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WHEREFORE, Search Warrant No. 7 issued on 31 May 1972 by respondent Judge is declared NULL and VOID and of no force and effect. The Temporary Restraining Order issued by this Court on 6 June 1972 is hereby made PERMANENT. The amount of ₱379,200.00 allegedly seized from the house of petitioner Quintero, now in the possession of the Central Bank, and already demonetized, is left with said Central Bank, to be disposed of, as such, in accordance with law and the regulations.

SO ORDERED.

Melencio-Herrera, Paras, and *Sarmiento, JJ.*, concur.

Yap, C.J., (*Chairman*) took no part, counsel for petitioner.

FIRST DIVISION

[G.R. No. L-46029. June 23, 1988]

N.V. REEDERIJ "AMSTERDAM" and ROYAL INTEROCEAN LINES, *petitioners, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; INCOME TAX; TAX ON FOREIGN CORPORATIONS; CASUAL BUSINESS ACTIVITY IN THE PHILIPPINES BY A FOREIGN CORPORATION DOES NOT AMOUNT TO ENGAGING IN TRADE OR BUSINESS FOR PURPOSES OF TAXATION.**— Petitioner N.V. Reederij "AMSTERDAM" is a foreign corporation not authorized or licensed to do business in the Philippines. It does not have a branch office in the Philippines and it made only two calls in Philippine ports, one in 1963 and the other in 1964. In order that a foreign corporation may be considered engaged in trade or business, its business transactions must be continuous. A

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casual business activity in the Philippines by a foreign corporation, as in the present case, does not amount to engaging in trade or business in the Philippines for income tax purposes.

2. ID.; ID.; ID.; HOW FOREIGN CORPORATION IS TAXED.— A foreign corporation engaged in trade or business within the Philippines, or which has an office or place of business therein, is taxed on its total net income received from all sources within the Philippines at the rate of 25% upon the amount but which taxable net income does not exceed ₱100,000.00, and 35% upon the amount but which taxable net income exceeds ₱100,000.00. On the other hand, a foreign corporation not engaged in trade or business within the Philippines and which does not have any office or place of business therein is taxed on income received from all sources within the Philippines at the rate of 35% of the gross income.

APPEARANCES OF COUNSEL

Bito, Misa & Lozada Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

GANCAYCO, *J.*:

The issue posed in this petition is the income tax liability of a foreign shipping corporation which called on Philippine ports to load cargoes for foreign destination on two occasions in 1963 and 1964, respectively, and which collected freight fees on these transactions.

From March 27 to April 30, 1963, MV "Amstelmeer," and from September 24 to October 28, 1964, MV "Amstelkroon," both of which are vessels of petitioner N.B. Reederij "AMSTERDAM," called on Philippine ports to load cargoes for foreign destination. The freight fees for these transactions were paid abroad in the amount of US $98,175.00 in 1963 and US $137,193.00 in 1964. In these two instances, petitioner Royal Interocean Lines acted as husbanding agent for a fee or

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commission on said vessels. No income tax appears to have been paid by petitioner N.V. Reederij "AMSTERDAM" on the freight receipts.

Respondent Commissioner of Internal Revenue, through his examiners, filed the corresponding income tax returns for and in behalf of the former under Section 15 of the National Internal Revenue Code. Applying the then prevailing market conversion rate of ₱3.90 to the US $1.00, the gross receipts of petitioner N.V. Reederij "Amsterdam" for 1963 and 1964 amounted to ₱382,882.50 and ₱535.052.00, respectively. On June 30, 1967, respondent Commissioner assessed said petitioner in the amounts of ₱193,973.20 and ₱262,904.94 as deficiency income tax for 1963 and 1964, respectively, as a non-resident foreign corporation not engaged in trade or business in the Philippines under Section 24 (b) (1) of the Tax Code.

On the assumption that the said petitioner is a foreign corporation engaged in trade or business in the Philippines, on August 28, 1967, petitioner Royal Interocean Lines filed an income tax return of the aforementioned vessels computed at the exchange rate of ₱2.00 to US$1.00[1] and paid the tax thereon in the amount of ₱1,835.52 and ₱9,448.94, respectively, pursuant to Section 24 (b) (2) in relation to Section 37 (B) (e) of the National Internal Revenue Code and Section 163 of Revenue Regulations No. 2. On the same two dates, petitioner Royal Interocean Lines as the husbanding agent of petitioner N.V. Reederij "AMSTERDAM" filed a written protest against the abovementioned assessment made by the respondent Commissioner which protest was denied by said respondent in a letter dated March 3, 1969. On March 31, 1969, petitioners filed a petition for review with the respondent Court of Tax Appeals praying for the cancellation of the subject assessment. After due hearing, the respondent court, on December 1, 1976, rendered a decision modifying said assessments by eliminating the 50% fraud compromise penalties imposed upon petitioners. Petitioners filed a motion for reconsideration of said decision

[1] Exhibits "A" and "B".

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but this was denied by the respondent court. Hence, this petition for review where petitioners raised the following issues:

"A. WHETHER N.V. REEDERIJ 'AMSTERDAM,' NOT HAVING ANY OFFICE OR PLACE OF BUSINESS IN THE PHILIPPINES, WHOSE VESSELS CALLED ON THE PHILIPPINE PORTS FOR THE PURPOSE OF LOADING CARGOES ONLY TWICE — ONE IN 1963 AND ANOTHER IN 1964 — SHOULD BE TAXED AS A FOREIGN CORPORATION NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES UNDER SECTION 24(b) (1) OF THE TAX CODE OR SHOULD BE TAXED AS A FOREIGN CORPORATION ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES UNDER SECTION 24(b) (2) IN RELATION TO SECTION 37 (e) OF THE SAME CODE; AND

B. WHETHER THE FOREIGN EXCHANGE RECEIPTS OF N.V. REEDERIJ "AMSTERDAM" SHOULD BE CONVERTED INTO PHILIPPINE PESOS AT THE OFFICIAL RATE OF ₱2.00 TO US$1.00, OR AT ₱3.90 TO US$1.00."

Petitioners contend that respondent court erred in holding that petitioner N.V. Reederij "AMSTERDAM" is a non-resident foreign corporation because it allegedly disregarded Section 163 of Revenue Regulations No. 2 (providing for the determination of the net income of foreign corporations doing business in the Philippines) and in holding that the foreign exchange receipts of said petitioner for purposes of computing its income tax should be converted into Philippine pesos at the rate of ₱3.90 to US$1.00 instead of ₱2.00 to US$1.00.

The petition is devoid of merit.

Petitioner N.V. Reederij "AMSTERDAM" is a foreign corporation not authorized or licensed to do business in the Philippines. It does not have a branch office in the Philippines and it made only two calls in Philippine ports, one in 1963 and the other in 1964. In order that a foreign corporation may be considered engaged in trade or business, its business transactions must be continuous. A casual business activity in the Philippines by a foreign corporation, as in the present case, does not amount

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to engaging in trade or business in the Philippines for income tax purposes.

The Court reproduces with approval the following disquisition of the respondent court —

"A corporation is itself a taxpaying entity and speaking generally, for purposes of income tax, corporations are classified into (a) domestic corporations and (b) foreign corporations. (Sec. 24(a) and (b), Tax Code.) Foreign corporations are further classified into (1) resident foreign corporations and (2) non-resident foreign corporations. (Sec. 24(b) (1) and (2). Tax Code.) A resident foreign corporation is a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein (Sec. 84(g), Tax Code) while a non-resident foreign corporation is a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein. (Sec. 84(h), Tax Code.)

A domestic corporation is taxed on its income from sources within and without the Philippines, but a foreign corporation is taxed only on its income from sources within the Philippines. (Sec. 24(a), Tax Code; Sec. 16, Rev. Regs. No. 2.) However, while a foreign corporation doing business in the Philippines is taxable on income solely from sources within the Philippines, it is permitted to claim deductions from gross income but only to the extent connected with income earned in the Philippines (Secs. 24(b) (2) and 37, Tax Code.) On the other hand, foreign corporations not doing business in the Philippines are taxable on income 'from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits and income and capital gains.' The tax is 30% (now 35%) of such gross income. (Sec. 24 (b) (1), Tax Code.)

At the time material to this case, certain corporations were given special treatment, namely, building and loan associations operating as such in accordance with Section 171 of the Corporation Law, educational institutions, domestic life insurance companies and foreign life insurance companies doing business in the Philippines. (Sec. 24(a) & (c), Tax Code.) It bears emphasis, however, that foreign life insurance companies which were not doing business in the Philippines were taxable as other foreign corporations not authorized to do business in the Philippines. (Sec. 24(c) Tax Code.)

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Now to the case at bar. Here, petitioner N.V. Reederij 'Amsterdam' is a non-resident foreign corporation, organized and existing under the laws of The Netherlands with principal office in Amsterdam and not licensed to do business in the Philippines. (pp. 8-81, CTA records.) As a non-resident foreign corporation, it is thus a foreign corporation, not engaged in trade or business within the Philippines and not having any office or place of business therein. (Sec. 84(h), Tax Code.) As stated above, it is therefore taxable on income from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits and income and capital gains, and the tax is equal to thirty *per centum* of such amount, under Section 24(b) (1) of the Tax Code. The accent is on the words — 'of such amount.' Accordingly, petitioner N. V. Reederij 'Amsterdam' being a non-resident foreign corporation, its taxable income for purposes of our income tax law consists of its gross income from all sources within the Philippines.

The law seems clear and specific. It thus calls for its application as worded as it leaves no leeway for interpretation. The applicable provision imposes a tax on foreign corporations falling under the classification of non-resident corporations without any exceptions or conditions, unlike in the case of foreign corporations engaged in trade or business within the Philippines which contained (at the time material to this case) an exception with respect to foreign life insurance companies. Adherence to the provision of the law, which specifies and determines the taxable income of, and the rate of income tax applicable to, non-resident foreign corporations, without mentioning any exceptions, would therefore lead to the conclusion that petitioner N.V. Reederij 'Amsterdam' is subject to income tax on gross income from all sources within the Philippines."

A foreign corporation engaged in trade or business within the Philippines, or which has an office or place of business therein, is taxed on its total net income received from all sources within the Philippines at the rate of 25% upon the amount but which taxable net income does not exceed ₱100,000.00, and 35% upon the amount but which taxable net income exceeds ₱100,000.00.[2] On the other hand, a foreign corporation not engaged in trade or business within the Philippines and which

[2] Section 84(g) National Internal Revenue Code; Section 24(b) (2).

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does not have any office or place of business therein is taxed on income received from all sources within the Philippines at the rate of 35% of the gross income.[3]

Petitioner relies on Section 24 (b) (2) and Section 37 (B) (e) of the Tax Code and implementing Section 163 of the Income Tax Regulations but these provisions refer to a foreign corporation engaged in trade or business in the Philippines and not to a foreign corporation not engaged in trade or business in the Philippines like petitioner-ship-owner herein. Thus, the respondent court aptly ruled:

"It must be stressed, however, that Section 37 (e) of the Code, as implemented by Section 163 of the Regulations, provides the rule of the determination of the net income taxable in the Philippines of a foreign steamship company doing business in the Philippines. To assure that non-resident foreign steamship companies not engaged in business in the Philippines and not having any office or place of business herein are not covered therein, the regulations explicitly and clearly provide that 'the net income of a foreign steamship company doing business in or from this country is ascertained,' under the formula contained therein, 'for the purpose of the income tax.' The reason is easily discernible. As stated above, the taxable income of non-resident foreign corporations consists of its gross income from all sources within the Philippines. Accordingly, a foreign steamship corporation derives income partly from sources within and partly from sources without the Philippines if it is *carrying on a business of transportation service* between points in the Philippines and points outside the Philippines. (Vol. 3, 1965, Federal Taxes, Par. 16389.) Only then does Section 37 (e) of the Tax Code, are implemented by Section 163 of the Regulations, apply in computing net income subject to tax. There is no basis therefore for an assertion 'that Section 37 (e) does not distinguish between a foreign corporation engaged in business in the Philippines and a foreign corporation not engaged in business in the Philippines.'" (p. 84, C.T.A. records.) (Decision, pp. 11-12.)

The conversion rate of ₱2.00 to US$1.00 which petitioners claim should be applicable to the income of petitioners for income tax purposes instead of ₱3.90 to $1.00 is likewise untenable.

[3] Section 84(h) National Internal Revenue Code; Section 24 (b) (1).

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The transactions involved in this case are for the taxable years 1963 and 1964. Under Rep. Act No. 2609, the monetary board was authorized to fix the legal conversion rate for foreign exchange. The free market conversion rate during those years was ₱3.90 to US$1.00.

'This conversion rate issue was definitely settled by this Court in the case of *Commissioner of Internal Revenue vs. Royal Interocean Lines and the Court of Tax Appeals*,[4] to wit:

"It should be noted that on July 16, 1959, the policy incorporated in Circular No. 20 and implemented in subsequent circulars was relaxed with the enactment of Republic Act No. 2609 which directed the monetary authorities to take steps for the adoption of a four-year program of gradual decontrol, during which the Monetary Board, with the approval of the President, could and did fix the conversion rate of the Philippine peso to the US dollar at a ratio *other* than that prescribed in Section 48 of Republic Act 265. During the period involved in the case at bar, the free market conversion rate ranged from ₱3.47 to ₱3.65 to a US dollar at which rate the freight fees in question were computed in the contested assessment. Inasmuch as said fees were revenues derived from 'foreign exchange' transactions, it follows necessarily that the petitioner was fully justified in computing the taxpayer's receipts at said free market rates.

"XXX XXX XXX

"The case of the United States Lines, on which the appealed decision of the Court of Tax Appeals is anchored, refers to transactions that took place *before* the approval of Republic Act 2609 on July 16, 1959 when the only legal rate of exchange obtaining in the Philippines was ₱2 to US$1, and all foreign exchange had to be surrendered to the Central Bank subject to its disposition pursuant to its own rules and regulations. Upon the other hand, the present case refers to transactions that took place during the effectivity of Republic Act 2609 when there was, *apart from* the parity rate, a legal free market conversion rate for foreign exchange transactions, which rate had been fixed in open trading, such as those involved in the case at bar."

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[4] G.R. No. L-26806, July 30, 1970, 34 SCRA 9.

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Indeed, in the course of the investigation conducted by the Commissioner on the accounting records of petitioner Royal Interocean Lines, it was verified that when said petitioner paid its agency fees for services rendered as husbanding agent of the said vessels, it used the conversion rate of ₱3.90 to US$1.00.[5] It is now estopped from claiming otherwise in this case.

WHEREFORE, the petition is DENIED with costs against petitioners. This decision is immediately executory and no extension of time to file motion for reconsideration shall be entertained.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 50733. June 23, 1988]

ATTY. VICENTE T. OCAMPO and PHILIPPINE AIR LINES EMPLOYEES ASSOCIATION (PALEA), *petitioners, vs.* **ATTY. EULOGIO R. LERUM, THE NATIONAL LABOR RELATIONS COMMISSION and THE DEPUTY MINISTER OF LABOR, AMADO G. INCIONG,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; THE COUNSEL WHO NEGOTIATED THE CBA IS ENTITLED TO ATTORNEY'S FEES WHICH EMANATED FROM THE RETROACTIVE WAGE INCREASES HE NEGOTIATED.—

[5] Data A and Data B, p. 709, BIR Records.