File

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WESTERN PALAWAN TIMBER
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3544

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

6/5/87

D E C I S I O N

Petitioner Western Palawan Timber Corporation seeks a review of the decision of respondent Commissioner of Internal Revenue dated July 20, 1981 denying its protest against the assessment for withholding tax at source for the year 1975 in the amount of ₱75,374.75, inclusive of interest and 25% surcharge. The basis of the assessment is the alleged failure of petitioner to deduct, withhold and remit to the Bureau of Internal Revenue in accordance with Section 54 of the National Internal Revenue Code the corresponding 15% withholding tax on the accrual of interest of its foreign loan from the Mitsubishi Corporation.

The facts are not disputed, both parties having submitted this case for decision on the basis of the records and the pleadings. (p. 95, CTA records.) And the records and pleadings show that:

1. Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office address presently located at 2nd Floor, Anson Building, 2304 Pasong Tamo Extension, Makati, Metro Manila. (p. 1, CTA records.)

2. As appearing in the corporate annual income tax return filed by petitioner for the fiscal year ended May 31, 1975, it paid interest in the amount of ₱300,899.20 to the Mitsubishi Corporation (Hongkong), Ltd., a non-resident foreign corporation. (p. 106, BIR records.)

3. Upon investigation of petitioner for income and business tax purposes, respondent's revenue examiner reported that petitioner did not withhold and pay the 15% tax on the interest paid to the Mitsubishi Corporation. As alleged by subject taxpayer, "no withholding tax at source was made since there was no actual payment during the period only on the later years". (p. 134, BIR records.)

4. On September 12, 1980, assessment notice and letter of demand were issued by the Regional Director, Revenue Region No. 4-B, Manila, against petitioner for deficiency withholding tax at source for the year 1975

in the total amount of ₱75,374.75, broken down as follows:

Tax Due	₱45,134.88
Surcharge . . .	11,283.72
Interest . . .	18,956.65

(pp. 1-2, & 7, CTA records.)

5. These assessment notice and letter of demand of the Regional Director were confirmed by Deputy Commissioner Romulo M. Villa in his letter to petitioner dated January 27, 1981. (p. 142, BIR records.)

6. On September 29, 1980, petitioner through its auditors, Messrs. Guzman, Bocaling & Co., protested the assessment and requested that the same be withdrawn on the ground that the interest on the foreign loan had not yet been paid at the time, and therefore petitioner had no obligation to withhold and pay the withholding tax thereon. (pp. 2 & 9-10, CTA records; pp. 240-241, BIR records.)

7. On July 20, 1981, respondent denied the protest on the ground that the liability to withhold and pay the income tax withheld at source under Section 53 of the National Internal Revenue Code attaches at the time of the accrual of the interest and not at the time of the actual remittance thereof. (pp. 249-250, BIR records; p. 3, CTA records.)

Hence, this petition for review.

Respondent poses two issues for this Court's consideration, the first of which is also the sole issue presented by petitioner:

1. Whether the liability of petitioner to withhold and pay the 15% tax on the interest on its foreign loan from the Mitsubishi Corporation (Hongkong), Ltd. attaches at the time of accrual or actual remittance thereof.

2. Whether petitioner is liable for the amount of ₱75,374.75 as deficiency withholding tax at source, inclusive of surcharge and interest, for the fiscal year ended May 31, 1975.

Indeed, the first issue is not one of first impression. Analogous to the case at bar on this point by reason of the close or exact identity of the factual setting, issue litigated and law involved, is Construction Resources of Asia, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3307, November 25, 1983, certiorari denied in Construction Resources of Asia, Inc. vs. Commissioner of Internal Revenue, G.R.

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No. 68413, December 10, 1984.

In that case, the taxpayer involved therein, just like petitioner herein, is a domestic corporation. In July, 1977, it entered into a contract with the Malaysian government for the construction of a road at Sabah. In connection therewith, the taxpayer incurred foreign loans in the amount of $3,900,000.00 at 9-3/16% interest per annum. For the period from December 7, 1977 to June 5, 1978, the taxpayer paid the sum of $179,156.25 to the foreign creditors as interest on its loans.

In an investigation conducted by examiners of the Bureau of Internal Revenue, it was ascertained that the taxpayer failed to file withholding tax return and to withhold 15% tax on interest on foreign loans remitted abroad. Thus, in a demand letter dated January 25, 1980, the Commissioner of Internal Revenue sought payment of the withholding tax at source in the amount of ₱300,170.46. The taxpayer, in letters dated November 7, 1979 and February 15, 1980, protested the assessment for withholding tax at source, stating that the actual payment of interest was made only on June 5, 1978 and, therefore, it had nothing yet to withhold in 1977.

This Court ruled that the liability of the taxpayer to withhold and pay the income tax withheld at source from interest due to a non-resident foreign corporation attaches at the time of the accrual of said interest and not at the time of actual payment or remittance thereof. Because of its controlling effects on the present case, we will quote the pertinent portion of the decision.

> 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 since it already and properly belongs to the government. Indeed, there is no reason why the overseas contractor, petitioner in this case, who is based in the Philippines, should 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.

Petitioner herein Western Palawan Timber Corporation would, however, seek refuge in Bayer Pharmaceuticals, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2846, March 16, 1979, certiorari denied in Commissioner of Internal Revenue vs. Court of Tax Appeals, et al., G.R. No. 72054, October 10, 1986, wherein this Court ruled:

> "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 Aktiengesellschalft, Leverkusen Bayermerk 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 the deficiency withholding tax-at-source assessment of Respondent Commissioner of Internal Revenue in the amount of ₱36,834.73 for the year 1972."

In that case, the taxpayer therein is a domestic corporation engaged in business of manufacturing and selling chemical, medicinal, pharmaceutical and biological products. Sometime in 1966, the taxpayer and the Bayer Aktiengesellschalft, Leverkusen Bayermerk (Bayer for short), a non-resident foreign corporation, entered into an agreement whereby the taxpayer was granted by Bayer the right to manufacture certain pharmaceutical products from actual ingredients of Bayer, in accordance with Bayer's prescriptions, and to sell such products under the trademarks registered in the Philippines in Bayer's name. In consideration of such right, the taxpayer agreed to pay Bayer a royalty of 5% on the net sales proceeds of the licensed products.

Verification of the taxpayer's books of accounts by an examiner of the Bureau of Internal Revenue disclosed that for the year 1972, the amount of royalty due from the taxpayer to Bayer pursuant to the royalty agreement amounted to ₱69,529.00 and the same had been set up in the books of the taxpayer as liability and was claimed as deduction from its gross income for 1972. Bayer had likewise issued a debit memo to the taxpayer for the royalties. Accordingly, for failure of the taxpayer to withhold and pay the tax on the royalties, the Commissioner of Internal Revenue issued a deficiency assessment for ₱36,834.73 against the taxpayer through his demand letter dated November 25, 1974.

The taxpayer, in a letter dated January 10, 1975, contested the assessment, arguing that it had no liability to withhold and pay the tax, since the obligation to withhold and pay the tax arises only upon actual payment or remittance. It maintains that there was no obligation to deduct, withhold and pay the withholding tax in 1972 since the royalties could not be remitted due to Central Bank restrictions. The Commissioner of Internal Revenue however contends that the liability to withhold and pay the income tax withheld at source from royalty payments to a non-resident foreign corporation is at the time of the accrual of said royalties and not at the time of the actual remittance or payment thereof.

This Court unequivocally ruled that since the royalties could not be remitted to the non-resident foreign corporation due 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 a matter of fact, as appearing from the corporate annual income tax return filed by petitioner for the fiscal year ended May 31, 1975, it paid interest already in the amount of ₱300,899.20 to the Mitsubishi Corporation. (p. 106, BIR records.) It is thus clear beyond doubt that petitioner was not restricted from remitting in 1975 the interest to its foreign creditor for it had already paid such interest in the taxable year involved in this case. And undoubtedly, whether the liability of petitioner to withhold and pay the 15% tax on the interest on its foreign loan in accordance with Section 54 of the National Internal Revenue Code attaches at the time of accrual (since petitioner was not restricted from remitting) or actual remittance thereof, the maturation point of the withholding duty and payment of tax has become due in 1975. Because of petitioner's failure to withhold and remit to the Bureau of Internal Revenue the withholding tax on the accrual or payment of interest on its foreign loan in 1975, the Court agrees with respondent Commissioner of Internal Revenue that petitioner Western Palawan Timber Corporation is liable for the amount of ₱75,374.75 as deficiency withholding tax at source, inclusive of surcharge and interest, for the fiscal year ended May 31, 1975.

Nonetheless, petitioner alleges under paragraph 4 of its petition for review that:

> 4. On November 6, 1980, petitioner remitted and paid to the Bureau of Internal Revenue the amount of ₱142,307.03 corresponding to the 15% tax based on the total amount of ₱948,713.55 actually remitted as interest payment to Mitsubishi Corporation. The interest amounting to ₱45,134.88 which was the basis of the assessment by respondent forms part of the ₱948,713.55 on which is based the 15% tax. A true copy of the corresponding official receipt for such payment is hereto attached and made part hereof as Annex "D".

This is however specifically denied by respondent in paragraph 3 of his answer:

> 3. He SPECIFICALLY DENIES the allegation in paragraph 4 of the petition that on November 6, 1980, petitioner remitted and paid to the Bureau of Internal Revenue the amount of ₱142,307.03, for lack of knowledge or information sufficient to form a belief as to the truth thereof. Whether the alleged payment was actually paid to and received by the government is still being verified. Moreover, assuming without admitting that the said amount was actually remitted, he SPECIFICALLY DENIES the averment that the same constitutes payment of the assessment for being a mere opinion and/or conclusion on the part of petitioner, and is false, the truth being as stated in the hereunder Special and Affirmative Defenses.

And as special and affirmative defense thereto respondent contends that:

> 8. The alleged receipt for ₱142,307.03 (Annex "D", petition) does not specify that it is in payment of the assessment involved in this case.

As aptly stated by respondent:

> In spite of respondent's denial of the above factual allegations (par. 3, Answer), petitioner failed to present evidence in support thereof. The alleged xerox copy of an official receipt showing payment of the amount of ₱142,307.03, without corroborating evidence, is not sufficient to prove that the amount of ₱142,307.03 includes the amount of ₱75,374.75 assessed against petitioner. Furthermore, assuming arguendo that petitioner has already paid the withholding tax on the interest due Mitsubishi Corporation in the amount of ₱300,899.20, it would still be liable for the corresponding penalties incident to delinquency (surcharge and interest) since the alleged payment was made on November 6, 1980, after the issuance of the assessment on September 12, 1980.

The Court recognizes that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. All presumptions are in favor of the correctness of the tax assessment. (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, specially if they are specifically denied in the answer, as in this case, conformably to the doctrine of the presumption in favor of the correctness of the tax assessment (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, supra; Collector of Internal Revenue vs. Bohol Land Transportation, L-13099 and L-13463, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer (Caresosa vs. Bureau of Internal Revenue, CTA Case No. 3713, January 25, 1985, certiorari denied in G.R. No. L-70758, August 30, 1985).

Accordingly, petitioner Western Palawan Timber Corporation is ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱75,374.75 as withholding tax at source for 1975, plus surcharges and interest incident to delinquency pursuant to the provisions of Section 51(e) of the applicable National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 5, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge