REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE COCA-COLA EXPORT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5387

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 09 1999

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DECISION

This case involves claim for refund or tax credit in the amount of ₱39,675,073.00, representing alleged overpaid branch profit remittance taxes pertaining to branch profits for the years 1993 and 1994.

Petitioner is a foreign corporation organized and existing under the laws of the State of Delaware, United States of America and duly licensed to do business in the Philippines as a manufacturer of concentrates and beverage bases for softdrinks through its branch office located at 10/F King's Court 1 Building, 2129 Pasong Tamo, Makati City (Exhibit A).

Petitioner alleges that it had remittable profits from its operations in the amount of ₱1,049,937,416.00 of which ₱976,536,505.00 was effectively connected with the conduct of its trade or business in the Philippines for the calendar year 1993.

Petitioner further alleges that in May and June 1994, it remitted the amount of ₱1,049,937,416.00 to its

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head office and paid respondent the amount of ₱146,480,476.00 representing the 15% branch profits remittance tax due on the profits of ₱976,536,505.00 which was effectively connected to trade or business in the Philippines, on the following dates:

BIR Cert. of Payment	Summary	Date of BIR Payments	Amount	Exhibit
T-2	T	06-27-94	₱ 43,072,941.18	T-1
U-2	U	06-27-94	52,607,647.05	U-1
V-1	V	06-27-94	21,472,941.18	V-1
W-2	W	07-25-94	29,326,946.59	W-1
		Total	₱146,480,476.00	

The 15% branch profits remittance tax of ₱146,480,476.00 was computed on the basis of the following formula:

₱976,536,505.00 x 15% = ₱146,480,476.00

In other words, the foregoing BPRT payments were computed based on petitioner's reported branch profits or branch profits applied for remittance abroad.

For the year 1994, petitioner again alleges that it had remittable profits from its operations in the amount of ₱1,125,627,527.00 of which ₱1,051,300,477.00 was effectively connected with the conduct of its trade or business in the Philippines.

In February and March 1995, petitioner claims that it remitted the said amount of ₱1,125,627,527.00 to its head office and paid to respondent the amount of

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₱157,695,072.00 representing the 15% branch profits remittance tax due on the profits of ₱1,051,300,477.00 which was effectively connected with the conduct of petitioner's trade or business in the Philippines on the following dates:

BIR Cert. of Payment	Summary	Date of BIR Payments	Amount	Exhibit
MM-2	MM	03-27-95	₱ 90,327,873.45	MM-1
NN-2	OO	04-25-95	67,367,198.46	NN
		Total	₱157,695,071.91	

The 15% branch profits remittance tax of ₱157,695,072.00 was likewise computed on the basis of the same formula, thus:

₱1,051,300,477.00 x 15% = ₱157,695,072.00

Again, petitioner based its BPRT payments on its reported branch profits or branch profits applied for remittance abroad.

On April 12, 1996, petitioner filed with the respondent a written claim for refund or issuance of tax credit certificate of the alleged overpaid branch profit remittance tax for the years 1994 and 1995 in the sum of ₱39,675,073.00 (Exh. SS), computed as follows:

A. 1993 Profits

a) BPRT paid to the BIR ₱146,480,476.00

b) Should be

$\frac{₱976,536,505.00}{1.15}$ x 15% (₱127,374,326.00)

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Excess branch profit remittance tax paid	₱ 19,106,150.00
B. 1994 Profits	
a) BPRT paid to the BIR	₱157,695,072.00
b) Should be ₱1,051,300,471.00 / 1.15 x 15%	(₱137,126,149.00)
Excess branch profit remittance tax paid	₱ 20,568,923.00
Total Overpaid BPRT	₱ 39,675,073.00

On June 14, 1996, 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 basis of the Supreme Court decisions in **Commissioner of Internal Revenue vs. Burroughs Limited and the Court of Tax Appeals, GR. No. 66653, June 19, 1986 and Bank of America NT & SA vs. Honorable Court of Appeals and the Commissioner of Internal Revenue, GR No. 103092, July 21, 1994.** The High Court ruled in both cases that the 15% branch profits remittance tax is imposed on profit actually remitted abroad and since said profit does not include the 15% branch profits remittance tax to be paid to the BIR, the said tax should not be included in the tax base for purposes of computing the 15% branch profits remittance tax due to the BIR.

Respondent, on the other hand, advanced in her Answer, *inter alia*, the following special and affirmative defenses, thus:

> 1. The 15% branch profit remittance tax imposed under the Tax Code is an income tax, hence, the same is non-deductible from gross (profit) income, inasmuch as the tax is an exaction on profit realized for remittance abroad;
>
> 2. Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily, the tax base should be the amount actually applied for by the branch with the CBP as profit to be remitted abroad;
>
> 3. The petitioner's right to claim the refund is partially, if not totally prescribed.

The only issue to be determined in this case is whether or not petitioner is entitled to the refund or issuance of a tax credit in the amount of ₱39,675,073.00 representing overpaid BPRT for branch profits earned in 1993 and 1994.

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

> "**Sec. 25. *Rates of tax on foreign corporations.* –**
>
> *(a) Rates of tax on resident foreign corporations.*
>
> xxx xxx xxx
>
> (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): Provided, That any profit

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> remitted by a branch to its head office authorized to engage in petroleum operations in the Philippines shall be subject to tax at 7 $^{1}/_{2}$%. In both cases, the tax shall be collected and paid in the same manner as provided in Sections 51 and 52 of this Code: and Provided, further, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines."

The issue has been finally resolved by the High Court in the case of **Bank of America NT and SA vs. The Honorable Court of Appeals and the Commissioner of Internal Revenue, 234 SCRA 302** which is in all fours with the present case, the pertinent portion of which is quoted hereunder, to wit:

> "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.
>
> "The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such

> foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries *vis-a-vis* local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax *paripassu* ends between domestic branches and subsidiaries of foreign corporations."

In said decision, the Supreme Court reinstated the pronouncement of this Court in the case of **Bank of America NT and SA vs. Commissioner of Internal Revenue, CTA Case No. 3799, October 29, 1986,** which declares in part:

> "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 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.

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> 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."

Based on the above considerations, it is clear that for purposes of computing the 15% branch profit remittance tax, the tax base should be the "profit remitted abroad", that is, the profit actually remitted abroad net of the BPRT itself.

Accordingly, as the 15% tax is imposed only on the profit remitted, that portion of the profits corresponding to the profit remittance tax itself which is not remitted abroad (as it is paid to the government) should not form part of the tax base for purposes of computing the branch profit remittance tax. (**Citibank NA vs. Commissioner of Internal Revenue, CTA Case No. 5023, August 3, 1995, also cited in the case of Philippine Geothermal Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5145, May 15, 1997**)

As to the issue of prescription raised by respondent, the records reveal that the claim for refund was filed within the two-year prescriptive period

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provided under Section 230 of the Tax Code. As mentioned earlier, petitioner paid the branch profits remittance taxes on the following dates:

Date Paid	Amounts	Exhibits
6-27-94	₱43,072,941.18	T-1
6-27-94	52,607,647.05	U-1
6-27-94	21,472,941.18	V-1
7-25-94	29,326,946.59	W-1
3-27-95	90,327,873.45	MM-1
4-25-95	67,367,198.46	NN

The administrative claim for refund was filed by the petitioner on April 12, 1996 and the petition for review with this Court was filed on June 14, 1996. Clearly, it can be seen that the claim if not barred by prescription contrary to the allegation of respondent because the administrative as well as the judicial claims for refund were made within the two-year prescriptive period provided under Section 230 of the Tax Code, which provides, thus:

> **SEC. 230.** ***Recovery of tax erroneously of illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid.

With respect to the amount claimed, a review of the evidence clearly shows that petitioner is entitled to entire amount of ₱39,675,073.00 representing excess branch profits remittance taxes paid for branch profits earned in 1993 and 1994.

WHEREFORE, in view of all 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 ₱39,675,073.00 representing overpaid branch profit remittance tax for the years 1993 and 1994. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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CERTIFICATION

I hereby certify that the above 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

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