Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

THE COCA-COLA EXPORT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4952

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 09 1995

x - x

D E C I S I O N

This case involves a claim for refund or tax credit in the amount of ₱1,262,577.78 for alleged overpaid withholding tax on dividends.

Petitioner is a corporation, organized and existing under the laws of the State of Delaware, United States of America, with principal place of business in the City of Atlanta, State of Georgia, United States of America, and is duly licensed to do business in the Philippines through its Philippine Branch with office at 10th floor King's Court Building, Makati, Metro Manila.

Petitioner is doing business in the Philippines through its Philippine Branch in the manufacture and sale of beverage base and concentrates, and in addition thereto is an investor, independently of its Philippine Branch, in Three Hundred Thousand (300,000) Common Shares of Coca-Cola Bottlers Philippines Inc. (CCBPI), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.

On November 6, 1990, Coca-Cola Bottlers Philippines, Inc., allegedly declared cash dividend and Petitioner was paid on March 5, 1991 a gross dividend of Twenty Five Million Two Hundred Fifty One Thousand Five Hundred Fifty Five Pesos and Fifty Six Centavos (₱25,251,555.56) from which twenty percent (20%) tax amounting to Five Million Fifty Thousand Three Hundred Eleven Pesos and Eleven Centavos (₱5,050,311.11) was withheld by Coca-Cola Bottlers Philippines, Inc.

It was alleged by petitioner that the above-mentioned tax withheld amounting to ₱5,050,311.11 was remitted by Coca-Cola Bottlers Philippines, Inc. to the respondent, the amount of ₱3,787,733.33 and ₱1,262,577.78 was paid on December 10, 1990 and February 11, 1991 respectively.

Petitioner alleged that it hold the investment in CCBPI directly and independently of its Philippine Branch, and the dividends were remitted directly by CCBPI to the petitioner in the U.S., the said dividends are considered dividends paid to non-resident foreign corporation, thus, the applicable provision is Section 25(b)(5)(B) of the National Internal Revenue Code.

It maintains that the case of Marubeni Corporation vs. Commissioner of Internal Revenue (G.R. No. 76575, September 14, 1989) is applicable to the case at bar. The High Court had occasion to rule that the Home Office is a separate and distinct taxpayer from the Branch Office in the Philippines, and that when the Home Office transacts business in the Philippines independently of the Philippine Branch Office, the transaction is considered transaction by a non-resident foreign corporation. Therefore, the dividends paid by Coca-Cola Bottlers Philippines, Inc., directly to Petitioner's Home Office in the United States are considered dividends paid to non-resident foreign corporation and as such, taxable under Section 25(b)(5)(B) of the Tax Code.

On July 30, 1992, petitioner filed with the respondent a claim for refund or tax credit in the amount of ₱1,262,577.78, representing the 5% excess withholding tax on dividends.

Subsequently, petitioner filed a petition for review with this Court on February 9, 1993 as a way of tolling the two-year prescriptive period set by law.

Respondent on the other hand interposes the following affirmative defenses to wit:

> that the tax in question was collected in accordance with law; in an action for refund, the burden of proof is upon the taxpayer to establish the right to refund and failure to sustain the burden is fatal to the action for refund; the claim for refund is still under investigation; the

> allegations regarding the refundability does not ipso facto merit the refund claimed; claims for refund of taxes are construed strictly against the claimant, the same being in the nature of an exception from taxation.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of ₱1,262,577.78 for overpaid withholding tax on dividends.

This Court finds for the petitioner. Pursuant to Section 25(b)(5)(B) of the National Internal Revenue Code, the tax in the dividends paid by Coca-Cola Bottlers Philippines Incorporated directly to petitioner in the U.S. shall be 15% of the dividends received, subject to the condition that the U.S. shall allow a credit against the tax payable to the U.S. from the petitioner, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the reduced tax (15%) on the dividends.

Sec. 25(b)(5)(B) of the National Internal Revenue Code insofar as pertinent provides as follows:

> On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 50(a) of the National Internal Revenue Code, as amended, subject to the condition that the country in which the non resident foreign corporations is domiciled shall allow a credit against the corporation, taxes deemed to have been paid in the Philippines equivalent to 20%

> which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this subparagraph.

The High Court had occasion to rule in the case of Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, G.R. No. 66838, December 2, 1991 that:

> xxx Section 24(b)(1), NIRC, does not in fact require that the deemed paid tax credit shall have actually been granted before the applicable dividend tax rate goes down from thirty-five (35%) to fifteen percent (15%). As noted several times earlier, Section 24(b)(1) merely requires, in the case at bar; that the USA shall allow a credit against the tax due from [P & G - USA for] taxes deemed to have been paid in the Philippines xxx.

There is neither statutory provision nor revenue regulation issued by the Secretary of Finance requiring the actual grant of the deemed paid tax credit by the US Internal Revenue Service to P & G - USA before the preferential fifteen percent (15%) dividend rate becomes applicable. Section 24(b)(1), NIRC, does not create a tax exemption nor does it provide a tax credit; it is a provision which specifies when a particular (reduced) tax rate is legally applicable.

Based on cited provisions of the law and jurisprudence, there is no doubt in the mind of the Court that petitioner is entitled to the relief sought for. (*Procter & Gamble Phil. Manufacturing Corporation vs. The Comm. of Internal Revenue, CTA Case No.* 2883, Jan. 31, 1984) In the light of the foregoing, there is nothing left for the Court but to give due course to this petition.

WHEREFORE, premises considered respondent is hereby ordered to refund in favor of Coca-Cola Export Corporation the amount of ₱1,262,577.78 for overpaid withholding tax on dividends.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(On leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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.

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals