REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WARNER-LAMBERT CO. INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3914

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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8/6/92

D E C I S I O N

The petitioner is a domestic corporation organized and existing under the laws of the Philippines and is engaged in the manufacture and sale of certain pharmaceutical, health-care and confectionary products under different trademarks.

In regard to the first cause of action, the evidence shows that petitioner has been granted a license by Warner-Lambert Company, U.S.A., (Warner-Lambert U.S.A. for short), a non-resident foreign corporation, to manufacture and sell products bearing the trademarks owned by Warner-Lambert U.S.A., as shown by their agreement, executed on April 1, 1979 (Exhibit "A"), as well as a Certificate of Registration issued by the Technology Transfer Board (Exhibit "A-1"). Petitioner was also obligated to pay royalties to Warner-Lambert U.S.A. pursuant to the agreement.

These royalties amounted to P466,344.00 for the period January 1, 1983 to March 31, 1983. Petitioner deducted and withheld 35%, or the amount of P163,220.40, from the said royalties of P466,344.00 as withholding tax, and remitted the same to the Bureau of Internal Revenue (BIR; Exhibits "B", "B-1" and "B-2").

With respect to the second cause of action, it is shown that petitioner is a transferee of a license granted to Parke-Davies & Co. Inc. (Parke-Davies for short) by Parke-Davies & Company U.S.A. (Parke-Davies U.S.A. for short), a non-resident foreign corporation. Pursuant to their agreement executed on March 21, 1979 (Exhibit "D"), the assets and obligations of Parke-Davies were assumed by petitioner in 1980 and petitioner was also obligated to pay royalties to Parke-Davies U.S.A. which amounted to P679,014.00 for the period January 1, 1983 to March 31, 1983. Petitioner deducted and remitted to the BIR 35% of the said royalties, or P237,654.00, as withholding tax at source. (Exhibits "E", "E-1", and "E-2")

In both the first and second causes of action, petitioner now claims that it should only deduct and pay 25% withholding tax on the royalties, not

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35% thereof, as was erroneously done. Hence, it sought from respondent tax credits in the amounts of P46,634.40 and P67,901.40 under the first and second causes of action, respectively, or a total of P114,535.80, as erroneously paid withholding taxes. The former amount of P46,634.40 is the difference between P163,220.40 (35% of P466,344) actually remitted to the BIR and 25% of P466,344 which is allegedly the correct amount to have been withheld and paid to the BIR; and the latter amount of P67,901.40 is the difference between P237,654.90 (35% of P679.014) which was also actually withheld and remitted to the BIR, and 25% of P679,014 which is allegedly the correct amount to have been withheld and remitted to the BIR.

The instant petition was filed to toll the 2-year prescriptive period, respondent not having acted on the claim for tax credits in both instances.

The only issues are:

> 1. Whether or not petitioner is entitled to the tax credits in the total amount of P114,535.80 (P46,634.40 + P67,901.40), representing alleged overpaid withholding taxes at source on royalty payments under the first and second causes of action; and

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> 2. Whether or not petitioner is the real party-in-interest or has legal capacity to sue in the instant petition for tax credits.

The Court finds for petitioner.

1. In regard to the first issue, it has been established, and it is in fact admitted, that the amounts of P466,344.00 and P679,014.00 remitted by petitioner to Warner-Lambert U.S.A. and Parke-Davies, U.S.A., respectively, were royalties. It is expressly provided under Article 13 of the Convention of the Government of the United States of America and the Government of the Republic of the Philippines with Respect to Taxes on Income, effective January 1, 1983, more particularly on royalties, that "25 per cent of the gross amount of the royalties" will be the tax imposed. The pertinent portion is quoted:

> "1. Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.
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> 2. However, the tax imposed by that other Contracting State shall not exceed
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> (a) In the case of the United States, 15 percent of the gross amount of the royalties, and
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> (b) In the case of the Philippines, the least of:

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> (i) 25 percent of the gross amount of the royalties,
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> (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
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> (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."(Emphasis supplied.)

Additionally, respondent admits paragraph 8 of the subject petition, citing BIR Ruling No. 149, dated August 25, 1983, confirming that royalty payments are subject to only 25% thereof after January 1, 1983, the pertinent portion of which is likewise quoted:

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> "In reply, please be informed that under par. (3), Article 13 of the RP-US Tax Treaty, the term "royalties" as used therein means payments of any kind received in consideration for the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process of other like right or property, for information concerning industrial, commercial or scientific experience. Accordingly, under the foregoing facts, the technical service fee is considered as royalty. Pursuant to Article 13(2)(b) of the RP-US Tax Treaty, the gross amount of said royalty is subject to the 25% withholding tax

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after January 1, 1983 when the RP-US Tax Treaty took effect.(Emphasis supplied.)

Very truly yours,

(Sgd.) RUBEN B. ANCHETA
Acting Commissioner
Bureau of Internal Revenue"

This Court, therefore, sustains petitioner's contention that the royalties remitted to the said two non-resident corporations are subject to only 25% withholding tax.

With respect to the second issue, recent Supreme Court decisions, more specifically Commissioner of Internal Revenue v. Court of Tax Appeals and Hawaiian - Philippines Co., GR No. 93901, dated February 9, 1992, and Commissioner of Internal Revenue v. Procter & Gamble Corporation, dated December 2, 1991 (setting aside an earlier ruling in the same case, 166 SCRA 560 [1988]), clearly held that a withholding agent is a real party-in-interest and has legal capacity to sue for refund of taxes or for a tax credit. The withholding agent is properly considered as a taxpayer, having an obligation to pay the withholding tax, which obligation is a personal, direct and independent liability of the withholding agent. Being statutorily liable for the tax, he should be regarded as a real party-in-interest to bring the suit for refund of the tax or issuance of a tax credit certificate.

WHEREFORE, judgment is hereby rendered in favor of petitioner, ordering respondent Commissioner of Internal Revenue to issue to petitioner a tax credit certificate for the total amount of P114,535.80 (P46,634.40 + P67,901.40) as overpaid withholding tax at source.

No costs.

SO ORDERED.

Quezon City, Metro Manila, August 6, 1992.

STELLA DADIVAS-FARRALES
Acting Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals