REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RHODIA PHILIPPINES, INC.,
Petitioner,

- versus - **C.T.A. Case No. 6117**

THE COMMISSIONER OF INTERNAL REVENUE, **Promulgated:**
Respondent.

JAN 17 2002

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DECISION

This case elevated before Us by way of Petition for Review involves a claim for the refund or in the alternative, a prayer for the issuance of tax credit certificate in the amount of FIVE HUNDRED ONE THOUSAND PESOS (P501,000.00) allegedly representing the overpaid withholding tax on cash dividends declared for the period May 1998.

The facts of the case are as follows:

Herein Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal address at the 5th Floor Cammon House, 110 Rada Street, Legaspi Village, Makati. It is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number 000-167-573-000 *(See Joint Stipulation of Facts and Issues, item Nos. 2 & 3, respectively, CTA docket p. 48).*

One of the stockholders of the Petitioner (RHODIA) is Rhone-Poulenc SA, a company duly established under the laws of France and which is not doing business in the

Philippines. Rhone-Poulenc SA owns 30% of the voting stock of the Petitioner *(ibid, item No. 4 & 5, respectively, CTA docket p.48).*

On May 18,1998, Petitioner, through its Board of Directors, adopted a resolution, declaring cash dividends in the amount of P 33,400,000.00 to its stockholders of record as of May 15, 1998. *(Exhibits E & F).* Out of the said amount, a cash dividend amounting to P 10,020,000.00 was declared in favor of Rhone Poulenc SA (France), on which Petitioner withheld the amount of P 1,503,000.00 representing the 15% withholding tax on the dividends as prescribed under the original provisions of Article 10(2) of the RP-France Tax Treaty. Thus, on June 5, 1998, the 15% withholding Tax amounting to P 1,503,000.00 was paid and remitted by Petitioner to the BIR through Citibank, N. A., an authorized agent bank, as evidenced by the machine validation reflected on Petitioner's monthly remittance return *(Exhibits G, H, H-1 to H-5).*

However, Article 10(2)(a) of the RP-France Tax Treaty was amended by a Protocol effective March 31, 1998 lowering the rate of the withholding tax from 15% to 10% on dividends remitted by a Philippine company to a resident of France, which holds at least 15% of the voting shares of the Philippine company *(Joint Stipulation of Facts, Item No. 7, CTA docket p. 49).*

Subsequently, on May 29, 2000, upon learning of the *Protocol amending the the Agreement between the Government of the Republic of the Philippines and the Government of the French Republic for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income*, which reduced, among others, the withholding tax rate on dividends from 15% to 10%, Petitioner filed with the

BIR an amended Monthly Remittance Return of Final Taxes Withheld (BIR Form No. 1601-F) for the May 1998 cash dividend declaration to Rhone Poulenc SA (France), this time using the reduced 10% withholding tax rate under the amendments to the RP-France Tax Treaty. The said amended Monthly Remittance Return reflected the excess or overpaid withholding tax amounting to P 501,000.00, computed as follows:

Nature of Income Payment	**Tax Base**	**Regular Tax Rate**	**Tax Required to be Withheld**
Cash Dividend payment by Domestic Corporation to NRFC	10,020,000.00	10%	1,002,000.00
Total Tax Required to be With-Held Based on Tax Treaty Rates			1,002,000.00
T o t a l			1,002,000.00
Less: Tax Remitted in Return Previously Filed, if this is Amended return			1,503,000.00
Tax Still Due(Overremittance)			(501,000.00)
Total Amount Still Due (Overremittance)			**(501,000.00)**

Accordingly, on June 5, 2000, Petitioner, through SGV & Co., filed with the Bureau of Internal Revenue a formal request for the refund or tax credit of the excess or overpaid withholding tax on dividends amounting to P 501,000.00 *(Exhibits J, J-1)*.

The failure of the Respondent to act upon the application for refund prompted the Petitioner to elevate the matter to this Court by way of Petition for Review on June 5, 2000, in faithful observance of the two-year prescriptive period provided by law *(Joint Stipulation of Facts and Issues, item no.10, CTA docket p. 49)*.

On August 18, 2000, Respondent, for his part, filed an Answer to the instant Petition for Review and raised among others, the following Special and Affirmative Defenses, thus:

1. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

2. It is incumbent upon herein Petitioner to show that it has complied with the provision of Section 229 of the Tax Code;

3. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35**);

4. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (**Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304**);

5. In (sic) action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

6. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.

In order to substantiate its claim for refund, Petitioner presented the following documentary evidence, to wit:

1. BIR's certificate of registration bearing Petitioner's TIN (Exhibits A, A-1);

2. Petitioner's Article of Incorporation (Exhibit B);

3. Certification from the French Embassy attesting to the fact that Petitioner is formerly Rhone Poulenc SA (Exhibit C);

4. Certificate of Non-registration of Corporate/Partnership issued by SEC (Exhibit D);

5. Secretary's Certificates proving Rhone Poulenc's ownership of 30% shares (Exhibit E) and proving Petitioner's declaration of Cash Dividends (Exhibit F);

6. Debit authority addressed to Citibank (Exhibit G) and Citibank's certification of Remittance (Exhibit P);

7. Petitioner's original and amended Monthly Remittance Returns of Income Taxes withheld for June 1998 (Exhibits H & I);

8. Letter of SGV & Co requesting refund or tax credit in the amount of P501,000.00 (Exhibit J);

9. Special Power of Attorney executed by Philippine Consul in France appointing Mr. Jamme to be Rhodia's true and lawful attorney (Exhibit K);

10. Debit Authority No.502 (Exhibit L) and Request for Payment/ Cash Advance proving remittance of the cash dividends to Rhodia (Exhibit M);

11. Protocol to the Tax Convention between Philippines & France (Exhibit O).

The issues presented before this Court as stipulated by the Parties are the following:

I.

Whether or not the Petitioner withheld the amount of P 1,503,000.00 representing the 15% withholding tax on cash dividends remitted to Rhone Poulenc SA in France of June 1998;

II.

Whether or not Petitioner remitted and paid to the BIR the 15% withholding tax amounting to P1,503,000.00 on cash dividends remitted to Rhone Poulenc SA in France.

III.

> Whether or not the Petitioner overpaid the withholding tax on dividends amounting to P501,000.00.

IV.

> Whether or not the Petitioner is entitled to the refund and/or issuance of a tax credit certificate amounting to P501,000.00 representing the overpaid withholding tax on dividends remitted to Rhone Poulenc SA in June 1998.

With regard to the first and second issue, We rule in the affirmative. A perusal of the records would reveal that Petitioner was able to prove by sufficient evidence, the fact of withholding - of the amount of P1,503,000.00 representing the 15% withholding tax on cash dividends - as well as the remittance thereof to the BIR.

As can be gleaned from the Secretary's Certificate, out of the 150,000 total shares, Rhone-Poulenc SA owns 44,995 shares of stock, which is roughly 30% of the voting stock of Petitioner *(Exhibit E)*. By Petitioner's declaration of cash dividends amounting to P33,400,000.00, Rhone-Poulenc SA is entitled to receive P10,020,000, having a 30% interest on the Petitioner's business. Thus, Petitioner remitted to Rhone Poulenc SA in France, the amount of P8,516,999.72, representing net cash dividends due to the latter, which to this Court's assessment is sufficiently shown by the receipt/voucher submitted by Petitioner as evidence *(Exhibits L & M)*. Verily, the amount of P1,503,000.00 was accordingly withheld by Petitioner as 15% final tax on the total cash dividends of P10,020,000.00.

As to the fact of remittance of the said withholding tax to the BIR, this was likewise sufficiently proved by Petitioner. The amount of P1,503,000.00, which was remitted to the Bureau of Internal Revenue was evidenced by the Monthly Remittance

Return of Income Taxes Withheld (BIR Form 1743W) for the month of June 1998 showing the machine validation of the authorized agent bank on June 5, 1998 *(Exhibits H and H-5)*.

The computation of the above-mentioned amount was based on Article 10 of the RP-France Tax Treaty imposing a 15% withholding tax on dividends paid by a Philippine Corporation to a French corporation. However, Article 10 of the said treaty was subsequently amended by the *Protocol amending the agreement between the Government of the Republic of the Philippines and the Government of the French Republic for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income (Exhibit O).* Among the amendments introduced by the Protocol was the reduction of the withholding taxes on dividends paid by a Philippine company to a resident of France, which holds at least 15% of the voting shares of the Philippine company, from 15% to 10%.

Thus, it could be safely concluded that the overpayment of withholding tax on dividends was due to the amendment introduced in the RP-France Tax Treaty, which reduced the withholding tax rates imposed on dividends. Article 5 of the Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic provides:

ARTICLE 5

In Article 10 of the Convention:

- In paragraph 2, the rates of "15 percent" and "25 percent" are replaced respectively by "10 percent" and "15 percent;"

- In paragraph 6, the rate of "15 percent" is replaced by "10 percent."

It is likewise significant to note that the said amendment was in effect and already applicable when the withholding tax on cash dividends was remitted to the BIR. As correctly pointed out by the Petitioner, since the Protocol was entered into force on March 31, 1998, which was the date of the French Embassy's reply to the Department of Foreign affairs Note No. 972153 dated July 21, 1997, (as certified by the Memorandum of the Department of Foreign Affairs' Office for Legal Affairs dated April 22, 1998 presented as Exhibit N), the reduction of the above withholding rates took effect on January 1, 1998 pursuant to Article 11 of the Protocol, thus:

"**Article 11**
ENTRY INTO FORCE

1. Each of the contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications.
2. Its provisions shall have effect for the first time:
   (a) As regards taxes withheld at source, for amounts payable on or after the first day of January of the calendar year in which the Protocol entered into force;
   (b) As regards other taxes on income, to income derived during the calendar year in which the Protocol entered into force, or relating to the accounting period ended during the year."

Considering that Rhone-Poulenc SA (France) holds more than 15% of the voting stock of Petitioner, the proper applicable WT rate on the dividends declared by Petitioner to Rhone-Poulenc SA in May 1998 is 10%, not 15%, pursuant to the amended provision of the RP-France Tax Treaty. And, since the correct rate of final withholding tax is only 10%, Petitioner will then have an overpayment of P501,000.00 computed as follows:

1976 RP-France Tax Treaty (P10,020,000.00 x 15%)	P1,503,000.00
1995 Protocol to the Tax Convention (P10,020,000.00 x 10%)	1,002,000.00
Overpayment of Withholding Tax	**P 501,000.00**

Thus, this Court finds the evidence presented by the Petitioner as sufficient to prove its entitlement to the refund or tax credit being claimed. Based on the foregoing, Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P501,000.00.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **GRANTED**. Respondent is hereby **ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner, the amount of P501,000.00 representing the excess or overpaid withholding tax on cash dividends for the period May 1998.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge