REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPS ELECTRONICS AND LIGHTING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5064

FEB 14 1996

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DECISION

This is a claim for refund of alleged overpaid withholding tax on royalties in the total amount of P4,995,391.07.

Petitioner, formerly known as Philips Electrical Lamps, is a domestic corporation duly registered with the Board of Investments on a preferred non-pioneer status under Presidential Decree No. 1789 and Executive Order No. 226 for the manufacture of a variety of high quality lamps and light bulbs.

On July 1, 1991, Petitioner, desirous of obtaining technical information to achieve optimum efficiency in the manufacture of its products, entered into an Industrial Cooperation Agreement with N.V. Philips' Gloei Lampenfabrieken (NVPG), a non-resident foreign corporation duly organized and existing under the laws of the Netherlands.

For the period of January 1992 to October 1993, Petitioner allegedly remitted to NVPG the total amount of P22,861,445.75 as technical assistance fees which is equivalent to 2.5% of net sales. Petitioner withheld and paid to the Bureau of Internal Revenue the corresponding withholding taxes totalling P7,281,535.64 applying the rates of 35% and 15%, as follows:

Period	Amount of Technical Assistance Fees	Withholding Tax Rate Applied	Withholding Tax Discounts
January 1992 to July 1993	P19,599,407.42	35%	P6,859,792.60
August to October 1993	3,262,038.33	15%	421,743.04
	P22,861,445.75		P7,281,535.64

According to Petitioner, the applicable tax rate on the technical assistance fees or royalties paid to NVPG should only be 10% based on the gross amount of the royalties pursuant to Article 12, Sections 1 and 2 (a) of the Tax Treaty between the Philippines and the Kingdom of Netherlands since Petitioner, as payor thereof, is an enterprise duly registered with the Board of Investments (BOI) on a preferred non-pioneer status, hence, engaged in a preferred area of activity.

Thus, said the Petitioner, it is now entitled to a tax refund of P4,995,391.07 computed as follows:

Tax Actually remitted to the BIR (using the 35%/15% rate)	P7,281,535.64
Less:	
Should-be tax using the 10% treaty rate	P2,286,144.57
	P4,995,391.07

On February 8, 1994, Petitioner filed a written claim for refund in the amount of P4,995,391.07 with the Bureau of Internal Revenue and in less than twenty-four hours filed the Petition for Review in this Court on February 9, 1994.

The issues raised to be resolved are the following:

1) Whether or not a withholding agent such as the Petitioner is the proper party to claim the refund or tax credit prayed for.

2) Whether or not Petitioner is entitled to said refund.

We find both issues for the Petitioner.

The first issue has long been settled when the Supreme Court in the case of **Commissioner of internal Revenue vs. Wander Philippines, Inc.**, (160 SCRA 573) ruled, thus:

> "In any event, the submission of Petitioner that Wander is but a withholding agent of the government

> and therefore cannot claim reimbursement of the alleged overpaid taxes, is untenable. It will be recalled that said corporation is first and foremost a wholly owned subsidiary of Glaxo. The fact that it became a withholding agent of the government which was not by choice but by compulsion under Section 53 (b) of the Tax Code, cannot by any stretch of the imagination be considered as an abdication of its responsibility to its mother company. Thus, this Court construing Section 53 (b) of the Internal Revenue Code held that 'the obligation imposed thereunder upon the withholding agent is compulsory.' It is devised to insure the collection by the Philippine Government of taxes on incomes, derived from sources in the Philippines, by aliens who are outside the taxing jurisdiction of this Court (**Commissioner of Internal Revenue vs. Malayan Insurance Co., Inc.**, 21 SCRA 944). In fact, Wander may be assessed for deficiency withholding tax at source, plus penalties consisting of surcharge and interest (Section 54, NLRC). Therefore, as the Philippine counterpart, Wander is the proper entity who should claim for the refund or credit of overpaid withholding tax on dividends paid or remitted by Glaxo."

Subsequently, in **Commissioner of Internal Revenue vs. Procter and Gamble - Philippine Manufacturing Corporation** (204 SCRA 377), the High Court reiterated its Wander Phils. opinion but this time was more elaborate:

x x x

> "2. The question of the capacity of P&G-Phil. to bring the claim for refund has substantive

dimensions as well which, as will be seen below, also ultimately relate to fairness.

x x x

Since the claim for refund was filed by P&G-Phil., the question which arises is: Is P&G-Phil. a 'taxpayer' under Section 309 (3) of the NIRC? The term 'taxpayer' is defined in our NIRC as referring to 'any person subject to tax imposed by the Title [on Tax on Income].' It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax' and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should be the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.

> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is

> statutorily made 'liable for tax' as not 'subject to tax.' By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him."
>
> x x x
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a 'taxpayer' within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim."

As regards the substantive issue, We so hold that Petitioner is entitled to the refund in view of Article 12 of the R.P.-Netherlands Tax Treaty which provides, thus:

"Article 12

ROYALTIES

1. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such royalties may also be taxed in the State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

a) 10 percent of the gross amount of the royalties where the royalties are paid by an enterprise registered and engaged in preferred areas of activities in that State:

x x x

During the trial, Petitioner submitted evidences to prove that it is "an enterprise registered and engaged in preferred areas of activities" (Exhs. A, B, C and D). Petitioner also established that it had duly remitted to the Bureau of Internal Revenue the withholding taxes which it overwithheld using the higher rates of 35% and 15% (Exhs. E-1 to E-23). Such being the case, We cannot do otherwise but grant the refund prayed for as Petitioner has overwhelmingly established its right thereto. Besides, Respondent did not even question the narration of facts as can be gleaned from her Answer but only zeroed in on the legal issues.

WHEREFORE, in all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or issue a tax credit certificate to the Petitioner in the amount of P4,995,391.07 representing overpaid withholding taxes for the period January 1992 to October 1993.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Associate Judge

(Dissenting)
RAMON O. DE VEYRA
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
Court of Tax Appeals