

FIRST DIVISION

[G.R. NO. 153793, August 29, 2006]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
JULIANE BAIER-NICKEL, AS REPRESENTED BY MARINA Q.
GUZMAN (ATTORNEY-IN-FACT) RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

Petitioner Commissioner of Internal Revenue (CIR) appeals from the January 18, 2002 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 59794, which granted the tax refund of respondent Juliane Baier-Nickel and reversed the June 28, 2000 Decision^[2] of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5633. Petitioner also assails the May 8, 2002 Resolution^[3] of the Court of Appeals denying its motion for reconsideration.

The facts show that respondent Juliane Baier-Nickel, a non-resident German citizen, is the President of JUBANITEX, Inc., a domestic corporation engaged in "[m]anufacturing, marketing on wholesale only, buying or otherwise acquiring, holding, importing and exporting, selling and disposing embroidered textile products."^[4] Through JUBANITEX's General Manager, Marina Q. Guzman, the corporation appointed and engaged the services of respondent as commission agent. It was agreed that respondent will receive 10% sales commission on all sales actually concluded and collected through her efforts.^[5]

In 1995, respondent received the amount of P1,707,772.64, representing her sales commission income from which JUBANITEX withheld the corresponding 10% withholding tax amounting to P170,777.26, and remitted the same to the Bureau of Internal Revenue (BIR). On October 17, 1997, respondent filed her 1995 income tax return reporting a taxable income of P1,707,772.64 and a tax due of P170,777.26.^[6]

On April 14, 1998, respondent filed a claim to refund the amount of P170,777.26 alleged to have been mistakenly withheld and remitted by JUBANITEX to the BIR. Respondent contended that her sales commission income is not taxable in the Philippines because the same was a compensation for her services rendered in Germany and therefore considered as income from sources outside the Philippines.

The next day, April 15, 1998, she filed a petition for review with the CTA contending that no action was taken by the BIR on her claim for refund.^[7] On June 28, 2000, the CTA rendered a decision denying her claim. It held that the commissions received by respondent were actually her remuneration in the performance of her duties as President of JUBANITEX and not as a mere sales agent thereof. The income derived by respondent is therefore an income taxable in the Philippines

because JUBANITEX is a domestic corporation.

On petition with the Court of Appeals, the latter reversed the Decision of the CTA, holding that respondent received the commissions as sales agent of JUBANITEX and not as President thereof. And since the "source" of income means the activity or service that produce the income, the sales commission received by respondent is not taxable in the Philippines because it arose from the marketing activities performed by respondent in Germany. The dispositive portion of the appellate court's Decision, reads:

WHEREFORE, premises considered, the assailed decision of the Court of Tax Appeals dated June 28, 2000 is hereby REVERSED and SET ASIDE and the respondent court is hereby directed to grant petitioner a tax refund in the amount of Php 170,777.26.

SO ORDERED.^[8]

Petitioner filed a motion for reconsideration but was denied.^[9] Hence, the instant recourse.

Petitioner maintains that the income earned by respondent is taxable in the Philippines because the source thereof is JUBANITEX, a domestic corporation located in the City of Makati. It thus implied that source of income means the physical source where the income came from. It further argued that since respondent is the President of JUBANITEX, any remuneration she received from said corporation should be construed as payment of her overall managerial services to the company and should not be interpreted as a compensation for a distinct and separate service as a sales commission agent.

Respondent, on the other hand, claims that the income she received was payment for her marketing services. She contended that income of nonresident aliens like her is subject to tax only if the source of the income is within the Philippines. Source, according to respondent is the situs of the activity which produced the income. And since the source of her income were her marketing activities in Germany, the income she derived from said activities is not subject to Philippine income taxation.

The issue here is whether respondent's sales commission income is taxable in the Philippines.

Pertinent portion of the National Internal Revenue Code (NIRC), states:

SEC. 25. Tax on Nonresident Alien Individual. –

(A) Nonresident Alien Engaged in Trade or Business Within the Philippines. –

(1) In General. – A nonresident alien individual engaged in trade or business in the Philippines shall be subject to an income tax in the same manner as an individual citizen and a resident alien individual, on taxable income received from all sources within the Philippines. A nonresident alien individual who shall come to the Philippines and stay therein for an aggregate period of more than one hundred eighty (180) days during any

calendar year shall be deemed a "nonresident alien doing business in the Philippines," Section 22(G) of this Code notwithstanding.

x x x x

(B) Nonresident Alien Individual Not Engaged in Trade or Business Within the Philippines. – There shall be levied, collected and paid for each taxable year upon the entire income received from all sources within the Philippines by every nonresident alien individual not engaged in trade or business within the Philippines x x x a tax equal to twenty-five percent (25%) of such income. x x x

Pursuant to the foregoing provisions of the NIRC, non-resident aliens, whether or not engaged in trade or business, are subject to Philippine income taxation on their income received from all sources within the Philippines. Thus, the keyword in determining the taxability of non-resident aliens is the income's "source." In construing the meaning of "source" in Section 25 of the NIRC, resort must be had on the origin of the provision.

The first Philippine income tax law enacted by the Philippine Legislature was Act No. 2833,^[10] which took effect on January 1, 1920.^[11] Under Section 1 thereof, nonresident aliens are likewise subject to tax on income "from all sources within the Philippine Islands," thus –

SECTION 1. (a) There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the Philippine Islands, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the Philippine Islands by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

Act No. 2833 substantially reproduced the United States (U.S.) Revenue Law of 1916 as amended by U.S. Revenue Law of 1917.^[12] Being a law of American origin, the authoritative decisions of the official charged with enforcing it in the U.S. have peculiar persuasive force in the Philippines.^[13]

The Internal Revenue Code of the U.S. enumerates specific types of income to be treated as from sources within the U.S. and specifies when similar types of income are to be treated as from sources outside the U.S.^[14] Under the said Code, compensation for labor and personal services performed in the U.S., is generally treated as income from U.S. sources; while compensation for said services performed outside the U.S., is treated as income from sources outside the U.S.^[15] A similar provision is found in Section 42 of our NIRC, thus:

SEC. 42. x x x

(A) Gross Income From Sources Within the Philippines. x x x

x x x x

(3) Services. – Compensation for labor or personal services performed in the Philippines;

x x x x

(C) Gross Income From Sources Without the Philippines. x x x

x x x x

(3) Compensation for labor or personal services performed without the Philippines;

The following discussions on sourcing of income under the Internal Revenue Code of the U.S., are instructive:

The Supreme Court has said, in a definition much quoted but often debated, that income may be derived from three possible sources only: (1) capital and/or (2) labor; and/or (3) the sale of capital assets. While the three elements of this attempt at definition need not be accepted as all-inclusive, they serve as useful guides in any inquiry into whether a particular item is from "sources within the United States" and suggest an investigation into the nature and location of the activities or property which produce the income.

If the income is from labor the place where the labor is done should be decisive; if it is done in this country, the income should be from "sources within the United States." If the income is from capital, the place where the capital is employed should be decisive; if it is employed in this country, the income should be from "sources within the United States." If the income is from the sale of capital assets, the place where the sale is made should be likewise decisive.

Much confusion will be avoided by regarding the term "source" in this fundamental light. It is not a place, it is an activity or property. As such, it has a situs or location, and if that situs or location is within the United States the resulting income is taxable to nonresident aliens and foreign corporations.

The intention of Congress in the 1916 and subsequent statutes was to discard the 1909 and 1913 basis of taxing nonresident aliens and foreign corporations and to make the test of taxability the "source," or situs of the activities or property which produce the income. The result is that, on the one hand, nonresident aliens and nonresident foreign corporations are prevented from deriving income from the United States free from tax, and, on the other hand, there is no undue imposition of a tax when the activities do not take place in, and the property producing income is not employed in, this country. Thus, if income is to be taxed, the recipient thereof must be resident within the jurisdiction, or the property or activities out of which the income issues or is derived must be situated within the jurisdiction so that the source of the income may be said to have a situs in this country.