

Adda v. Commissioner 10 T.C. 273 (1948)

Trading Commodities Through An Agent in the U.S.

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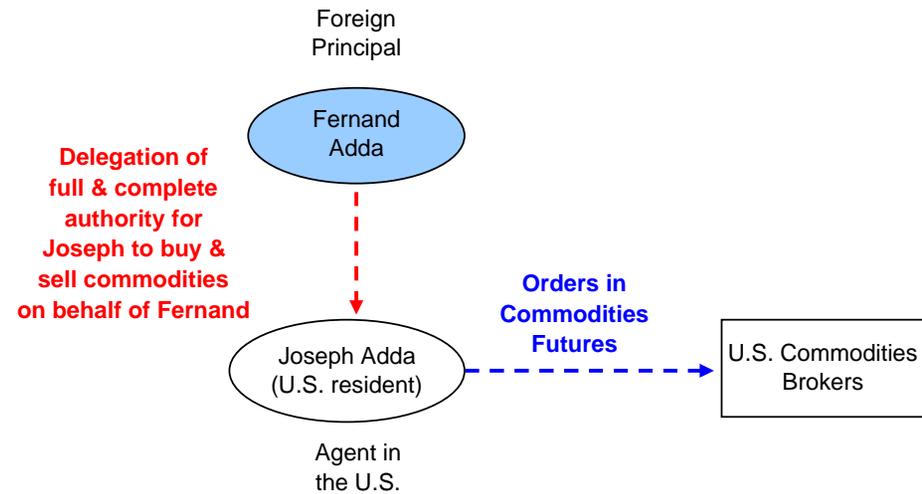
Fernand Adda was a national of Egypt who went to France in May, 1940 and resided in France through the taxable year 1941. He was never a resident of the United States. Fernand made some trades in commodities on commodity exchanges in the United States through resident brokers during and prior to 1941, trading in cotton, wool, grains, silk, hides and copper.

In August, 1939 Fernand discussed with his brother, Joseph Adda, who intended to visit the United States, the possibility that war might affect Fernand's ability to communicate with his brokers in the United States and authorized Joseph Adda, in case of such an interruption of communications, to act for Fernand in placing orders for the purchase or sale of commodities. Fernand outlined to his brother the general trading policy which he desired to have followed.

Joseph Adda was not compensated by Fernand for his services in effecting transactions in commodities in 1940 and 1941. Fernand gave Joseph Adda full and complete authority in dealing for Fernand in commodities to use his own discretion and judgment as to when to buy or sell for Fernand's account and the prices at which the sales or purchases were to be made.

The issue was whether in the taxable year 1941 Fernand, a nonresident alien, was engaged in trade or business in the United States or had an office or place of business therein. The phrase "engaged in trade or business within the United States" does not include the effecting of transactions in the United States in commodities through a resident broker. Trading in commodities for one's own account for profit may be a "trade or business" if sufficiently extensive. Many transactions were effected through different brokers, several accounts were maintained, and gains and losses in substantial amounts were realized. The evidence showed that the trading was extensive enough to amount to a trade or business. Had Fernand come to the United States and effected these transactions while here for a sufficient period he would be taxed upon the profits of these transactions, for he would lose the status of nonresident alien. The court stated that he sought to accomplish, through his brother as his agent, what he could not accomplish directly by himself, that is, to effect transactions by decisions made in the United States by one who is not a resident broker, commission agent, or custodian, and not be taxed upon the gains. In effect he engaged, by his agent, in trade or business in the United States.

Under the law of partnership each partner is the agent of each other partner within the scope of the partnership business. Accordingly a nonresident alien partner is treated as being engaged in trade or business within the United States as the resident members of the partnership, as his agents, are engaged in trade or business in the United States. While no partnership was here involved, Fernand was doing business in the United States through a resident agent as fully as a nonresident alien partner may do business through the agency of a resident partner.



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