10 T.C. 273 (1948)

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A non-resident alien is considered engaged in trade or business within the United States, and is therefore taxable on gains, when they authorize an agent in the U.S. to conduct commodity transactions on their behalf with discretionary authority.

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Summary

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Fernand Adda, a non-resident alien, granted his brother Joseph, residing in the U.S., the authority to trade in commodity futures on his behalf. Joseph executed numerous trades through U.S. brokers. The Tax Court addressed whether Fernand was engaged in trade or business in the U.S. and therefore taxable on the gains. The court held that Fernand was indeed engaged in trade or business in the U.S. because his brother was acting as his agent with broad discretionary powers. The court also held that Adda was entitled to a net short-term capital loss carry-over from 1940 to 1941.

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Facts

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Fernand Adda was a national of Egypt residing in France.r
He authorized his brother, Joseph Adda, a U.S. resident, to trade commodities on U.S. exchanges on his behalf, granting Joseph full discretion over trading decisions.r
Fernand provided Joseph with credits at U.S. brokerage firms and authorized him to access funds from Fernand’s other accounts.r
During 1940 and 1941, Joseph executed numerous commodity trades for Fernand’s account.r
Fernand also conducted some direct trades with U.S. brokers.r

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Adda’s tax liability. Adda petitioned the Tax Court, contesting the deficiency. The Commissioner claimed an additional deficiency in their answer. The Tax Court reviewed the case to determine whether Adda was engaged in trade or business within the U.S. and whether certain losses were deductible.

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Issue(s)

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Whether a nonresident alien is engaged in trade or business within the United States, making them taxable on gains, when they authorize a resident agent in the U.S. to conduct commodity transactions on their behalf with discretionary authority.r
Whether the taxpayer is entitled to a short term capital loss carry-over from 1940 to 1941.r

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Holding

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Yes, because the taxpayer’s brother acted as his agent in the U.S. with discretionary authority to conduct commodity transactions, and this level of activity constitutes engaging in trade or business within the U.S.r
Yes, because the taxpayer had taxable income in 1940 and sustained short term capital losses, which can be carried over to the following year to the extent of the 1940 income.r

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Court’s Reasoning

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The court reasoned that while section 211 (b) of the Internal Revenue Code excludes transactions effected through a resident broker from the definition of

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