REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL FOODS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3900

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

2/2/88

D E C I S I O N

Petitioner is a corporation organized and existing under the laws of Delaware, U.S.A. and not doing its business in the Philippines.

Petitioner had entered into a licensing agreement with General Foods Philippines (licensee) a corporation organized under Philippine laws, whereby it granted the latter the right to use in the Philippines, its processes, technical information and know-how and the exclusive license to use trademarks of its products. In consideration thereof, General Foods Philippines, Inc. will pay royalties to petitioner at the rate of 1% (originally 1½%) of licensee's gross sales. (Exhs. A; A-1 to A-17).

The General Foods Philippines, Inc. has been withholding and remitting taxes to the Bureau of Internal Revenue at the rate of 35% on said royalty payments to petitioner pursuant to Section 24(b)(1) of the National Internal Revenue Code, as amended.

That for the period covering January, 1983 to July, 1983, General Foods Philippines, Inc. has remitted and paid to the Bureau of Internal Revenue the total royalty taxes amounting to ₱151,792.45, which is 35% of the gross royalty payments of ₱433,692.71. (Exh. B; Exhs. D, E & F). The General Foods Philippines, however, failed to consider the RP-US Tax Treaty which took effect on January 1, 1983, which provides for a lower tax rate applicable on royalties due to corporations that are resident of the United States, and the pertinent portion of Article 13 of the said RP-US Tax Treaty is quoted as follows:

> "1. Royalties derived by a resident of one of the contracting states from sources within the other Contracting State may be taxed by both Contracting States.
>
> 2. However, the tax imposed by that other Contracting State shall not exceed -
>
> a) x x x

b) In the case of the Philippines, the least of:

(1) 25 percent of the gross amount of the royalties x x x."
(Underlining ours.)

Based on the above quoted provisions of the RP-US Tax Treaty, General Foods Philippines, Inc. should have withheld and remitted taxes on the royalties due to petitioner for the period from January 1983 to July 1983 only in the amount of ₱108,423.18, computed at 25% of the gross royalties of ₱433,692.71. Petitioner has, therefore, erroneously withheld and overpaid taxes in the amount of ₱43,369.27, which is the difference of ₱151,792.45 actual tax paid and the tax that should have been paid in the amount of ₱108,423.18.

Petitioner, through its external auditor, filed on November 2, 1983 a written claim for refund of the said amount of ₱43,369.27, but which has not yet been refunded to petitioner. (Exh. C).

Considering that respondent Commissioner of Internal Revenue had not presented any witness or evidence to prove its allegations of non-allowance and decided to rest its case by submitting its case based upon the pleadings, we, therefore, stand by the truth of petitioner's evidence and so we hold that petitioner is entitled to the refund of the amount of ₱43,369.27 as overpaid royalties based upon the provisions of Article 13 of the said RP-US Tax Treaty.

WHEREFORE, the Commissioner of Internal Revenue is hereby ordered to refund to petitioner General Foods Corporation the sum of ₱43,369.27 as overpaid royalties for the period from January 1983 to July 1983.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, February 2, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals