Lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITH, KLINE & FRENCH
OVERSEAS CO., (PHILIPPINE
BRANCH),
Petitioner,

- versus - C.T.A. CASE NO. 2915

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

7/29/88

D E C I S I O N

This is about the liability to a deficiency withholding tax at source on royalty due a non-resident foreign corporation which have accrued in petitioner's books.

As set forth - petitioner foreign corporation incorporated under the laws of the United States and licensed to do business in the Philippines through its local branch was assessed by the respondent Commissioner of Internal Revenue under letter of demand dated July 9, 1976 for deficiency withholding tax at source in the aggregate amount of ₱131,384.72 inclusive of interest, broken down as follows:

2nd Quarter - 1971

Royalty payments		₱122,741.42
Tax due thereon		₱ 42,959.00
Less: Tax paid per return - ₱3,498.91		
Tax overpaid for 1st Qtr.	34,086.00	37,584.91
B a l a n c e		₱ 5,374.09
Add: 1/2% int. fr. 7-26-71 to 12-31-72.		461.20
14% int. fr. 1-1-73 to 7-26-74 ...		1,180.09
TOTAL AMOUNT DUE		₱ 7,015.38

3rd Quarter - 1971

Royalty payments	₱157,687.26
Tax due thereon	55,191.00
Less: Amount paid	1,920.36
B a l a n c e	₱ 53,270.64
Add: 1/2% int. fr. 10-26-71 to 12-31-72	3,772.63
14% int. fr. 1-1-73 to 10-26-74 ..	13,562.12
TOTAL AMOUNT DUE	₱ 70,605.39

4th Quarter - 1971

Royalty payments	₱124,567.00
Tax due thereon	43,598.00
Less: Amount paid	3,636.96
B a l a n c e	₱ 39,961.04
Add: 1/2% int. fr. 1-26-72 to 12-31-72	2,230.63
14% int. fr. 1-1-73 to 1-26-75 ..	11,572.28
TOTAL AMOUNT DUE	₱ 53,763.95

On August 25, 1976 petitioner protested the assessment but respondent Commissioner of Internal Revenue denied the same and reiterated the earlier demand for the payment of the amount of ₱131,384.72 as deficiency withholding taxes at source corresponding to the three (3) quarters of 1971 in a letter dated October 24, 1977 but received by the petitioner on December 2, 1977.

Hence this petition for review.

Petitioner holds on to the proposition that the withholding tax at source arises only at the time of the remittance of the royalty to the non-resident licensor and not upon the accrual thereof as the non-resident corporation derives no economic advantage until the income is actually or constructively remitted to it, as explained in L.D. Caulk v. U.S. 116 F. Supp. 835; 45 AFTR 498, (1953). "Based on our client's records on royalties due to the non-resident licensors in 1971, the gross royalty amounted to P531,674, the 35% withholding tax on which amounts to P185,085.90 (sic). However, only a portion of said gross royalty of P531,674.00 has been remitted, and on such remittances, our client has already paid P88,154.46 as withholding tax, on different dates under several official receipts. The unpaid withholding tax, therefore, on the unremitted royalties amounts to P97,931.44." Furthermore, "The Central Bank restriction prohibiting herein petitioner from remitting a part of the royalties (Please see Regulations implementing CB Circular 289, copy attached as Annex "A") to the non-resident foreign corporation is undeniably a substantial limitation or restriction on such accrued royalties. Hence, only that part which was allowed by the Central Bank to be remitted abroad constitutes income. Logically, therefore, the duty to withhold arises only when the Central Bank allows the petitioner to remit the royalties accrued, because it is only at that point of time when these royalties may be considered income to the recipient. Before that, the would-be recipient cannot yet subject these royalties to its will. In fact, it cannot as yet control them, neither can it also withdraw them from the Philippines."

Respondent Commissioner of Internal Revenue does posit an unvarying assertion that "withholding tax is not dependent on remittance of the income payable to the non-resident foreign corporation but on the accrual thereof. Such being the case, although a portion of the amount due to the non-resident foreign corporation cannot be remitted on account of Central Bank restrictions, the tax due on said portion should be deducted and withheld as if there is no restrictions," (BIR Ruling No. 71-003, February 26, 1971)

Suffice it, the issue now raised was squarely met in Bayer Pharmaceuticals, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2846, March 16, 1972; certiorari denied in Commissioner of Internal Revenue v. Court of Tax Appeals, et al., G.R. No. 72054, September 29, 1986, similar in many or so in tenor and circumstances, where as there, so here, the ruling equally applies, interalia, thus -

> "Since the royalties could not be remitted to Bayer due to Central Bank restrictions, as stated by respondent himself in his decision appealed from, surely, respondent's counsel should not expect petitioner to make efforts, albeit unlawful, to remit the same. And on respondent's point that since the royalties had been accrued in petitioner's books the income thereon became subject to withholding even if remittance was effected later, suffice it to say that the accrual of the royalties in petitioner's books, as held in the L.D. Caulk, did not amount to 'gains', profits and income' on the part of non-resident Bayer and, therefore, no necessity to withhold tax devolved on petitioner.
>
> "We, accordingly, rule that since the royalties in question could not be paid or remitted in 1972 by petitioner Bayer Pharmaceuticals, Inc., to non-resident foreign corporation Bayer Aktiengesellschalft, Leverkusen Bayermerck

> due to Central Bank restrictions, petitioner was under no obligation to withhold and pay income tax-at-source on said royalties and, therefore, is not liable for the deficiency withholding tax-at-source assessment of respondent Commissioner of Internal Revenue x x."

Going by the pronouncement and insofar as the same is brought to bear upon the circumstances obtaining, there can be no occasion to further speculate when the chips must fall, so to speak, "The time of payment of the royalties is the maturation point of the withholding duty." (Bayer, supra.) We hesitate to further fashion an issue into a satis actorily settled legal situation.

WHEREFORE, respondent's deficiency assessment for the period involved is hereby set aside. No costs.

SO ORDERED.

Quezon City, Metro Manila, July 29, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals