REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WYETH SUACO LABORATORIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3981

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

7/29/88

D E C I S I O N

As to whether or not the obligation to withhold and pay income tax-at-source on interests, royalties, etc., due a non-resident corporation attaches upon accrual or actual payment is the simple issue in the case at bar.

As it appears, petitioner corporation organized and existing under and by virtue of Philippine laws was assessed for deficiency income tax and withholding tax-at-source under a letter of demand dated November 28, 1980 of the respondent Commissioner of Internal Revenue for the respective amounts as follows:

1)	Deficiency Income Tax		P 10,661.87
	Interest of 14% from February 16, 1976 to February 15, 1979		4,477.00
	Amount still due and collectible	-	P 15,139.86
2)	Withholding Tax-At-Source		P106,317.56
	14% Interest from July 26, 1976 to January 26, 1979		37,211.15
	Amount still due and collectible	-	P143,538.71

The deficiency income tax assessment in the amount of P15,139.86 which was subsequently paid as evidenced by Confirmation Receipt No. B7304599 and Payment Order No. 609152 both dated October 2, 1985 (Annexes C and C-1) draws the curtain of conclusion over petitioner's liability, leaving only the question of the deficiency withholding tax-at-source for resolution.

Said assessment then administratively protested by petitioner on January 29, 1981 on the ground that the tax attaches only upon remittance and not on accrual thereof (Bayer Pharmaceuticals, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2846, March 16, 1979; Certiorari denied, Commissioner of Internal Revenue v. CTA et al. G.R. 72054 September 29, 1986) proved to no avail as the respondent on July 11, 1985 denied the same and reiterated the earlier demand citing the decision in the case of <u>Construction Resources of Asia v. Commissioner of Internal Revenue,</u> CTA Case No. 3307 November 25, 1983 (Petition for Certiorari by taxpayer denied in Resolution of the Supreme Court G.R. No. 68413 December 10, 1984) where it was held that the liability to withhold and pay income tax-at-source on interest due to a non-resident foreign corporation attaches at the time of accrual and not upon actual payment thereof.

Hence this petition.

The facts are not in dispute but we are a little struck by the quibble on the apparent disconcerting application of the holdings in the cases above-cited which seems to leave much to be desired. It need not be stressed however that the decision in the <u>Bayer</u> case, supra, was never intended as a sort of a conundrum as would incite endless possibilities for conjecture. Far be it from a trivial pursuit, the Court plainly said, that -

> 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 Aktengesell-schalft, Leverkusen Bayermerck 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 deficiency withholding tax-at-source assessment of respondent Commissioner of Internal Revenue in the amount of P36,834.73 for the year 1975.

The circumstance obtaining in the case at bar finds no legal constraint to the remittance to speak of, hence the liability to withhold and pay the income tax at source on the royalties due the non-resident foreign corporation attaches at the time of the accrual and not on actual payment or remittance thereof.

What may seem to be considered an elusive and subtle casuistry in the said decision as petitioner would have it impressed, the subsequent decision in the case of Construction Resources of Asia, supra, relied upon by the respondent provides a definitive statement, thus -

> The liability of petitioner to withholding and pay the income tax withheld-at-source from interests due to a non-resident foreign corporation attaches at the time of the accrual of said interests and not at the time of actual payment or remittance thereof.

> Payment of the withholding tax-at-source due from a foreign lender attaches upon accrual of the interest to be remitted abroad. The interest accrues at the time it is earned. At such time, the tax on the interest attaches and the contractor is obligated to remit the tax to the government. Indeed, there is no reason why the overseas contractor, petitioner in this case, who is based in the Philippines, would wait until it remits the interest due the foreign lender before paying the withholding tax-at-source. Otherwise, the government will be at the mercy of the taxpayer who may take time in remitting the interest to the foreign lender.

And, finally, the recent decision in the Western Palawan Timber Corporation v. Commissioner of Internal Revenue, CTA Case No. 3544, June 5, 1987 toughens the appropriate legal moorings of the said holdings, to wit:

> This court unequivocably ruled that since the royalties could not be remitted to the non-resident foreign corporation to Central Bank restrictions, the time of payment of the royalties is the maturation point of the withholding duty. It bears emphasis, therefore, that if the income payable to a non-resident foreign corporation can be paid or remitted because there are no restrictions against its payment or remittance thereof, the liability to withhold and pay the tax thereon attaches at the time of accrual, not at the time of actual remittance.
>
> Here in the case at bar, there is no allegation or showing whatsoever that petitioner was restricted from remitting in 1975 the interest on its foreign loan

> from non-resident Mitsubishi Corporation. The liability of petitioner to withhold and pay the income tax withheld-at-source from interest due its foreign creditor attaches therefore at the time of the accrual of said interest and not at the time of actual payment or remittance thereof.

As was the said case, so here with petitioner. There is no allegation, much less any evidence, to show that it was restricted from remitting the royalties to the non-resident foreign corporation. The withholding tax-at-source must be upon accrual.

ACCORDINGLY, petitioner is ordered to pay to the respondent Commissioner of Internal Revenue the amount of P143,528.71 as deficiency withholding tax-at-source for the fourth quarter of 1975, plus surcharges and interest incident to the delinquency pursuant to the pertinent provisions of the National Internal Revenue Code, as amended.

SO ORDERED.

Quezon City, Metro Manila, July 29, 1988.

ALEX Z. REYES
Associate Judge

DECISION -
CTA CASE NO. [redacted] 3981

I CONCUR:

(Did not take part)
AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate 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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals