REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WYETH-SUACO LABORATORIES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2881

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

10/29/86

D E C I S I O N

Petitioner Wyeth-Suaco Laboratories, Inc., appeals to this Court from a decision dated March 24, 1977 of respondent Commissioner of Internal Revenue on a disputed assessment of deficiency withholding tax at source for the 4th quarter of 1973 to the 4th quarter of 1974 in the total amount of ₱1,135,978.89, inclusive of surcharge, interest and compromise penalty for late payment. The basis of the deficiency assessment is petitioner's failure to deduct, withhold, and pay the corresponding withholding tax on royalties due to a nonresident foreign corporation, which royalties were accrued or set up as liabilities in petitioner's books during the period involved in this case.

Petitioner is a corporation organized and existing under the laws of the Philippines with office and business address at 2236 Pasong Tamo Extension, Makati, Metro Manila. It is engaged in the manufacture and sale of nutritional and pharmaceutical products.

During the period in question, petitioner was under obligation to pay certain amounts of royalty to the American Home Products Corporation (Wyeth International Limited), a nonresident foreign corporation, on the nutritional and pharmaceutical products manufactured and sold by it in the Philippines under a royalty agreement.

Investigation conducted by examiners of the Bureau of Internal Revenue disclosed that the amount of royalty due from petitioner to the American Home Products Corporation of New York, U.S.A., amounted to ₱2,712,820.25, broken down as follows:

Period Covered	Royalty
November 1 to December 31, 1973	₱ 460,617.02
January 1 to March 31, 1974	669,555.28
April 1 to June 30, 1974	670,369.44
July 1 to September 30, 1974	642,739.58
October 1 to October 31, 1974	269,538.93
Total Royalties-	₱2,712,820.25

(Exh. "1" & Exh. "1-A", pp. 47, 51 & 52, BIR Rec.)

It was also ascertained that the royalties in the contained in the Memorandum to Authorized Agent Banks dated February 21, 1970 on the remittance of royalties accruing on existing royalty contracts or on unremitted or blocked royalties, by allowing the full remittance thereof, upon compliance with certain conditions imposed by said Central Bank Circular 393.

It appears that as a consequence of Memorandum to Authorized Agent Banks dated February 21, 1970 of the Central Bank, petitioner was able to remit only 50% of the royalties due to the nonresident licensor for the 4th quarter of 1973 and for the 1st and 2nd quarters of 1974, for which the corresponding withholding tax was paid. In order to be able to remit the full royalties, including the remaining 50% previously unremitted or blocked portion, petitioner amended its royalty agreement with the nonresident licensor on January 1, 1974, to conform with the requirements of Central Bank Circular No. 393. After obtaining the approval of the Central Bank of the amended royalty agreement under Circular 393, petitioner was able to remit all unremitted or blocked royalties for past periods, including those for the 4th quarter of 1973 to the 4th quarter of 1974. The corresponding withholding taxes were all duly paid.

In his letter dated March 24, 1977, respondent denied petitioner's protest and reiterated the payment of the said deficiency assessment of ₱1,135,978.89 maintaining that the obligation to withhold and pay the tax arises at the time of accrual of the royalties and not at the time of the actual remittance or payment thereof. To quote the pertinent portion:

> "In reply thereto, I have the honor to inform you that for Philippine internal revenue tax purposes, the liability to withhold and pay the income tax withheld at source from royalty payments to the non-resident foreign corporation occurs at the time of the accrual of said royalties and not at the time of the actual remittance or payment thereof (BIR Ruling No. 71-003). Accordingly, and since the royalties has been set up in the books of your client as accrued royalties, said royalties are already subject to the withholding provisions of Sections 53 & 54 of the Tax Code, even if remittance is made later on."

From this decision, petitioner appealed to this Court.

The main issue in this case is whether or not the obligation to withhold and pay income tax at source on the royalties is upon accrual or upon the actual remittance or payment thereof.

Indeed, the issue is not one of first impression. In Bayer Pharmaceuticals, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2846, March 16, 1979, certiorari denied in Commissioner of Internal Revenue vs. Court of Tax Appeals, et. al., G.R. No. 72054, September 29, 1986, where the factual setting is identical to that in the case at bar, this Court unequivocally ruled that the time of payment or actual remittance of the royalties is the maturation point of the withholding duty. Because of its controlling effects on the instant case, we will quote at length from the decision:

> "What possible ground can there be for us not to apply to petitioner the ruling of the United States Federal Court in L.D.Caulk, supra, for which Bayer Pharmaceuticals, Inc. is similarly situated? A decision buttressed by the law, which is closely if not exactly similar to our law, reason and logic is not to be simply brushed aside to accommodate a ruling of our own Bureau of Internal Revenue which merely quoted as authority the excerpt of a United States Internal Revenue ruling but which excerpt has been declared obsolete by the same United States Internal Revenue Service as a result of the L.D. Caulk decision. As we view this legal problem, we find no cogent and valid reason to modify, much less depart from the conclusion reached in L.D. Caulk, as expressed in the above-quoted opinion of the United States Court there, and the same should resolve the identical issue now brought before us in this proceeding. We cannot ignore the well-settled principle of construction that since our income tax law was practically

copied from that of the United States, the interpretations it has received in the United States have authoritative effect in the proper construction and application of our law. More so in the case of our withholding-tax-at-source provision embodied in Section 53(b) of our National Internal Revenue Code which, as shown above, was merely imported and copied almost verbatim from Section 143(b) of the United States Tax Code during the year involved in the L.D. Caulk decision. Accordingly, the conclusion reached in L.D. Caulk, which is followed by the United States Internal Service - That the time of payment of the royalties is the maturation point of the withholding duty - should govern this proceeding.

"Not much need be said on respondent's assertion that, based on the report of the investigating examiner, nothing is stated that petitioner attempted to remit the royalties to Bayer. By respondent's own decision, it is explicitly declared 'that the royalties in the amount of ₱69,529.00 were not remitted by BPI (petitioner herein) to Bayer due to Central Bank restrictions.' (Exhibit '5', Exhibit 'E-1', p. 30, BIR records) 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 case, 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.
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> "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 Aktiengesellischalft, Leverkusen Bayermerk due to Central Bank restrictions, petitioner was under no obligation to withhold and pay income tax-at-source on said royalties and, therefore, it is not liable for the deficiency withholding tax-at-source assessment of respondent Commissioner of Internal Revenue in the amount of ₱36,834.73 for the year 1972."

Clearly, therefore, the decision dated March 24, 1977 of respondent Commissioner of Internal Revenue should be cancelled and set aside.

With this conclusion, and it appearing that the tax proper covered in the deficiency assessment involved in this case has already been paid by petitioner on various occasions when actual remittances of royalties were effected (Resolution dated May 9, 1980 of the Court, pp. 83-84, CTA records), the secondary issue as to whether or not petitioner has paid the deficiency withholding tax at source assessed against it becomes moot and academic. The same is true with respect to the question of whether or not petitioner is subject to the 25% surcharge and 14% interest, as well as to certain compromise penalties, imposed upon it by respondent.

WHEREFORE, the decision appealed from should be as it is hereby reversed. No costs.

SO ORDERED.

Quezon City, Metro Manila, November 19, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge