L-1-B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA,
Petitioner,

- versus -

C.T.A. CASE NO. 5183

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: MAR 11 1997

x - x

D E C I S I O N

This case involves petitioner's claim for refund or tax credit in the amount of P4,989,567.65 representing alleged overpaid branch profit remittance tax for the years 1991 and 1992.

Petitioner is a foreign corporation with an established branch in the Philippines authorized to engage in the banking business.

On May 20, 1992, petitioner received a letter, dated May 15, 1992, from the Foreign Exchange Operations and Investments Department of the Bangko Sentral ng Pilipinas (BSP) authorizing the remittance of branch profits earned in 1991 to its Head Office in California, USA, amounting to P190,910,553.80, net of 15% branch profit remittance tax of P25,570,897.20. On December 28, 1992, petitioner filed the monthly remittance return of income taxes withheld (BIR Form 1743 W) corresponding to the branch profit remittance tax of P25,570,897.20 which amount was withheld by BSP.

Sometime 1993, petitioner applied for an authority to remit branch profits for 1992 to its Head Office. BSP granted the remittance of the amount of P86,448,497.30, net of 15% branch profit remittance tax of P12,682,454.70, per BSP letter dated May 14, 1993. The tax withheld amounting to P12,682,454.70 was reported to the BIR on July 9, 1993 under BIR Form 1743 W.

On October 21, 1994, petitioner filed with the Appellate Division of the Bureau of Internal Revenue a letter, dated October 20, 1994, claiming for the refund or issuance of a tax credit certificate of the alleged overpaid branch profit remittance tax for the years 1991 and 1992 in the sum of P4,989,567.65, computed as follows:

<u>**1991**</u>:

<u>RBU</u>

a) Profit remittance
tax paid P164,106,234.00 x 15% = P24,615,935.10

Should be.

b) Profit remittance tax paid	$\frac{P164,106,234.00 \times 15\%}{1.15}$	=	21,405,160.95
Excess branch profit remittance tax paid			P 3,210,774.15

FCDU

a) Profit remittance tax paid	P 6,366,414.00 x 15%	=	P 954,962.10

Should be:

b) Profit remittance tax paid	$\frac{P\ 6,366,414.00 \times 15\%}{1.15}$	=	830,401.83
Excess branch profit remittance tax paid			P 124,560.27
Total 1991 Overpaid Branch Profit Remittance Tax			P 3,335,334.42

1992

RBU

a) Profit remittance tax paid	P 84,273,117.00 x 15%	=	P12,640,967.55

Should be:

b) Profit remittance tax paid	$\frac{P\ 84,273,117.00 \times 15\%}{1.15}$	=	10,992,145.69

Excess branch profit remittance tax paid		P 1,648,821.86

FCDU

a) Profit remittance tax paid	P 276,581.00 x 15% =	P 41,487.15

Should be:

b) Profit remittance tax paid	$\frac{\text{P } 276{,}581.00 \times 15\%}{1.15}$ =	36,075.78
Excess branch profit remittance tax paid		P 5,411.37
Total 1992 Overpaid Branch Profit Remittance Tax		P 1,654,233.23

GRAND TOTAL	P 4,989,567.66

On December 26, 1994, petitioner filed the instant petition in order to suspend the running of the two-year prescriptive period for judicially claiming a refund or tax credit.

Petitioner anchors its claim for refund or tax credit on the bases of the Supreme Court decisions in "Commissioner of Internal Revenue vs. Burroughs Limited and the Court of Tax Appeals," G.R. No. 66653, June 19, 1986; and "Bank of America NT & SA vs. Honorable Court of Appeals and The Commissioner of Internal Revenue," G.R. No. 103092, July 21, 1994. The High Court ruled in both cases that the branch profit remittance tax shall be computed based on the profit "actually remitted" abroad and not on the profits to be remitted abroad.

Respondent however contended that the 15% branch profit remittance tax is imposed and collected at source. Therefore, the basis should be the amount actually applied for by the branch with BSP as the profit to be remitted abroad following the guidelines set in Revenue Memorandum Circular No. 8-82, March 17, 1982, and following the case of Compania General de Tabacos de Filipinas - Phil. Branch vs. Commissioner of Internal Revenue, CTA Case No. 3827, October 14, 1988.

The only issue to be determined in the present case is whether or not the 15% branch profit remittance tax should be computed on the profits actually remitted abroad or on the profits applied for remittance.

The law in force is Section 25(a)(5) of the Tax Code, which provides:

> "**SECTION. 25.** ***Rates of tax on foreign corporation.*** - **(a)** ***Tax on resident foreign corporations.*** **(1)** ***In general.*** - x x x.
>
> x x x x x x x x x.
>
> **(5)** ***Tax on branch profits remittances.*** - Any profit remitted by a branch to its head office shall be subject to a tax of 15% (except those registered with the Export Processing Zone Authority) x x x." (Emphasis ours.)

The Supreme Court adopted our view in the case of Bank of America NT & SA vs. The Commissioner of Internal Revenue, CTA Case No. 3799, October 29, 1986 in its recent decision in the case of **Bank of America NT & SA, et. al. vs. The Court of Appeals, et. al., G.R. No. 103092, and Bank of America NT & SA, vs. The Hon. Court of Appeals, et. al., G.R. No. 103106, July 21, 1994,** thusly:

> "x x x In all the situations x x x where the mechanism of withholding of taxes at source operates to ensure collection of the tax, and which respondent claims the base on which the tax is computed is the amount to be paid or remitted, the law applicable expressly, specifically and unequivocally mandates that the tax is on the total amount thereof which shall be collected and paid as provided in Sections 53 and 54 of the Tax Code. Thus:
>
> > 'Dividends received by an individual who is a citizen or resident of the Philippines from a domestic corporation, shall be subject to a final tax at the rate of fifteen (15%) per cent on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code. (Emphasis supplied; Sec. 21, Tax Code)

'Interest from Philippine Currency bank deposits and yield from deposit substitutes whether received by citizens of the Philippines or by resident alien individuals, shall be subject to a final tax as follows: (a) 15% of the interest or savings deposits, and (b) 20% of the interest on time deposits and yield from deposits substitutes, which shall be collected and paid as provided in Sections 53 and 54 of this Code; x x x (Underlining supplied; Sec. 21, Tax Code applicable.)'

x x x x x x x x x.

'On the other hand, there is absolutely nothing in Section 24(b)(2)(ii), supra, which indicates that the 15% tax on branch profit remittance is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 and 54 of the Tax Code. The statute employs 'Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) - without more. Nowhere is there said of 'base on the total amount actually applied for by the branch with the Central Bank of the Philippines as

> profit to be remitted abroad, which shall be collected and paid as provided in Sections 53 and 54 of this Code.' Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer nor better canon of interpretation than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term 'any profit remitted abroad' can only mean such profit as is 'forwarded, sent, or transmitted abroad' as the word 'remitted' is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words.'

In the 15% remittance tax, the law specifies its own tax base to be on the 'profit remitted abroad.' There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.

x x x x x x x x x.

The Solicitor General suggests that the analogy should extend to the ordinary application of the withholding tax system and so with the rule on constructive remittance concept as well. It is difficult to accept the proposition. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest. It is hardly the case, however, in the imposition of the 15% remittance tax where there is but one taxpayer using its own domestic funds in the payment of the tax. To say that there is constructive remittance even of such funds would be stretching far too much that imaginary rule. Sound logic does not defy but must concede to facts."

It is therefore now a settled rule that the 15% branch profit remittance tax is based on the "profit remitted abroad". The same doctrine was followed in the more recent case of Citibank N.A., vs. Commissioner of Internal Revenue, CTA Case NO. 5023, August 3, 1995. Finding therefore no error in the computation of petitioner's claim for refund or tax credit in the sum of P4,989,567.66, representing excess branch profit remittance taxes paid for branch profits earned in 1991 and 1992, the same is hereby awarded in its favor.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby ordered to refund or issue in favor of petitioner a tax credit certificate in the amount of P4,989,567.66, representing overpaid branch profit remittance tax for the years 1991 and 1992. No pronouncement as to costs of suit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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