REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CARGILL PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7656**
	Members:
- versus -	**ACOSTA,** *P.J.* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:**
	SEP 06 2010; 4:10 pm

x---x

DECISION

UY, J.:

Before this Court is an Amended Petition for Review filed on August 14, 2007,[1] seeking the refund or the issuance of tax credit certificate in favor of petitioner, Cargill Philippines, Inc., in the amount of ₱ 8,771,270.71, allegedly representing erroneously paid withholding taxes on royalties for the period covering June 1, 2005 to April 30, 2007.

THE FACTS

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the 14th Floor, Citibank Tower,

[1] The original Petition for Review was filed on July 10, 2007.

Paseo de Roxas, Makati City, Philippines[2] and is duly registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer.[3] One of its primary purposes is "(t)o own, operate, run and manage plants and facilities for the production, crushing, extracting or otherwise manufacture and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil and other articles of similar nature and their by-products; (and) to engage in research, breeding, development, experiments, production, culture, processing, importation and exportation, and sale by wholesale of agricultural seeds/products of all kinds whatsoever and the rendition of technical assistance and services related thereto".[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes. He holds office at the BIR National Office Building, Diliman, Quezon City.[5]

On June 1, 2002, CAN Technologies and petitioner entered into an Intellectual Property License Agreement ("Agreement") whereby CAN Technologies granted petitioner a non-exclusive, royalty-bearing, and non-transferable license to use its Patents, Technology, and Copyrights in the Philippines to produce, market, distribute, sell, use and apply animal feeds in the Philippines.[6] CAN Technologies, Inc. (CAN Technologies), formerly AGX Services, Inc., is a corporation organized and existing under the laws of the United States of America (USA), with address at 300 Delaware Avenue, Suite 552, Wilmington, Delaware 19801, USA, [7] and has developed and owns, or has the rights to use and sublicense certain proprietary information and technology for formulating animal feed compositions, applying and using animal

---

[2] Joint Stipulation of Facts and Issues (JSFI), Par. 1.1, Docket, p. 363.
[3] Exhibit "B".
[4] Exhibits "A" and "A-1".
[5] JSFI, Par. 1.2, Docket, p. 364.
[6] Exhibit "F", Article 2.1.
[7] JSFI, Par. 1.1, Docket, pp. 363 to 364. Exhibit "VV".

feeds, processing animal feeds, determining the nutritional composition of components used in animal feeds, and producing, marketing, and selling such animal feeds, and intellectual property relating thereto.[8]

As consideration for the said Intellectual Property License, petitioner agreed to pay CAN Technologies a royalty fee equal to one-quarter percent (1.25%) of its Net Sales and five and one-quarter percent (5.25%) of its Consulting Revenues, which results directly or indirectly from the use of CAN Technologies' technology, patents, or copyrights.[9] From June 2005 to April 2007, petitioner allegedly paid royalties to CAN Technologies, as well as withheld the necessary taxes thereon at the rate of fifteen percent (15%).

On December 21, 2005, petitioner filed with the BIR a Letter dated December 14, 2005,[10] requesting a confirmation of its opinion that the royalties to be paid by herein petitioner to CAN Technologies are subject to the preferential tax rate of ten percent (10%) of the gross amount of royalties in accordance with the "most favored nation" clause of the RP-US Tax Treaty[11], in relation to the RP-Bahrain Tax Treaty[12].

In response to petitioner's request, the BIR, through its Assistant Commissioner for Legal Service, James H. Roldan, issued BIR Ruling No. DA-ITAD 60-07 on May 11, 2007[13] stating that by applying the RP-Bahrain Tax Treaty in relation to the "most favored nation" clause of the RP-US Tax Treaty, the royalty fee to be paid under the Agreement is subject to the 15% preferential tax rate on royalties and not 10%. Nevertheless, the requested "most favored nation" tax rate of 10%

---

[8] Exhibit "F".
[9] Exhibit "F", Article 6.1.
[10] Exhibit "D".
[11] The Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income.
[12] The Convention between the Republic of the Philippines and the State of Bahrain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital.
[13] Exhibit "E".

was granted based on the RP-Czech Tax Treaty[14], entered into force on September 23, 2003, which contains provisions on taxes applicable to income derived or which accrued beginning January 1, 2004.

In view of the aforesaid ITAD BIR Ruling and tax treaties, petitioner filed with the BIR Large Taxpayers Service Audit and Investigation Division I on July 10, 2007, a written claim[15] for refund or issuance of tax credit certificate, representing overpayment of final tax erroneously withheld and remitted to the BIR for the period covering June 2005 to April 2007, pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997. On the same date, petitioner filed a Petition for Review before this Court to stop the running of the two-year prescriptive period under the law, and to preserve its right to judicially claim the subject tax refund or tax credit.[16]

Before a responsive pleading could be served, petitioner filed the instant Amended Petition for Review[17] on August 14, 2007. which was admitted by this Court's former Second Division In the Resolution dated October 22, 2007.[18]

Respondent filed an Answer[19] on September 17, 2007, interposing the following Special and Affirmative Defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

---

[14] The Convention between the Czech Republic and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.
[15] Exhibit "XX".
[16] Petition for Review, Par. 26, Docket, p. 14.
[17] Docket, pp. 152 to 167.
[18] Docket, pp. 335 to 336.
[19] Docket, pp. 330 to 332.

6. Petitioner's claim for refund/ issuance of tax credit in the amount of **P8,771,270.71**, as alleged erroneously paid final withholding taxes on royalties for the period of **June 1, 2005 to April 30, 2007** were not fully substantiated by proper documentary evidence.

7. Petitioner failed to comply with the requirements under the RP-US Tax Treaty and the RP-Czech Tax Treaty, for purposes of computing the 10% rate of final withholding taxes on royalties paid by petitioner to CAN Technologies, Inc.;

8. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under ***Sections 204*** *in relation to* ***Section 230 (now 229)*** *of the Tax Code*. Otherwise, its failure to prove the same is fatal to its claim for refund.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

During trial, petitioner presented testimonial and documentary evidence to prove its supposed entitlement to the refund in the amount of ₱ 8,771,270.71, representing the alleged erroneously paid withholding tax on royalties for the period June 1, 2005 to April 30, 2007. On the other hand, respondent's counsel failed to appear during the scheduled presentation of respondent's evidence on July 6, 2009. Thus, upon motion of petitioner's counsel, respondent was deemed to have waived the right to present evidence and to have rested her case and the parties were directed to file their respective memorandum in the Resolution dated July 14, 2009.[20]

After having been granted an extension period until August 15, 2009 in the Order dated July 27, 2009,[21] only petitioner complied and filed its Memorandum on

---

[20] Resolution dated July 14, 2009, required petitioner within twenty (20) days from July 6, 2009 and respondent within 15 days from notice to file their respective Memorandum, Docket, p. 975.
[21] Docket, p. 981.

August 17, 2009 [22] and this case was submitted for decision in the Resolution dated August 24, 2009 sans respondent's Memorandum.[23]

On September 22, 2009, respondent filed a Motion for Reconsideration[24] of the August 24, 2009 Resolution on the ground that petitioner's administrative claim for refund with still pending and there was still no report of investigation of such claim, and prayed that respondent be allowed to adopt all the arguments and affirmative defenses found in the Answer as part of respondent's Memorandum. In the Resolution dated January 4, 2010,[25] the Court's former Second Division granted the said Motion for Reconsideration and accordingly set aside and lifted its earlier Resolution dated August 24, 2009.

In the Order dated January 13, 2010,[26] the Court's former Second Division transferred this case to the First Division pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2010 entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals"*. Subsequently, in the Resolution dated February 23, 2010,[27] this case was deemed submitted for decision as of such date, taking into consideration petitioner's Memorandum, sans respondent's Memorandum.

Respondent, however, again filed a Motion for Reconsideration of the said Resolution on March 24, 2010, praying that respondent be allowed to adopt all the arguments and affirmative defenses found in the Answer as part of respondent's Memorandum. Said motion was granted in the Resolution dated March 29, 2010[28] and this case was deemed submitted for decision, considering petitioner's

---

[22] Docket, pp. 982-1010

[23] Docket, p. 1012.
[24] Docket, pp. 1014 to 1017.
[25] Docket, pp. 1026 to 1027.
[26] Docket, p. 1028.
[27] Docket, p. 1030.
[28] Docket, pp. 1037 to 1038.

Memorandum filed on August 17, 2009 and respondent's arguments and affirmative defenses in alleged in the Answer, which were adopted as respondent's Memorandum.[29]

Hence, this Decision.

THE ISSUES

As jointly stipulated by the parties, these are the issues[30] submitted for resolution of this Court, viz:

> "2.1 Whether petitioner should apply the rate of 15% or 10% in computing the final withholding tax on royalties paid to CAN Technologies, Inc., for the period covering June 1, 2005 to April 30, 2007.
>
> 2.2 Whether or not petitioner erroneously paid final withholding taxes on royalties to CAN Technologies, Inc., for the period covering June 1, 2005 to April 30, 2007.
>
> 2.3 Whether or not petitioner complied with the requirements imposed under the RP-US Tax Treaty and the RP-Czech Tax Treaty.
>
> 2.4 Whether or not petitioner's claim for refund or tax credit of alleged erroneously paid final withholding taxes on royalties made to CAN Technologies, Inc., for the period covering June 1, 2005 to April 30, 2007 were duly substantiated by proper documents.
>
> 2.5 Whether or not petitioner is entitled to the claimed refund or tax credit in the sum of Eight Million Seven Hundred Seventy One Thousand Two Hundred Seventy Pesos and Seventy One Centavos (Php 8,771,270.71) representing erroneously paid final withholding taxes on royalties for the period June 1, 2005 to April 30, 2007."

Considering that respondent was allowed to adopt the arguments and affirmative defenses in the Answer filed on September 7, 2007, as his Memorandum, the issue as to whether or not the claim for refund or tax credit was timely filed at the administrative and judicial levels, shall also be considered. This issue shall be resolved first as it affects the jurisdiction of this Court.

---

[29] Id.
[30] Docket, pp. 365 to 366.

Petitioner's arguments

Petitioner alleges that it was billed by, and paid to, CAN Technologies royalty payments for patents, technology and copyrights, in accordance with their Agreement, as substantiated by invoices and bank debit memos, properly recorded in its books of accounts. In relation thereto, it allegedly withheld and remitted to the BIR 15% final withholding tax on the royalty fees that it paid to CAN Technologies, for the period June 1, 2005 to April 30, 2007, in the total amount of ₱ 26,313,812.00.

However, petitioner claims that it is entitled to the reduced rate of 10% under Article 13 of the RP-US Tax Treaty in relation with the RP-Czech Tax Treaty and therefore, allegedly made an overpayment of ₱ 8,771,270.71, representing the difference between the final taxes withheld on the said royalty fees at the rate of 15% and the taxes that should have been withheld at 10%. Furthermore, petitioner maintains that it is the proper party to file the instant claim which it allegedly filed seasonably.

Respondent's counter-arguments

Respondent contends that petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the BIR, and that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable. According to respondent, petitioner's claim for refund/issuance of tax credit in the amount of ₱ 8,771,270.71 were not fully substantiated by proper documentary evidence, and that petitioner failed to comply with the requirements under the RP-US Tax Treaty and the RP-Czech Tax Treaty, for purposes of computing the 10% rate of final withholding taxes on royalties paid by petitioner to CAN Technologies. That assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions of Section 204 in relation to Section 229 of the NIRC of 1997, otherwise, its failure to prove the same is fatal to its claim for refund. Respondent also maintains that claims for refund are construed strictly against the claimant because it partakes the nature of exemption from taxation, and as such, are looked upon with disfavor.

THE COURT'S RULING

Although the Petition for Review was timely filed, petitioner however failed to sufficiently establish its case.

Timeliness of the filing of the claim for refund or tax credit, both at the administrative and judicial levels.

Sections 204(C) and 229 of the NIRC of 1997 provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or

> penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the foregoing, petitioner has two (2) years from the date of payment of subject tax within which to file both its administrative and judicial claims for refund. In this case, taxes for the royalties due to CAN technologies from petitioner were allegedly paid from June 2005 to April 2007 on the following dates: July 15, 2005; August 15, 2005; September 14, 2005; October 17, 2005; November 15, 2005; December 15, 2005; January 19, 2006; February 15, 2006; March 16, 2006; April 17, 2006; May 12, 2006; June 14, 2006; July 17, 2006; August 10, 2006; September 15, 2006; October 16, 2006; November 15, 2006; December 15, 2006; January 19, 2007; February 13, 2007; March 14, 2007; April 13, 2007; and May 11, 2007.[31]

Counting from the date of the first payment was made, which is July 15, 2005, petitioner had until July 15, 2007 to file its administrative and judicial claims for refund. Petitioner's administrative and judicial claims for refund were both filed on July 10, 2007 which are well within the two-year prescriptive period.

Hence, filed on time.

Failure to show that the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-Czech Tax Treaty were "paid under similar circumstances".

Under the RP-US Tax Treaty, a provision on the "most favored nation" clause[32] applicable to the instant case is mentioned in Article 13(2)(b)(iii) thereof, which provides as follows:

"Article 13
ROYALTIES

[31] Exhibit "JJJ".
[32] The other one is found under Article 9(1)(b) thereof.

1) Royalties derived by a resident of one of the Contracting State from sources within the other Contracting State may be taxed by both Contracting States.

2) However, the tax imposed by that Contracting State shall not exceed—

a) In the case of the United States, 15 percent of the gross amount of the royalties, and

b) In the case of the Philippines, the least of:

(i) 25 percent of the gross amount of the royalties;

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(iii) **the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State.**

xxx xxx xxx." *(Emphasis supplied)*

The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries.[33] The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation.[34] The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable.[35]

---

[33] Salonga, Yap, Public International Law, 255.
[34] Black's Law Dictionary 5th ed., 913.
[35] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

Petitioner claims that on the basis of Article 13(2)(b)(iii) of the RP-US Tax Treaty, it is entitled to the preferential tax rate of ten percent (10%) on royalties based on Article 12(2)(a) of the RP-Czech Tax Treaty which provides as follows:

> "Article 12
> ROYALTIES
>
> 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
>
> 2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
>
>   a) **10 per cent of the gross amount of the royalties** arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, other than that mentioned in sub-paragraph (b), any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;
>
>   xxx xxx xxx." *(Emphasis supplied)*

In interpreting Article 13(2)(b)(iii) of the RP-US Tax Treaty, the Supreme Court, in *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*,[36] had this to say about the said tax treaty, international juridical double taxation, methods of eliminating double taxation, and how the phrase "royalties paid under similar circumstances" should be interpreted, to wit:

> "The RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies.

[36] G.R. No. 127105, June 25, 1999.

> Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.
>
> Double taxation usually takes place when a person is resident of a contracting state and derives income from, or owns capital, in the other contracting state and both states impose tax on that income or capital. In order to eliminate double taxation, a tax treaty resorts to several methods. First, it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.
>
> The second method for the elimination of double taxation applies whenever the state of source is given a full or limited right to tax together with the state of residence. In this case, the treaties make it incumbent upon the state of residence to allow relief in order to avoid double taxation. There are two methods of relief— the exemption method and the credit method. In the exemption method, the income or capital which is taxable in the state of source or situs is exempted in the state of residence, although in some instances it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital. On the other hand, in the credit method, although the income or capital which is taxed in the state of source is still taxable in the state of residence, the tax paid in the former is credited against the tax levied in the latter. The basic difference between the two methods is that in the exemption method, the focus is on the income or capital itself, whereas the credit method focuses upon the tax.
>
> In negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country. Thus the petitioner correctly opined that the phrase 'royalties paid under similar circumstances' in the most favored nation clause of the US-RP Tax Treaty necessarily contemplated 'circumstances that are tax-related.'"

Given the purpose underlying tax treaties and the rationale for the most favored nation, the preferential tax rate of ten (10) percent provided for in the RP-Czech Tax Treaty should apply only if the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-Czech Tax Treaty are paid under similar circumstances. This means that petitioner must prove that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States with respect to taxes imposable upon royalties earned from sources within the Philippines, as those allowed to their Czechs counterparts under the RP-Czech Tax Treaty.

Both Article 13 of the RP-US Tax Treaty and Article 12(2)(b)(a) of the RP-Czech Tax Treaty, earlier quoted, broadly cover income tax on royalties for the use of patents, technology, and copyrights to produce, market, distribute, sell, use and apply animal feeds.

Anent the provisions of the said tax treaties pertaining to giving relief to, or the elimination of, double taxation, they are compared as follows:

RP-US Tax Treaty	RP-Czech Tax Treaty
"Article 23 RELIEF FROM DOUBLE TAXATION Double taxation of income shall be avoided in the following manner: 1) **In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle thereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid or accrued to the Philippines** and, in the case of a United States corporation owning at least 10 percent of the voting stock of a Philippine corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid or accrued to the Philippines by the Philippine corporation paying such dividends with respect to profits out of which such dividends are paid. **<u>Such appropriate amount shall be based upon the amount of tax paid or accrued to the Philippines, but the credit shall not exceed the limitations</u>** (for the	"Article 22 ELIMINATION OF DOUBLE TAXATION xxx xxx xxx 2. In the case of a resident of the Czech Republic, double taxation shall be eliminated as follows: a) **The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of this Convention may also be taxed in the Philippines, but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in the Philippines. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of this Convention, may be taxed in the Philippines**. xxx xxx xxx." *(Emphasis supplied)*

nly

purpose of limiting the credit to the United States tax on income from sources within the Philippines or on income from sources outside the United States) **provided by United States law for the taxable year**. x x x." *(Emphasis and underscoring supplied)*	

A cursory reading of the foregoing provisions would reveal that while both provide the credit method as a means of eliminating international juridical double taxation, We cannot say for certain whether the limitation of the amount that may be credited under the RP-US Tax Treaty would be similar to that stated under the RP-Czech Tax Treaty. Under the RP-US Tax Treaty, reference still has to be made to the *"United States law"* to determine the said limitation, while under the RP-Czech Tax Treaty, it is no longer necessary, since it is already specific, *i.e.*, the deduction (or tax credit) shall not exceed the part of the Czech tax which is appropriate to the income earned.

Records show that petitioner failed to present evidence to prove or establish the provisions of the United States law which would determine the limitation being referred to in Article 23(1) of the RP-US Tax Treaty. Thus, We cannot say for certain that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States with respect to taxes imposable upon royalties earned from sources within the Philippines as those allowed to Czech residents under the RP-Czech Tax Treaty.

The limitation of the amount that may be credited under the RP-US Tax Treaty must be clearly established. This must be so because the similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment, precisely to underscore the need for equality of treatment.[37]

[37] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.,* supra.

Although BIR Ruling No. DA-ITAD 60-07[38], expressly allowed petitioner to apply the 10% preferential tax rate on royalties, after finding that the two conditions for the "most favored nation" tax treatment of royalties are met, the Court is not bound by said findings. It appears that said BIR Ruling merely cited Article 23 of the RP-US Tax Treaty and Article 22 of the RP-Czech Tax Treaty and immediately jumped to conclusion, without further explanation or elaboration, that the mechanism employed by the United States in mitigating the effects of double taxation of income derived by its residents from foreign sources is the same with that employed by the Czech Republic.

Although as a general rule, interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts, such interpretation is not conclusive and will be ignored if judicially found to be erroneous.[39] And in the instant case, We are not inclined to adopt the findings contained in BIR Ruling No. DA-ITAD 60-07 of the BIR-International Tax Affairs Division (ITAD).

Considering that petitioner failed to show that the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-Czech Tax Treaty are "paid under similar circumstances", it becomes unnecessary to address the other issues raised in the instant Amended Petition for Review.

WHEREFORE, premises considered, the instant Amended Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[38] Exhibit "E", at pp. 6 to 7.
[39] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division