] denying petitioners' claim for tax refunds, and order the Commissioner of Internal Revenue to refund to them their income taxes which they claim to have been erroneously or illegally paid or collected.

As summarized by the Solicitor General, the facts of the cases are as follows:

> Petitioners are Filipino citizens and employees of Procter and Gamble, Philippine Manufacturing Corporation, with offices at Sarmiento Building Ayala Avenue, Makati, Rizal. Said corporation is a subsidiary of Procter & Gamble, a foreign corporation based in Cincinnati, Ohio, U.S.A. During the years 1970 and 1971 petitioners were assigned, for certain periods, to other subsidiaries of Procter & Gamble, outside of the Philippines, during which petitioners were paid U.S. dollars as compensation for services in their foreign assignments. (Paragraphs III, Petitions for Review, C.T.A. Cases Nos. 2511 and 2594, Exhs. D, D-1 to D-19). When petitioners in C.T.A. Case No. 2511 filed their income tax returns for the year 1970, they computed the tax due by applying the dollar-to-peso conversion on the basis of the floating rate ordained under B.I.R. Ruling No. 70-027 dated May 14, 1970, as follows:
>
> From January 1 to February 20, 1970 at the conversion rate of ₱3.90 to U.S. $1.00;
>
> From February 21 to December 31, 1970 at the conversion rate of P6.25 to U S. $1.00

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[1] Judge Amante Filler, *ponente*, concurred in by Judge Constantino C. Roaquin.

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Petitioners in C.T.A Case No. 2594 likewise used the above conversion rate in converting their dollar income for 1971 to Philippine peso. However, on February 8, 1973 and October 8, 1973, petitioners in said cases filed with the office of the respondent Commissioner, amended income tax returns for the above-mentioned years, this time using the par value of the peso as prescribed in Section 48 of Republic Act No. 265 in relation to Section 6 of Commonwealth Act No. 699 as the basis for converting their respective dollar income into Philippine pesos for purposes of computing and paying the corresponding income tax due from them. The aforesaid computation as shown in the amended income tax returns resulted in the alleged overpayments, refund and/or tax credit. Accordingly, claims for refund of said over-payments were filed with respondent Commissioner. Without awaiting the resolution of the Commissioner of Internal Revenue on their claims, petitioners filed their petitions for review in the above-mentioned cases.

Respondent Commissioner filed his Answer to petitioners' petition for review in C.T.A. Case No. 2511 on July 31, 1973, while his Answer in C.T.A. Case No. 2594 was filed on August 7, 1974.

Upon joint motion of the parties on the ground that these two cases involve common question of law and facts, the respondent Court of Tax Appeals heard the cases jointly. In its decision dated September 26, 1977, the respondent Court of Tax Appeals held that the proper conversion rate for the purpose of reporting and paying the Philippine income tax on the dollar earnings of petitioners are the rates prescribed under Revenue Memorandum Circulars Nos. 7-71 and 41-71. Accordingly, the claim for refund and/or tax credit of petitioners in the above-entitled cases was denied and the petitions for review dismissed, with costs against petitioners. Hence, this petition for review on *certiorari*.[2]

Petitioners claim that public respondent Court of Tax Appeals erred in holding:

1. That petitioners' dollar earnings are receipts derived from foreign exchange transactions.

2. That the proper rate of conversion of petitioners' dollar earnings for tax purposes is the prevailing free market rate of exchange and not the par value of the peso; and

[2] *Rollo,* pp. 98-100.

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3. That the use of the par value of the peso to convert petitioners' dollar earnings for tax purposes into Philippine pesos is "unrealistic" and, therefore, the prevailing free market rate should be the rate used.

Respondent Commissioner of Internal Revenue, on the other hand, refutes petitioners' claims as follows:

At the outset, it is submitted that the subject matter of these two cases are Philippine income tax for the calendar years 1970 (CTA Case No. 2511) and 1971 (CTA Case No. 2594) and, therefore, should be governed by the provisions of the National Internal Revenue Code and its implementing rules and regulations, and not by the provisions of Central Bank Circular No. 42 dated May 21, 1953, as contended by petitioners.

Section 21 of the National Internal Revenue Code, before its amendment by Presidential Decrees Nos. 69 and 323 which took effect on January 1, 1973 and January 1, 1974, respectively, imposed a tax upon the taxable net income received during each taxable year from all sources by a citizen of the Philippines, whether residing here or abroad.

Petitioners are citizens of the Philippines temporarily residing abroad by virtue of their employment. Thus, in their income tax returns for the period involved herein, they gave their legal residence/ address as c/o Procter & Gamble PMC, Ayala Ave., Makati, Rizal (Annexes 'A' to 'A-8', and Annexes 'C' to 'C-8', Petition for Review, CTA Cases Nos. 2511 and 2594).

Petitioners being subject to Philippine income tax, their dollar earnings should be converted into Philippine pesos in computing the income tax due therefrom, in accordance with the provisions of Revenue Memorandum Circular No. 7-71 dated February 11, 1971 for 1970 income and Revenue Memorandum Circular No. 41-71 dated December 21, 1971 for 1971 income, which reiterated BIR Ruling No. 70-027 dated May 4, 1970, to wit:

> 'For internal revenue tax purposes, the free market rate of conversion (Revenue Circulars Nos. 7-71 and 41-71) should be applied in order to determine the true and correct value in Philippine pesos of the income of petitioners.'[3]

[3] *Id.*, pp. 100-101.

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After a careful examination of the records, the laws involved and the jurisprudence on the matter, We are inclined to agree with respondents Court of Tax Appeals and Commissioner of Internal Revenue and thus vote to deny the petition.

This is basically an income tax case. For the proper resolution of these cases income may be defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Unless otherwise specified, it means cash or its equivalent.[4] Income can also be thought of as a flow of the fruits of one's labor.[5]

Petitioners are correct as to their claim that their dollar earnings are not receipts derived from foreign exchange transactions. For a foreign exchange transaction is simply that — a transaction in foreign exchange, foreign exchange being "the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another."[6] When petitioners were assigned to the foreign subsidiaries of Procter & Gamble, they were earning in their assigned nation's currency and were ALSO spending in said currency. There was no conversion, therefore, from one currency to another.

Public respondent Court of Tax Appeals did err when it concluded that the dollar incomes of petitioner fell under Section 2(f)(g) and (m) of C.B. Circular No. 42.[7]

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[4] *Fisher vs. Trinidad*, 43 Phil. 973.

[5] *Madrigal vs. Rafferty*, 38 Phil. 414.

[6] *Janda vs. Lepanto Consolidated Mining Co.*, 99 Phil. 197, 204.

[7] "Section 2. — The following are foreign exchange transactions and as required by Central Bank Circular No. 20 are subject to prior licensing by or on behalf of the Central Bank:

xxx xxx xxx

"(f) Any transaction by which a resident performs any service for a non-resident other than tourists or temporary visitors. If the proper license is obtained, the former shall demand and obtain payment for such service within ninety days in U.S. dollars or in any other foreign currency acceptable to the Central Bank;

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The issue now is, what exchange rate should be used to determine the peso equivalent of the foreign earnings of petitioners for income tax purposes. Petitioners claim that since the dollar earnings do not fall within the classification of foreign exchange transactions, there occurred no actual inward remittances, and, therefore, they are not included in the coverage of Central Bank Circular No. 289 which provides for the specific instances when the par value of the peso shall not be the conversion rate used. They conclude that their earnings should be converted for income tax purposes using the par value of the Philippine peso.

Respondent Commissioner argues that CB Circular No. 289 speaks of receipts for export products, receipts of sale of foreign exchange or foreign borrowings and investments but not income tax. He also claims that he had to use the prevailing free market rate of exchange in these cases because of the need to ascertain the true and correct amount of income in Philippine peso of dollar earners for Philippine income tax purposes.

A careful reading of said CB Circular No. 289[8] shows that the subject matters involved therein are export products, invisibles,

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"(g) Any transaction by which a resident performs for another resident service rendered in a business or profession of the latter located outside the Philippines. If proper license is obtained, the former shall demand and obtain payment of the fair value of such service within ninety days from the date of the performance of the aforesaid service, in U.S. dollar or in any other foreign currency acceptable to the Central Bank;

xxx xxx xxx

"(m) Any other transactions involving international financial implications."

[8] "Pursuant to the provisions of Republic Act No. 265, the Monetary Board, by unanimous vote and with the approval of the President of the Philippines, and in accordance with existing executive and international agreement to which the Republic of the Philippines is a party, hereby promulgates the following regulations on foreign exchange transactions.

"Section 1. Eighty (80) per cent of all receipts from the leading export products, i.e., exports whose annual average value exceeded $75 million in the base period 1966-68, shall be surrendered to the Central Bank at the par value. The par value shall not apply to the remaining twenty (20) per cent, which shall be held to authorized agent banks at the prevailing free market rate. For purposes of this section, the following are

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receipts of foreign exchange, foreign exchange payments, new foreign borrowing and investments — nothing by way of income tax payments. Thus, petitioners are in error by concluding that since C.B. Circular No. 289 does not apply to them, the par value of the peso should be the guiding rate used for income tax purposes.

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considered as the leading export products: logs, centrifugal sugar, copra and copper (ore or concentrates).

"Section 2. The par value likewise shall not apply to all receipts from all other export products as well as from invisibles, which shall be sold to authorized agents of the Central Bank of the Philippines at the prevailing free market rate.

"Section 3. All receipts of foreign exchange by resident persons, firms, companies or corporations shall represent not less than the full value of the transactions involved. All such receipts shall be sold to authorized agents of the Central Bank of the Philippines by the recipients within three business days following the receipt of such foreign exchange and must be received in currencies prescribed to form part of the international reserve. Resident persons, firms, companies or corporations shall not delay taking ownership of their foreign exchange earnings except when such delay is customary.

"Section 4. The par value likewise shall not apply to all foreign exchange payments, which shall be negotiated at the prevailing free market rate, except for outstanding foreign obligations and letters of credit covered by forward exchange contracts. Only authorized agent banks may sell foreign exchange for imports and invisible disbursements.

"Section 5. Authorized agent banks may sell foreign exchange for imports except those falling under the UC, SUC and NEC categories, without prior specific approval of the Central Bank. Such imports may be financed by letters of credit, or under D/A and open account arrangements subject to rules to be promulgated by the Monetary Board. Monthly ceiling on foreign currency letters of credit and special time deposit requirements (STD) are hereby lifted. Existing STDS shall be released as they mature.

"Section 6. The sale of foreign exchange for current invisible payments by authorized agent banks shall be allowed, without prior specific approval of the Central Bank, provided that amounts of more than $100.00 are substantiated by documentary evidence attesting to the veracity of the purpose and the amount applied for; and provided further that travel, remittance for educational expenses and student maintenance, maintenance of dependents abroad of Philippine residents, remittance of profits, dividends, and interests, royalties film and other rentals shall be subject to the regulations to be promulgated by the Monetary Board.

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The dollar earnings of petitioners are the fruits of their labors in the foreign subsidiaries of Procter & Gamble. It was a definite amount of money which came to them within a specified period of time of two years as payment for their services.

Section 21 of the National Internal Revenue Code, amended up to August 4, 1969, states as follows:

Sec. 21. *Rates of tax on citizens or residents.* — A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or abroad or an alien residing in the Philippines, determined in accordance with the following schedule:

xxx xxx xxx

And in the implementation for the proper enforcement of the National Internal Revenue Code, Section 338 thereof empowers

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"Section 7. New foreign borrowing and investments, and transfer of assets by emigrants shall be subject to regulations to be promulgated by the Monetary Board.

"Section 8. The free market rate shall not be administratively fixed but shall be determined through transactions in the foreign exchange market on a day-to-day basis. The authorities shall not intervene in the market except to the extent necessary to compensate for excessive fluctuations but shall not operate against the trend in the market.

"Section 9. All provisions of existing circulars, memorandum and regulations of the Central Bank governing transactions in foreign exchange inconsistent with the provisions hereafter are hereby revoked.

"Section 10. Strict observance of the provisions of this Circular is hereby enjoined, and any person, firm, company or corporation, whether residing and/or located in the Philippines or not, who, being bound to the observance of said provisions, or of such other rules, terms and conditions, or directives which may be issued by the Central Bank in the implementation of this Circular, shall fail or refuse to comply with or abide by, or shall violate the same, shall be subject to the penal sanctions of the Central Bank Act.

"Section 11. This Circular shall take effect immediately.

FOR THE MONETARY BOARD:

(SGD.) G. S. LICAROS

Governor

February 21, 1970."

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the Secretary of Finance to "promulgate all needful rules and regulations" to effectively enforce its provisions.[9]

Pursuant to this authority, Revenue Memorandum Circular Nos. 7-71[10] and 41-71[11] were issued to prescribe a uniform rate

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[9] Section 338, National Internal Revenue Code (1970), as amended; Philippine Lawyer's Association vs. Agrava, 105 Phil. 173.

[10] "SUBJECT: Prescribing a uniform rate for U.S. Dollars to Philippine Pesos for Internal Revenue Tax Purposes.

TO: All Internal Revenue Officers and others concerned:

For the Purpose of establishing a uniform rate of exchange to U.S. dollars to Philippine pesos for internal revenue tax purposes for the year 1970, the following schedule of exchange rates are hereby prescribed for reference and guidelines of all concerned;

Schedule of Exchange Rates

1. In all cases of transactions involving remittances and acceptances of U.S. dollars occurring during the period from January 1 to February 20, 1970, the official rate of exchange of P3.90 to $1.00 shall be used.

2. The case of transactions involving remittances or acceptance of U.S. dollars occurring after February 20, 1970 the following rules shall govern:

(a) In the case of regular or habitual transactions involving remittances and acceptances of U.S. dollars, such as salaries, royalty payments and the like, the uniform rate of P6.25 to U.S. $1.00 shall be used; provided however, that an the case of transactions involving the computation of advance sales or compensating taxes, the rates used by the Bureau of Customs at the time of the payment of such taxes shall prevail.

(b) In the case of an isolated or casual transaction involving remittances or acceptances of U.S. dollars, such as dividends, occasional sales of property and the like the exchange rate quoted by the Foreign Exchange Department of the Central bank of the Philippines prevailing at the time of such remittances or acceptance shall be used.

Enforcement and Publicity

All internal revenue officers and others charged with the enforcement of internal revenue laws are enjoined to enforce the provisions of this circular accordingly and to give as wide a publicity as possible.

(Sgd.) MISAEL P. VERA

Commissioner of Internal Revenue

APPROVED:

(Sgd.) CESAR VIRATA

Secretary of Finance"

[11] "SUBJECT: Prescribing a uniform exchange rate for U.S. dollars to Philippine pesos for internal revenue tax purposes.

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of exchange from US dollars to Philippine pesos for INTERNAL REVENUE TAX PURPOSES for the years 1970 and 1971, respectively. Said revenue circulars were a valid exercise of the authority given to the Secretary of Finance by the Legislature

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TO: All Internal Revenue Officers and others concerned:

For the purpose of establishing a uniform rate of exchange to U.S. dollars or other foreign currencies to Philippine pesos for internal revenue tax purposes for the year 1971, the following schedule of exchange rates are hereby prescribed for reference and guidelines of all concerned:

Schedule of Exchange Rates

In all cases of transactions involving remittances and acceptances of U.S. dollars and other foreign currencies occurring during the year 1971, the following rules shall govern:

(a) In the case of regular or habitual transactions involving remittances or acceptances of US dollars or other foreign currencies such as salaries, wages, fees or other renominations for personal services, royalties, rents, interests or other fixed or determinable annual or periodical income, the uniform rate of P6.25 to U.S. $1.00 shall be used.

(b) In the case of transactions involving the computation of advance sales or compensating taxes, the rate of exchange used by the Bureau of Customs at the time of the payment of such taxes shall prevail.

(c) In the case of an isolated or casual transaction involving remittances of acceptances of U.S. dollars or other foreign currencies such as dividends, interests, capital gains or other gains from occasional sales of property and the like, the exchange rate quoted by the Foreign Exchange Department of the Central Bank of the Philippines prevailing at the time of such remittances or acceptances shall be used.

(d) Where the currency involved is other than U.S. dollars, the foreign currency shall first be converted to U.S. dollars at the prevailing rate of exchange between the two currencies. The resulting amount shall then be converted to Philippine pesos in accordance with the above-promulgated rules.

All internal revenue officers and others charged with the enforcement of internal revenue laws are enjoined to enforce the provisions of this circular accordingly and to give it as wide a publicity as possible.

(SGD.) MISAEL P. VERA

Commissioner of Internal Revenue.

APPROVED:

(SGD.) CESAR VIRATA

Secretary of Finance"

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which enacted the Internal Revenue Code. And these are presumed to be a valid interpretation of said code until revoked by the Secretary of Finance himself.[12]

Petitioners argue that since there were no remittances and acceptances of their salaries and wages in US dollars into the Philippines, they are exempt from the coverage of such circulars. Petitioners forget that they are citizens of the Philippines, and their income, within or without, and in these cases wholly without, are subject to income tax. Sec. 21, NIRC, as amended, does not brook any exemption.

Since petitioners have already paid their 1970 and 1971 income taxes under the uniform rate of exchange prescribed under the aforestated Revenue Memorandum Circulars, there is no reason for respondent Commissioner to refund any taxes to petitioner as said Revenue Memorandum Circulars, being of long standing and not contrary to law, are valid.[13]

Although it has become a worn-out cliche, the fact still remains that "taxes are the lifeblood of the government" and one of the duties of a Filipino citizen is to pay his income tax.

WHEREFORE, the petitions are denied for lack of merit. The dismissal by the respondent Court of Tax Appeals of petitioners' claims for tax refunds for the income tax period for 1970 and 1971 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, and *Regalado, JJ.*, concur.

Melo, J., no part.

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[12] *Hilado vs. Collector of Internal Revenue,* 100 Phil. 288.

[13] *Commissioner of Internal Revenue vs. Ledesma,* 31 SCRA 95.