70 T.C. 287 (1978)

An individual's presence in the U.S. may constitute residency for U.S. tax purposes, even if they maintain foreign domicile and are in the U.S. on a nonimmigrant visa; treaty exemptions for foreign students are strictly construed and require the individual to be in the U.S. 'solely' for educational purposes and to be a resident of the treaty country.

Summary

Amirali Budhwani, a Pakistani citizen on an F-1 student visa, sought to exclude $5,000 of his U.S. income from taxation under the U.S.-Pakistan income tax treaty. He argued he was a resident of Pakistan and temporarily in the U.S. solely as a student. The Tax Court denied the exclusion, holding that Budhwani was a U.S. resident for tax purposes due to his extended stay and full-time employment, and that he was not in the U.S. 'solely' as a student because of his employment. The court emphasized that treaty exemptions are narrowly applied and that engaging in substantial employment contradicts the 'solely as a student' requirement.

Facts

Petitioner Amirali Budhwani, a citizen of Pakistan, entered the U.S. on January 5, 1973, on an F-1 student visa to study mechanical engineering. He enrolled at Central YMCA Community College as a full-time student in the spring of 1973. In June 1973, Budhwani began full-time employment at Continental Machine Co., working 8-hour day shifts and attending evening classes. He continued full-time employment at Continental through 1974 and 1975, except for a brief layoff. Budhwani did not pay income tax to Pakistan on his U.S. earnings for 1973 and 1974. In March 1975, he applied for permanent residency in the U.S., which was granted in November 1975. On his 1974 U.S. tax return, Budhwani claimed a $5,000 income exclusion under the U.S.-Pakistan income tax treaty for Pakistani residents temporarily in the U.S. solely as students.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Budhwani's 1974 federal income tax, disallowing the $5,000 exclusion. Budhwani petitioned the Tax Court to contest this deficiency.

Issue(s)

1. Whether Amirali Budhwani was a resident of Pakistan for the purposes of the U.S.-Pakistan income tax treaty in 1974.
2. Whether Amirali Budhwani was temporarily present in the United States 'solely' as a student during 1974 for the purposes of the U.S.-Pakistan income tax treaty.

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Holding

1. No, because Budhwani was a resident of the United States for U.S. tax purposes in 1974 and did not demonstrate he was a resident of Pakistan for Pakistani tax purposes.
2. No, because Budhwani's full-time employment in the U.S. during 1974 indicated he was not in the U.S. 'solely' as a student.

Court's Reasoning

The court reasoned that to qualify for the treaty exclusion, Budhwani had to prove he was both a resident of Pakistan for treaty purposes and temporarily in the U.S. 'solely' as a student. Regarding residency, the treaty defines a 'resident of Pakistan' as someone 'resident in Pakistan for purposes of Pakistan tax and not resident in the United States for the purposes of the United States tax.' The court found Budhwani failed both parts of this test. First, he presented no evidence of being a resident of Pakistan for Pakistani tax purposes, admitting he paid no Pakistan income tax. Second, the court determined Budhwani was a U.S. resident for U.S. tax purposes. Citing section 1.871-2, Income Tax Regs., the court stated, 'An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax.' The court noted Budhwani's extended stay for education, which was expected to take several years, and his full-time employment, indicating an intention beyond that of a 'mere transient.' Although regulations presume non-residency for aliens, the court found Budhwani's extended presence and employment rebutted this presumption. Even assuming non-resident alien status, the court held Budhwani was not in the U.S. 'solely' as a student. His full-time employment, violating the terms of his student visa, and slow academic progress demonstrated his presence was not 'solely' for education. The court concluded, 'it is impossible to find that petitioner was here solely as a student.'

Practical Implications

Budhwani v. Commissioner clarifies the stringent requirements for foreign students to claim income tax treaty exemptions. It highlights that 'resident' status for U.S. tax purposes is broadly defined and can be triggered by a substantial presence and activities demonstrating more than transient intent, even without permanent residency status. The case emphasizes that treaty exemptions, particularly for students, are narrowly construed. Engaging in significant employment, especially in violation of visa terms, undermines claims of being in the U.S. 'solely' for education, regardless of student visa status or enrollment. Legal professionals advising foreign individuals on tax matters must carefully assess the nature and duration of their U.S. presence and activities, particularly employment, to determine residency and treaty eligibility. Later cases applying *Budhwani* often focus on the 'solely as a student' requirement and the extent to which employment activities disqualify treaty benefits.

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