REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS SYNTHETIC FIBER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3421

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/10/93

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D E C I S I O N

Petitioner seeks the nullification of the decision of respondent Commissioner dated, September 10, 1981, denying its protest of the assessment, dated April 3, 1981, wherein petitioner was assessed deficiency withholding taxes at source for payments of interest on foreign loans, royalties and dividends for the period covering the fourth quarter of 1975 until the fourth quarter of 1976, in the total amount of ₱379,700.68.

Petitioner is a duly registered Philippine corporation primarily engaged in the manufacture of tows, polyester fiber and yarn. Petitioner's obligation to pay withholding taxes arose out of payments of interest on foreign loans, royalties and dividends to certain non-resident foreign corporations under several agreements (Exhs. "E" to "I", inclusive, and "AR-1"). During the period covered by the assessment, petitioner's practice was to withhold the taxes due on said payments when the same became due and demandable under the applicable contracts and not when they were declared accrued in its books.

In a letter, dated April 3, 1981, which was received by petitioner on May 12, 1981(Ibid., pp. 258-262), respondent informed petitioner that "upon investigation, no deficiency income tax has been found due from (petitioner) for the year 1976. However, the same investigation also disclosed that there is still due from (petitioner) deficiency withholding tax at source in the sum of ₱379,700.68 for the 1st and 4th quarters of the same year, details of which are as follows:

Withholding Tax at Source
(Interest on Foreign Loan)
Fourth Quarter - 1975
January 25, 1976

Interest Accrued		₱417,307.87
15% Tax due thereon		₱ 812,307.87
14% int. fr. 1/25/76 to 4/25/76		28,752.08
Compromise - late payment		50.00
Amount due on 4/26/76		₱ 847,398.26
Less: Amount paid:		
TC # A-00508-A ..	₱ 71,040.00	
OR # 2829626	15,176.00	
OR # 2879625	44,115.00	130,331.00
Balance of tax as of 4/26/76		₱ 711,067.26
14% int. fr. 4/26/76 to 7/26/76		24,887.35
Amount due on 7/26/76		₱ 735,954.61
Less: Payments made on 7/26/76:		
OR # 2997120	₱ 92,947.00	
2997121	1,598,261.00	
2997122	42,030.00	1,733,238.00
Balance of Payment to be Applied to First Quarter, 1976		(₱997,283.39)

First Quarter - 1976
April 25, 1976

Interest Accrued	₱ 4,483,332.69
15% Tax due thereon	672,499.90
14% int. fr. 4/26/76 to 10.26.76.....	23,537.50
Compromise - late payment	50.00
Amount due on 10/25/76	₱ 696,087.40
Less: Balance of Payment made on 10/25/76	(997,283.39)
Balance of Payment to be Applied to Second Quarter, 1976	(₱ 301,195.99)

Second Quarter - 1976
July 25, 1976

Interest Accrued		₱ 4,082,379.99
15% Tax due thereon		₱ 612,357.00
14% int. fr. 4/26/76 to 10.26.76.....		21,432.50
Compromise - late payment		50.00
Amount due on 10/25/76		₱ 633,839.50
Less: Balance of Payment made on 10/25/76		(301,195.99)
Balance of Tax		₱ 332,643.51
14% int. fr. 10/25/76 to 1/25/77		11,642.52
Amount due on 1/25/77		₱ 344,286.03
Less: Payment made on 1/25/77:		
OR # 5026398	₱ 40,498.00	
# 5026399	40,824.00	
# 5026400	805,390.00	
# 5026401	301,312.00	
# 5026402	44,339.00	(₱ 1,232,363.00)
Balance of Payment to be Applied to Third Quarter, 1976		(₱ 888,076.98)

Third Quarter - 1976
October 25, 1976

Interest Accrued	₱ 3,192,735.65
15% Tax due thereon	₱ 478,910.35
14% int. fr. 10/24/76 to 1/25/77	16,761.86
Compromise - late payment	50.00
Amount due on 1/25/77	₱ 495,722.21
Less: Balance of Payment made on 1/25/77	(888,076.98)
Balance of Payment to be Applied to Fourth Quarter, 1976	(₱ 392,354.77)

Fourth Quarter - 1976
January 25, 1977

Interest Accrued	₱ 3,749,549.46
15% Tax due thereon	₱ 562,432.42
Less: Balance of Payment made on 1/25/77	(392,354.77)
Balance of Tax	₱ 170,077.65
14% int. fr. 10/24/76 to 1/25/77	71,432.61
Compromise - late payment	50.00
AMOUNT STILL DUE AND COLLECTIBLE	₱ 241,560.26

(Royalty)
Fourth Quarter - 1975
January 25, 1976

Royalty Accrued	₱ 1,485,058.15
35% Tax due thereon	₱ 519,770.35
14% int. fr. 1/25/76 to 4/25/76	18,191.97
Compromise - late payment	50.00
Amount due on 4/26/76	₱ 538,012.32
Less: Amount credited (TDC #030-4-26-76)	511,276.00
Balance	₱ 26,726.32
Add: 14% int. fr. 4/26/76 to 10/25/76	1,871.54
Amount due on 10.25.76	₱ 28,607.86
Less: Amount paid on 10/25/76 under OR No. 2997115	508,769.00
Balance of Payment to be applied to First Quarter, 1976	(₱ 480,161.14)

First Quarter - 1976
April 25, 1976

Royalty Accrued	₱ 407,668.05
35% Tax due thereon	₱ 142,683.82
14% int. fr. 1/25/76 to 4/25/76	9,987.87
Compromise - late payment	50.00
Total	₱ 152,721.69
Less: Balance of Payment under OR # 2997115 dated 10/25/76 ...	(480,161.14)
Balance of Payment to be applied to First Quarter, 1976	(₱ 327,439.45)

Second Quarter - 1976
July 25, 1976

Royalty Accrued	₱ 1,064,130.89
35% Tax due thereon	₱ 376,655.81
14% int. fr. 7/25/76 to 10/25/76	13,042.95
Amount due on 10/25/76	₱ 385,698.76
Less: Balance of Payment made on 10/25/76 under OR # 2997115 ...	(327,439.45)
Balance of tax	₱ 58,259.31
Add: 14% int. fr. 1/25/76 to 4/25/76	3,733.63
Compromise - late payment	50.00
Total Amount due on 4/11/77	₱ 62,042.94
Less: Amount paid under OR # 0666256 4/11/77	(447,506.00)
Balance of Payment to be applied to Third Quarter, 1976	(₱ 385,463.06)

Third Quarter - 1976
October 25, 1976

Royalty Accrued	₱ 671,856.76
35% Tax due thereon	₱ 235,149.87
14% int. fr. 10/25/76 to 4/11/77.....	15,069.91
Compromise - late payment	50.00
Total amount due on 4/11/77..........	₱ 250,269.78
Less: Balance of Payment made on 4/11/77 under OR # 0666256, 4/11/77 ...	(385,463.06)
Balance of Payment to be applied to Fourth Quarter, 1976	(₱ 135,193.28)

Fourth Quarter - 1976
January 25, 1977

Royalty Accrued	₱	597,842.32
35% Tax due thereon..................	₱	209,244.81
14% Int. fr. 1/25/77 to 4/11/77......		6,166.49
Amount due on 4/11/77................	₱	215,411.30
Less: Balance of Payment made on 4/11/77 under OR No. 0666256...........		(135,193.28)
Balance of Tax.......................	₱	80,218.02
Add: 14% int. fr. 4/11/77 to 1/25/80.		31,314.69
Compromise - late payment............		50.00
AMOUNT STILL DUE AND COLLECTIBLE.....	₱	111,582.71

(Dividend)
First Quarter - 1976
April 25, 1976

Dividend Accrued			
Teijin Ltd. (Tokyo, Japan)..............	₱ 1,478,377.50		
Madelein Vlachos (N/R Foreigner...........	6,562.50		
Toyo Menka Kaishu, Ltd. (Resident)..........	211,199.00	₱	1,696,139.00
Withholding tax at source due thereon:			
35% on ₱1,478,377.50..	₱ 517,520.13		
30% on ₱ 6,562.50..	1,968.75		
10% on ₱ 211,199.00..	25,119.90	₱	540,520.78
Add: 14% int. fr. 4/25/76 to 7/25/76...			19,125.24
Compromise - late payment..............			50.00
Amount due on 7/25/76..................		₱	559,696.02
Less: Payment made on 7/25/76 under OR No. 782534...............			540,520.78
B a l a n c e..........................		₱	19,175.24
Add: 14% int. fr. 7/25/76 to 4/25/79..			7,382.47
AMOUNT STILL DUE AND COLLECTIBLE		₱	26,557.71"

The assessment was based on the findings of an investigation conducted by the Bureau of Internal Revenue (BIR) which showed, among others, that:

> "As regards to (sic) the withholding tax at source liability of Filsyn, it was gathered that for the year under review, Filsyn (sic) method of payment of withholding tax at source is based on actual remittance or payment of royalty, interest and dividends abroad and not on accrual basis pursuant to B.I.R. Ruling No. 7-003, dated February 26, 1971. Following the said ruling, a recomputation of the taxpayer's withholding tax at source liability on interest paid and accrued to several foreign banks and lending institutions and royalty paid and accrued to Teijin, Tokyo, Japan was made and it was gathered that Filsyn is still further liable to pay the following deficiency interest for failure to pay on time the corresponding withholding tax at source based on accrual thereof, which is as follows:

Deficiency interest on withholding tax on interest to foreign loans............	₱ 166,653.61
Deficiency interest on withholding tax on royalty...........	63,762.24
	₱ 230,415.85

xxx xxx xxx

> "As regards to (sic) the withholding tax on cash dividends, it was further gathered that Filsyn failed to pay on time the corresponding withholding tax of ₱540,520.78 due on ₱1,696,139.00 cash dividends as computed in the attached working papers marked Annex C-1. From the records, it was found out that Filsyn declared cash dividends payable on March 26, 1976, hence the withholding tax is due on April 26, 1976, which is after 25 days from the end of the first calendar quarter of 1976, as provided for under Section 54 of the Tax Code. However, the withholding tax at source due on

> the aforesaid amount of cash dividends was only paid on July 26, 1976, hence the corresponding deficiency interest for late payment amounting to P 18,918.22 is recommended herein for collection." (BIR Records, pp. 243-244; Exh. "S-1")

On May 18, 1981, petitioner protested the assessment on the ground, among others, that the BIR erred in holding that its obligation to remit the withholding taxes arose from the moment said payments were accrued in petitioner's books, regardless of when actual remittance of the payments was made (Exh. "B").

In the assailed decision, dated September 10, 1981, respondent denied petitioner's protest and advised the latter that its decision was already final (Exh. "C"). Thus, this petition filed with Us on February 4, 1982.

The lone issue to be resolved by Us is whether petitioner is required to withhold taxes at source on its foreign loan, royalty and dividend payments to non-resident corporations which have been accrued as liabilities in its books, but have not yet become due and demandable nor been actually paid.

We find no reason to disturb the assailed decision.

We have had occasions in the past to rule on the issue of when taxes must be withheld in case the payor (withholding agent under the Tax Code) uses the accrual method of accounting. In the cases of <u>Bayer</u>

<u>Pharmaceutical Co., Inc. vs. Commissioner of Internal Revenue</u> (CTA Case No. 2846, March 16, 1979), <u>Construction Resources of Asia vs. Commissioner of Internal Revene</u> (CTA Case No. 3307, November 25, 1983), and <u>Western Palawan Timber Corp. vs. Commissioner of Internal Revenue</u> (CTA Case No. 3544, June 5, 1987), we held that: as a general rule, the withholding of taxes at source from income due non-resident foreign corporations must be made <u>at the time of the accrual, and not of the actual payment</u>; and that the only exception to this rule -- that is, the only time that withholding of taxes must be done upon the actual payment, and not the accrual in the books of the payor -- is when there is a government restriction which prevents the actual remittance of the income due the non-resident corporate payee <u>existing at the time the accrual of said income was made on the payor's books</u>. Clearly, in the case at bar, since no government restriction existed at the time the subject accrual was made, to prevent actual remittance of the subject incomes; then, the general rule applies. That is, petitioner was obliged under the law to withhold and remit taxes at source on such incomes accrued in its books.

This holding is further bolstered by the ruling of the Supreme Court in the recent case of <u>Commissioner of</u>

Internal Revenue vs. Wyeth Suaco laboratories, Inc. and the Court of Tax Appeals (202 SCRA 125 [1991]), which reads:

> "Wyeth Suaco questions the legality of the regulation imposed by the Bureau of Internal Revenue of requiring a withholding agent or taxpayer to remit the taxes deducted and withheld at source on incomes which have not yet been paid. It maintains the stand that withholding tax at source should only be remitted to the Bureau of Internal Revenue once the incomes subject to withholding tax at source have actually been paid. Thus, private respondent avers that it was not liable to remit the taxes withheld at source on royalties and dividends unless these incomes have been actually paid to its foreign licensors and stockholders.
>
> "xxx xxx xxx
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> "Moreover, the records show that Wyeth Suaco adopted the accrual method of accounting wherein the effect of transactions and other events on assets and liabilities are recognized and reported in the time periods to which they relate rather than only when cash is received or paid. The "Report of Investigation" submitted by the tax examiner indicated that accrual was the basis of the taxpayer's return. Thus, private respondent recorded accrued royalties and dividends payable as well as the withholding tax at source payable on these incomes. Having deducted and withheld the tax at source and having recorded the withholding tax at source payable in its books of accounts, private respondent was obligated to remit the same to the Bureau of Internal Revenue."

Petitioner makes much of the fact that the subject accrued incomes have not yet become due and demandable at the time the accrual was made. According to petitioner, since such accrued incomes have not yet become due and demandable, there is as yet, as far as the non-resident corporations-recipients of such payments are concerned, no taxable income from which petitioner must withhold taxes. Petitioner goes on to contend that:

> "The rationale of the Bayer decision xxx was that although the non-resident foreign corporation had the theoretical right to collect the royalties, it was forbidden the right to receive them or dispose of them. Without the power to command payment to itself nor the power to dispose of the 'income,' no economic advantage accrued to the non-resident foreign corporation. The 'income' was therefore unrealized and highly artificial without the element of control over the amounts. Accordingly, no gain, profit or income was thereby created. There being no income subject to withholding of tax-at-source, no duty to withhold and pay the tax arose at that time. xxx
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> "Although the case at bar does not involve any 'blocking proclamation' against the remittance of funds, the non-resident foreign corporations involved in this case, at the time the amounts were accrued in Filsyn's books likewise did not have the right to receive them or dispose of them and neither did they have the power to command payment to themselves or others, until these amounts become due and demandable under the relevant contract. No economic gain accrued to the non-resident foreign corporation prior to that time. As in the Bayer and L.D. Caulk cases, the non-resident foreign corporations did not yet have 'gains, profits, and income,' at the time of accrual by the debtor corporation."

We cannot agree with petitioner. The question of whether or not the subject accrued incomes have become due and demandable at the time of such accrual, is not pivotal in this case.

In the first place, as stated by petitioner in its memorandum, Statement No. 5, par. 7(e) of the Accounting Standards Council defines the term "accrued liabilities" as constituting "liabilities for expenses incurred on or before the balance sheet date but payable at a later date, usually to specific persons, and determinable with reasonable accuracy." (Underscoring supplied). Clearly, liabilities -- such as the subject incomes -- may only be accrued if they are payable later than the balance sheet date. In other words, the subject incomes were accrued in the books of petitioner precisely because they were not yet due and demandable.

In the second place, the present case must be differentiated from that of Bayer. In the earlier case, the withholding agent, Bayer Pharmaceuticals, could not, even if it wanted to, remit the royalty payments to their non-resident foreign corporation-recipient. The Central Bank prohibition, which was beyond the control of both Bayer and the non-resident foreign corporation, removed all possibility of such remittance being made.

On the other hand, in the present case, there is no such circumstance or force effectively blocking the non-resident foreign corporations from receiving the incomes already accrued in petitioner's books. In other words, there is nothing beyond the control of petitioner which would prevent or stop it from remitting the said incomes even before they become due and demandable under the pertinent contracts.

Finally, to countenance the position of the petitioner would be tantamount to saying that, in case the payor actually remits foreign loan payments, royalties, and/or dividends to a non-resident foreign corporation <u>before they become due and demandable</u>, then such payor does not have an obligation to withhold the taxes at source on said actual payments until the maturity date of the obligations. This is clearly untenable.

WHEREFORE premises considered, the instant petition for review is DISMISSED. The assailed decision of respondent Commissioner, dated September 10, 1981, is hereby AFFIRMED. Petitioner is ordered to remit to respondent the amount of ₱379,700.68, as deficiency withholding tax at source for the year 1976, as well as all interests and penalties accruing on it.

SO ORDERED.

Quezon City, Metro Manila, May 10, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge