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FIRST DIVISION

[G.R. Nos. L-44501-05. July 19, 1990]

JOHN L. GARRISON, FRANK ROBERTSON, ROBERT H. CATHEY, JAMES W. ROBERTSON, FELICITAS DE GUZMAN and EDWARD McGURK, *petitioners, vs.* **COURT OF APPEALS and REPUBLIC OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. TAXATION; INCOME TAX; RESIDENT ALIEN IS OBLIGED TO FILE AN INCOME TAX RETURN; RELEVANT STANDARDS IN DETERMINING WHETHER AN ALIEN IS A RESIDENT OF THE PHILIPPINES OR NOT.— Each of the petitioners does indeed fall within the letter of the codal precept that an "alien residing in the Philippines" is obliged "to file an income tax return." None of them may be considered a *non-resident alien*, "a mere transient or sojourner," who is not under any legal duty to file an income tax return under the Philippine Tax Code. This is made clear by Revenue Regulations No. 2 of the Department of Finance of February 10, 1940, which lays down the relevant standards on the matter: "An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of income tax. Whether he is a transient or not is determined by his intentions with regards to 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 as 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 to 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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2. ID.; ID.; RESIDENT ALIEN; INCOME TAX EXEMPTION GRANTED BY BASES AGREEMENT TO AMERICAN NATIONALS WHO ARE RESIDENTS OF THE PHILIPPINES IS NOT ABSOLUTE.— The exemption granted to the petitioners by the Bases Agreement from payment of income tax is not absolute. By the explicit terms of the Bases Agreement, it exists only as regards income derived from their employment "in the Philippines in connection with construction, maintenance, operation or defense of the bases"; it does not exist in respect of other income, *i.e*., "income derived from Philippine sources or sources other than the US sources." Obviously, with respect to the latter form of income, *i.e.*, that obtained or proceeding from "Philippine sources or sources other than the US sources," the petitioners, and all other American nationals who are residents of the Philippines, are legally bound to pay tax thereon.

3. ID.; ID.; ID.; ID.; THE DUTY RESTS ON THE U.S. NATIONALS CONCERNED TO INVOKE AND *PRIMA FACIE* ESTABLISH THEIR TAX-EXEMPT STATUS.— In other words, so that American nationals residing in the country may be relieved of the duty to pay income tax for any given year, it is incumbent on them to show the Bureau of Internal Revenue that in that year they had derived income exclusively from their employment in connection with the U.S. bases, and none whatever "from Philippine sources or sources other than the US sources." They have to make this known to the Government authorities. It is not in the first instance the latter's duty or burden to make unaided verification of the sources of income of American residents. The duty rests on the U.S. nationals concerned to invoke and *prima facie* establish their tax-exempt status. It cannot simply be presumed that they earned no income from any other sources than their employment in the American bases and are therefore totally exempt from income tax. The situation is no different from that of Filipino and other resident income-earners in the Philippines who, by reason of the personal exemptions and permissible deductions under the Tax Code, may not be liable to pay income tax year for any particular year; that they are not liable to pay income tax, no matter how plain or irrefutable such a proposition might be, does not exempt them from the duty to file an income tax return.

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APPEARANCES OF COUNSEL

Quasha, Asperilla, Ancheta, Valmonte, Peña & Marcos for petitioners.

The Solicitor General for respondents.

D E C I S I O N

NARVASA, *J.*:

Sought to be overturned in these appeals is the judgment of the Court of Appeals,[1] which affirmed the decision of the Court of First Instance of Zambales at Olongapo City — convicting the petitioners "of violation of Section 45 (a) (1) (b) of the National Internal Revenue Code, as amended, by not filing their respective income tax returns for the year 1969" and sentencing "each of them to pay a fine of Two Thousand (₱2,000.00) Pesos, with subsidiary imprisonment in case of insolvency, and to pay the costs proportionately."[2]

The petitioners have adopted the factual findings of the Court of Appeals,[3] *viz.*:

1. JOHN L. GARRISON "was born in the Philippines and *** lived in this country since birth up to 1945, when he was repatriated and returned to the United States. He stayed in the United States for the following twenty years until May 5, 1965, when he entered the Philippines through the Clark Air Base. The said accused lived in the Philippines since his return on May 6, 1965. He lives with his Filipino wife and their children at No. 4 Corpus Street, West Tapinac, Olongapo City, and they own the house and lot on which they are presently residing. His wife acquired by inheritance six hectares of agricultural land in Quezon Province."

2. JAMES W. ROBERTSON "was born on December 22, 1915 in Olongapo, Zambales and he grew up in this country. He and his

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[1] Rendered on May 17, 1976, the *ponente* being Lim, *J.*, with whom concurred Gatmaitan and Domondon, *JJ.*

[2] Rendered on May 28, 1983 by Judge Augusto M. Amores (Branch I).

[3] In turn adopted from the Trial Court, *Rollo*, pp. 10-12; 27-29.

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family were repatriated to the United States in 1945. They stayed in Long Beach, California until the latter part of 1946 or the early part of 1947, when he was re-assigned overseas, particularly to the Pacific area with home base in Guam. His next arrival in the Philippines was in 1958 and he stayed in this country from that time up to the present. He is presently residing at No. 25 Elicaño Street, East Bajac-Bajac, Olongapo City, and his house and lot are declared in his name for tax purposes."

3. FRANK W. ROBERTSON "was born in the Philippines and he lived in this country up to 1945, when he was repatriated to the United States along with his brother, his co-accused James W. Robertson. He stayed in the United States for about one year, during which time he resided in Magnolia Avenue, Long Beach, California. Sometime in 1946 or early 1947, he was assigned to work in the Pacific Area, particularly Hawaii. At that time he had been visiting the Philippines off and on in connection with his work. In 1962, he returned once more to the Philippines and he has been residing here ever since. He is married to a Filipino citizen named Generosa Juico and they live at No. 3 National Road, Lower Kalaklan, Olongapo City. The residential lot on which they are presently residing is declared in his wife's name for tax purposes, while the house constructed thereon was originally declared in his name and the same was transferred in his wife's name only in February, 1971."

4. ROBERT H. CATHEY "was born in Tennessee, United States, on April 8, 1917; his first arrival in the Philippines, as a member of the liberation forces of the United States, was in 1944. He stayed in the Philippines until April, 1950, when he returned to the United States, and he came back to the Philippines in 1951. He stayed in the Philippines since 1951 up to the present."

5. FELICITAS DE GUZMAN "was born in the Philippines in 1935 and her father was a naturalized American citizen. While she was studying at the University of Sto. Tomas, Manila, she was recruited to work in the United States Naval Base, Subic Bay, Philippines. Afterwards, she left the Philippines to work in the United States Naval Base, Honolulu, Hawaii, and she returned to the Philippines on or about April 21, 1967. The said accused has not left the Philippines since then. She is married to Jose de Guzman, a Filipino citizen, and they and their children live at No. 96 Fendler Street, East Tapinac, Olongapo City. Her husband is employed in the United

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States Naval Base, Olongapo City, and he also works as an insurance manager of the Traveller's Life."

6. EDWARD McGURK "came to the Philippines on July 11, 1967 and he stayed in this country continuously up to the present time."

ALL THE PETITIONERS "are United States citizens, entered this country under Section 9 (a) of the Philippine Immigration Act of 1940, as amended, and presently employed in the United States Naval Base, Olongapo City. For the year 1969 John L. Garrison earned $15,288.00; Frank Robertson, $12,045.84; Robert H. Cathey, $9,855.20; James W. Robertson, $14,985.54; Felicitas de Guzman, $8,502.40; and Edward McGurk, $12,407.99 ***.

ALL SAID PETITIONERS "received separate notices from Ladislao Firmacion, District Revenue Officer, stationed at Olongapo City, informing them that they had not filed their respective income tax returns for the year 1969, as required by Section 45 of the National Internal Revenue Code, and directing them to file the said returns within ten days from receipt of the notice. But the accused refused to file their income tax returns, claiming that they are not resident aliens but only special temporary visitors, having entered this country under Section 9 (a) of the Philippine Immigration Act of 1940, as amended. The accused also claimed exemption from filing the return in the Philippines by virtue of the provisions of Article XII, paragraph 2 of the US-RP Military Bases Agreement."

The petitioners contend that given these facts, they may not under the law be deemed resident aliens required to file income tax returns. Hence, they argue, it was error for the Court of Appeals —

1) to consider their "physical or bodily presence" in the country as "sufficient by itself to qualify *** (them) as resident aliens despite the fact that they were not 'residents' of the Philippines immediately before their employment by the U.S. Government at Subic Naval Base and their presence here during the period concerned was dictated by their respective work as employees of the United States Naval Base in the Philippines," and

2) to refuse to recognize their "tax-exempt status *** under the pertinent provisions of the RP-US Military Bases Agreement."

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The provision alleged to have been violated by the petitioners, Section 45 of the National Internal Revenue Code, as amended, reads as follows:

"SEC. 45. — *Individual returns.* (a) *Requirements*. — (1) The following individuals are required to file an income tax return, if they have a gross income of at least One Thousand Eight Hundred Pesos for the taxable year; ***

(b) If alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines."

The sanction for breach thereof is prescribed by Section 73 of the same code, to wit:

"SEC. 73. *Penalty for failure to file return or to pay tax.* — Anyone liable to pay the tax, to make a return or to supply information required under this code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified each year, shall be punished by a fine of not more than Two Thousand Pesos or by imprisonment for not more than six months, or both ***."

The provision under which the petitioners claim exemption, on the other hand, is contained in the Military Bases Agreement between the Philippines and the United States,[4] reading as follows:

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

The petitioners claim that they are covered by this exempting provision of the Bases Agreement since, as is admitted on all sides, they are all U.S. nationals, all employed in the American Naval Base at Subic Bay (involved in some way or other in

[4] ART. XII, L.-par 2, part 2, see *Rollo*, p. 32.

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"construction, maintenance, operation or defense" thereof), and receive salary therefrom exclusively and from no other source in the Philippines; and it is their intention, as is shown by the unrebutted evidence, to return to the United States on termination of their employment.

That claim had been rejected by the Court of Appeals with the terse statement that the Bases Agreement "speaks of exemption from the *payment* of income tax, not from the *filing* of the income tax returns ***"[5]

To be sure, the Bases Agreement very plainly identifies the persons NOT "liable to pay income tax in the Philippines except in regard to income derived from Philippine sources or sources other than the US sources." They are the persons in whom concur the following requisites, to wit:

1) nationals of the United States serving in or employed in the Philippines;

2) their service or employment is "in connection with construction, maintenance, operation or defense of the bases";

3) they reside in the Philippines by reason only of such employment; and

4) their income is derived exclusively from "U.S. sources."

Now, there is no question (1) that the petitioners are U.S. nationals serving or employed in the Philippines; (2) that their employment is "in connection with construction, maintenance, operation or defense" of a base, Subic Bay Naval Base; (3) they reside in the Philippines by reason only of such employment since, as is undisputed, they all intend to depart from the country on termination of their employment; and (4) they earn no income from Philippine sources or sources other than the U.S. sources. Therefore, by the explicit terms of the Bases Agreement, none of them "shall be liable to pay income tax in the Philippines ***." Indeed, the petitioners' claim for exemption pursuant to

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[5] *Rollo,* pp. 31-32.

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this Agreement had been sustained by the Court of Tax Appeals which set aside and cancelled the assessments made against said petitioners by the BIR for deficiency income taxes for the taxable years 1969-1972.[6] The decision of the Court of Tax Appeals to this effect was contested in this Court by the Commissioner of Internal Revenue,[7] but the same was nonetheless affirmed on August 12, 1986.[8]

But even if exempt from *paying income tax*, said petitioners were, it is contended by the respondents, not excused from *filing income tax returns*. For the Internal Revenue Code (Sec. 45, *supra*) requires the filing of an income tax return also by any "alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines"; and since the petitioners, although aliens residing within the Philippines, had failed to do so, they had been properly prosecuted and convicted for having thus violated the Code.

"What the law requires," states the challenged judgment of the Court of Appeals, "is merely physical or bodily presence in a given place for a period of time, not the intention to make it a permanent place of abode. It is on this proposition, taken in the light of the established facts on record to the effect that almost all of the appellants were born here, repatriated to the US and to come back, in the latest in 1967, and to stay in the Philippines up to the present time, that makes appellants resident aliens not merely transients or sojourners which residence for quite a long period of time, coupled with the amount and source of income within the Philippines, renders immaterial, for purposes of filing the income tax returns as contra-distinguished from the payment of income tax, their intention to go back to the United States."

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[6] Decision dated Dec. 14, 1984, written for the Court by Associate Judge Alex Z. Reyes.

[7] G.R. Nos. 70116-19.

[8] 143 SCRA 397; the decision having been written for the Second Division of the Court by Paras, *J.*, with whom concurred Feria, Fernan, Alampay, and Gutierrez, Jr., *JJ.*

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Each of the petitioners does indeed fall within the letter of the codal precept that an "alien residing in the Philippines" is obliged "to file an income tax return." None of them may be considered a *non-resident alien*, "a mere transient or sojourner," who is not under any legal duty to file an income tax return under the Philippine Tax Code. This is made clear by Revenue Regulations No. 2 of the Department of Finance of February 10, 1940,[9] which lays down the relevant standards on the matter:

"An alien actually present in the Philippines who is not a mere transient or sojourner is a resident of the Philippines for purposes of income tax. Whether he is a transient or not is determined by his intentions with regards to 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 as 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 to 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."

The petitioners concede that the foregoing standards have been "a good yardstick," and are in fact not at substantial variance from American jurisprudence. [10] They acknowledge, too, that "their exemption under the Bases Agreement relates simply to non-liability for the payment of income tax, not to the filing of *** (a return)." But, they argue[11] —

"*** after having expressly recognized that petitioners need not pay income tax here, there appears to be no logic in requiring them to file income tax returns which anyhow would serve no practical purpose since their liability on the amounts stated thereon can hardly

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[9] SEC. 5.

[10] Petitioners' brief (*Rollo*, p. 90), pp. 10-11.

[11] *Id.*, p. 11.

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be exacted. The more practical view, taking into account policy considerations that prompted the Government of the Republic of the Philippines to exempt the petitioners, as well as other American citizens similarly situated, from the payment of income tax here, is to recognize the lesser act of filing within the exemption granted. This is simply being consistent with the reason behind the grant of tax-exempt status to petitioners."

Pointing out further to what they consider "the administrative implementation of that (tax-exemption) provision (of the Bases Agreement) by both governments for about 22 years (which did not require the filing of income tax returns by American citizen employees holding 9-A special visas like petitioners), and to "the higher plane of political realities which prompted the Philippine Government to partially surrender its inherent right to tax," petitioners submit that "the particular problem involved in these cases is a matter that has to find solution and ought to be dealt with in conference tables rather than before the court of law."[12]

Quite apart from the evidently distinct and different character of the *requirement to pay income tax* in contrast to the *requirement to file a tax return*, it appears that the exemption granted to the petitioners by the Bases Agreement from payment of income tax is not absolute. By the explicit terms of the Bases Agreement, it exists only as regards income derived from their employment "in the Philippines in connection with construction, maintenance, operation or defense of the bases"; it does not exist in respect of other income, *i.e.*, "income derived from Philippine sources or sources other than the US sources." Obviously, with respect to the latter form of income, *i.e.*, that obtained or proceeding from "Philippine sources or sources other than the US sources," the petitioners, and all other American nationals who are residents of the Philippines, are legally bound to pay tax thereon. In other words, so that American nationals residing in the country may be relieved of the duty to pay income tax for any given year, it is incumbent on them to show the Bureau of Internal Revenue that in that year they had derived income exclusively from their employment in connection with the U. S. bases, and none whatever "from Philippine sources

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or sources other than the US sources." They have to make this known to the Government authorities. It is not in the first instance the latter's duty or burden to make unaided verification of the sources of income of American residents. The duty rests on the U.S. nationals concerned to invoke and *prima facie* establish their tax-exempt status. It cannot simply be presumed that they earned no income from any other sources than their employment in the American bases and are therefore totally exempt from income tax. The situation is no different from that of Filipino and other resident income-earners in the Philippines who, by reason of the personal exemptions and permissible deductions under the Tax Code, may not be liable to pay income tax year for any particular year; that they are not liable to pay income tax, no matter how plain or irrefutable such a proposition might be, does not exempt them from the duty to file an income tax return.

These considerations impel affirmance of the judgments of the Court of Appeals and the Trial Court.

WHEREFORE, the petition for review on *certiorari* is DENIED, and the challenged decision of the Court of Appeals is AFFIRMED. Costs against petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

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[12] *Id.,* pp. 14-15.