LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5175

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 10 1997

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DECISION

This refers to a claim for refund in the amount of ₱1,968,282.30 representing overpaid withholding tax on royalty payments to William Wrigley, Jr., Co., Chicago, U.S.A. (Wrigley - U.S.A. for short) corresponding to the period from June to September 1993.

Petitioner is a domestic registered corporation engaged in the manufacture and sale of chewing gum, with business address at Pioneer Street, Pasig, Metro Manila.

On January 1, 1992, it entered into the following agreements with Wrigley - U.S.A., to wit:

Name of Agreement	Exhibit Marking for Petitioner	Location in CTA records
1. Technical Data Agreement	Exh. "A"	pp. 50-60
2. Technical Assistance Agreement	Exh. "B"	pp. 62-72

3.	Trademark Agreement	Exh. "C"	pp. 74-86
4.	License Agreement	Exh. "D"	pp. 89-110

which agreements were all registered with and duly approved by the Bureau of Patents, Trademarks and Technology Transfer as evidenced by the following Certificates of Registration, namely:

Certificate of Registration	Exhibit Marking for Petitioner	Location in CTA Records
1. No. 1308	Exh. "A-1"	p. 49
2. No. 1310	Exh. "B-1"	p. 61
3. No. 1309	Exh. "C-1"	p. 73
4. No. 1466	Exh. "D-1"	p. 87

As a consideration for the technical data and assistance received from Wrigley - U.S.A., as well as the use of its trademark and license, herein petitioner is required to pay a royalty based on its net export sales.

For the period from June 1993 to September 1993, petitioner paid to Wrigley - U.S.A. royalties in the total amount of ₱13,121,882.00, 25% of which in the total amount of ₱3,210,475.50 was remitted to the B.I.R. as withholding tax. Breakdown and other details of said payments are shown hereunder:

Period Covered	Royalties Paid	25% W/holding Tax	Exhibit Markings for Petitioner
June 1993	P 5,029,080.00	P1,257,265.00	"E-2" & "E-3"

Period Covered	Royalties Paid	25% W/holding Tax	Exhibit Markings for Petitioner
July to August 1993	5,319,239.00	1,329,809.75	"F-2"
Sept. 1993	2,773,583.00	693,395.75	"G-2"
	₱13,121,902.00	₱3,280,470.50	

On July 12, 1993, petitioner filed its Monthly Remittance Return for Income Tax Withheld for the period June 1993 (Exh. "E") and paid the corresponding tax in the total amount of ₱4,118,957.42 (Exh. "E-1").

The Withholding Tax Return for July to August 1993 (Exh. "F") was filed on September 10, 1993 and the corresponding tax paid was in the amount of ₱2,096,374.88 (Exh. "F-1").

For the period September 1993, the Withholding Tax Return (Exh. "G") was filed by petitioner on October 11, 1993 and the corresponding tax in the amount of ₱3,541,040.94 (Exh. "G-1") was also paid on the same day.

The royalty payments to Wrigley - U.S.A. during the period June 1993 to September 1993 was subjected by petitioner to 25% withholding tax on the basis of Revenue Memorandum Circular (RMC) No. 39-92, dated July 1, 1992, pertinent portion of which provides:

> "1. Rulings previously issued by the BIR allowing the availment of the benefits of the 'most favored nation' clause on payments of royalties to recipients in the United States

are revoked effective January 21, 1992 pursuant to the IBM memorandum decision. It is to be noted that this revocation is not given retroactive application because of the provisions of Section 246 of the Tax Code which prohibits such retroactive application if such will be prejudicial to the interest of the taxpayer. But beginning January 21, 1992, the tax liabilities which accrue or become payable on royalty payments shall be determined at the correct tax rate (either 15% if royalties are paid by corporations registered with the Board of Investments and engaged in preferred areas of activities, or 25%, for all other cases) and paid under the conditions as provided for in the following paragraphs.

2. Taxpayers who have relied on such rulings, but are not the recipients of such rulings directly providing for the 'most favored nation' tax rate of 10% on their royalty payments, and accordingly have failed to withhold the correct taxes on royalties paid to recipienst in the United States are deemed to be deficient in their tax payments beginning from such date that they have started paying the incorrect amount of taxes of 10%. These taxpayers cannot claim that they have a vested right to such 'most favored nation' tax treatment which cannot be given retroactive application. As such, these taxpayers are given not later than October 30, 1992 to amend their withholding tax returns and pay the corresponding taxes, without the penalties. xxx."

Petitioner submits that the applicable withholding tax rate of royalty payments is 10% pursuant to Art. 13(2)(b)(iii) of the RP-US Tax Treaty in relation to Art. 12(2)(b) of the RP-West Germany Tax Treaty, providing, thus:

"**Article 13. Royalties.**

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) In the case of the United States, 15 percent of the gross amount of the royalties; and

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

(i) 25 percent of the gross amount of the royalties;

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a Corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(iii) **<u>The lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State."</u>** (underscoring supplied)

"**Article 12. <u>Royalties</u>**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:

(a) 15 per cent of the gross amount of royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films or tapes for television or broadcasting, or

> (b) 10 per cent of the gross amount of royalties arising from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
>
> For as long as the transfer of technology, under Philippine law, is subject to approval, the limitation of the tax rate mentioned under (b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippine competent authorities." (Underscoring supplied)

Thus, in a letter, dated December 2, 1993, filed with the respondent on December 7, 1993, petitioner requested for the refund or issuance of a tax credit certificate in the total amount of P1,968,282.30 as alleged overpaid withholding tax at source paid on royalties remitted to Wrigley - U.S.A. during the subject period.

The lone issue to be resolved in this case is whether or not petitioner is entitled to the refund of the amount of P1,968,282.30.

We rule affirmatively in favor of petitioner.

In the light of our previous decisions in similar cases involving identical issue, we have ruled in the case of **"General Electric Philippines Meter and**

Instrument Co., Inc. vs. Commissioner of Internal Revenue," CTA Case No. 4158, December 5, 1991, that:

> "On the basis of the most favored nation clause of the RP-US Tax Treaty, Art. 13(2)(b)(iii), taken in relation to Article 12(2)(b) of the RP-West Germany Tax Treaty and BIR Ruling No. 263-86, petitioner should have withheld and paid only 10% tax instead of 25% on royalties paid by petitioner to General Electric Company in the U.S..
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> Of the accrued royalties in 1984 in the amount of P15,570,208.22 paid in 1985 – 25% tax was actually paid by petitioner on May 10, 1985 by way of withholding tax in the amount of P81,743.59 (Exhs. I, K and J, pp. 53-54, CTA rec.). Since the tax due thereon is only 10%, according to the above provision of law, the sum of P54,495.73 was due and paid resulting to an overpayment of P27,247.86.
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> Of the technical service fee of P168,474.91, petitioner paid on June 10, 1985 the 15% withholding tax in the sum of P25,271.23. (Exhs. E, G, & F, pp. 50-51 CTA rec.). Since the tax due is only 10% according to the above provision of law, the sum of P14,440.71 was due and paid resulting to an overpayment of P10,830.52."

The above-quoted decision was affirmed by the Court of Appeals in **Commissioner of Internal Revenue vs. General Electric Philippines Meter and Instrument Co., Inc., C.A. G.R. No. 30674,** and became final when the entry of judgement was issued on January 26, 1995.

In a latter case entitled **"IBM Philippines, Inc. vs. Commissioner of Internal Revenue," CTA Case No. 4308,**

decided on March 31, 1993, this Court reiterated the aforequoted ruling stating that:

> "On the second issue, whether or not petitioner should be taxed at the reduced rate of 10% withholding tax on royalties in accordance with Article 12(2)(b) of the R.P.-West Germany Tax Treaty and not 25% withholding tax on royalties under Article 13(2)(b)(iii) of the R.P.-U.S. Tax Treaty.
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> This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by then Commissioner of Internal Revenue, Bienvenido Tan, Jr., (BIR Ruling No. 456-88, *supra*.), that under the most favored nation provision of the R.P.-U.S. Tax Treaty (Article 13, paragraph 2(b)(iii), the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state. Article 12, paragraph 2(b) of the R.P.-West Germany Tax Treaty, provides that royalties arising in the Philippines and paid to a resident of West Germany may also be taxed in the Philippines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitation of the tax rate in case of royalties arising in the Philippines, apply if the contract giving rise to such royalties has been approved by Philippine competent authorities.
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> Thus, inasmuch as the Agreement between World Trade and IBM Phils. as well as the Agreement between IBM and IBM Phils. had been approved by the Central Bank of the Philippines, royalties arising in the Philippines and payable to World Trade as well as to IBM Phils. should be taxed at the rate of 10% because said rate is indicated in the R.P.-West Germany Tax Treaty and pursuant to Article

13, paragraph 2(b)(iii), of the RP–US Tax Treaty."

The above-cited rulings/decisions were again reiterated by this Court in **Smithkline and French Overseas Co. vs. Commissioner of Internal Revenue, CTA Case No. 5048, September 22, 1995,** where We ruled that:

> "We do not intend to depart from the wisdom of the said rulings and thus, the same should be applied in the case at bar.
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> Prescinding from the above discussions, records of the case reveal that petitioner indeed overpaid its payment on royalties in the amount of ₱372,884.70 (Exh. F) and thus, should be entitled to the refund of said amount."

The above-mentioned decision became final when its entry of judgment was issued on January 30, 1996.

In a most recent case decided by this Court on April 23, 1996, it was emphasized that there are two important requirements that should be present and/or complied with before the 10% rate of withholding tax on royalties remitted to a U.S. resident may be availed of. These are:

> 1. It is necessary that there be an agreement or a contract whereby the royalties paid to the U.S. must originate from the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and
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> 2. The contract or agreement must be duly approved by Philippine competent authorities. (CTA Case No. 5141, "Jardine

Davies, Inc. and Macwhyte Company, a Division of Amsted Industries, Inc. vs. Commissioner of Internal Revenue", promulgated on April 23, 1996).

Petitioner in the instant case presented in evidence the four (4) agreements it entered into with Wrigley - U.S.A.. Such agreements were the Technical Data Agreement (Exh. "A"), Technical Assistance Agreement (Exh. "B"), Trademark Agreement (Exh. "C") and License Agreement (Exh. "D") which were all registered and approved by the Bureau of Patents, Trademarks and Technology Transfer. The certificates of registration of these agreements were likewise presented and marked as Exhibits "A-1", "B-1", "C-1" and "D-1". With the presentation and marking of these documents petitioner has complied with the two (2) important requirements laid down in the aforementioned case of "**Jardine Davies, Inc. and Macwhyte Company vs. Commr. of Internal Revenue**", *supra*.

To prove that the amount being claimed as refundable/tax creditable, has actually been remitted to the BIR, petitioner also presented the Monthly Remittance Returns of Income Tax Withheld for the subject period (Exhs. "E", "F" and "G") which showed the machine validations of the amounts paid (Exhs. "E-1", "F-1" and "G-1") for each return.

With the presentation of all the aforementioned documents, which were properly identified by petitioner's witness, Mrs. Celia Garcia, including all the other exhibits which were also material to the issue involved, this Court is convinced all the more to grant to petitioner a tax credit certificate in the amount of ₱1,968,280.30 computed as follows:

Total royalties paid	₱13,121,902.00
25% tax withheld and remitted to BIR	3,280,470.50
Should be at preferential rate of 10%	1,312,190.20
Tax Creditable Overpaid Withholding Tax	₱ 1,968,280.30

For her part, respondent failed to present any evidence to rebut petitioner's claim which was substantially proven during the hearings conducted. In fact, in a resolution promulgated on January 31, 1996 (p. 132, CTA rec.) this Court considered respondent's counsel to have waived the presentation of her evidence for failure to appear several times at the hearings scheduled for the reception of her evidence.

WHEREFORE, in view of the foregoing, this Court finds the petition meritorious and hereby **ORDERS** respondent to **ISSUE** in favor of petitioner a **TAX CREDIT CERTIFICATE** in the amount of ₱1,968,280.30 as overpaid withholding tax on royalty payments for the period from June 1993 to September 1993.

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 with 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