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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SYSTEMATICS INC. and BANK OF THE PHILIPPINE ISLANDS,
Petitioners,

- versus -

C.T.A. CASE NO. 4665

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 02 1994

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DECISION

This case involves a claim for refund of allegedly overpaid withholding tax on license fee in the amount of P1,514,877.30 for the year 1989.

Petitioner Systematics Inc. (SI) is a non-resident foreign corporation with business address at 4001 Rodney Parham Rd., Little Rock, Arkansas, U.S.A.. Represented herein by the withholding agent/petitioner Bank of Philippine Islands (BPI), a corporation duly organized and existing under the laws of the Philippines.

On April 30, 1989, BPI entered into an agreement with SI entitled "Investment Charter Software License Agreement" (portion of which was amended on July 20, 1989).[1] This agreement was duly registered and approved by the Technology Transfer Board of the Department of Trade and Industry on July 27, 1989 under Certificate of Registration No. 950.[2] The said Agreement granted BPI a license to use certain SI computer programs. Further a payment of a license fee in the amount of $271,800.00 or P6,059,509.20 was stipulated payable upon completion of the acceptance of the software (originally payable upon execution of the agreement).

On November 10, 1989, petitioner BPI filed its Monthly Remittance Return of Income Taxes Withheld for the month of October 1989 showing a final withholding tax of P3,881,334.59 which was paid under Payment Order No. 3637466 and CB Confirmation Receipt No. 17080580 both dated November 10, 1989.[3] Petitioner BPI alleged that this amount includes the P2,120,828.22 income tax payment of petitioner SI representing 35% of P6,059,509.20 license fee.[4]

On April 26, 1990, BPI requested for BIR ruling confirming its opinion that the license fees and royalties paid by it to SI were subject only to a 10% withholding tax pursuant to Article 13, paragraph

[1]Exh. "A".
[2]Exh. "G".
[3]Exhs. "C", "C-1" and "C-2".
[4]Exhs. "B" and "B-1".

2(b)(iii) of the RP-US Tax Treaty in relation to Article 12, paragraph 2(b) of the RP-West Germany Tax Treaty.[5]

In response, the then Commissioner of Internal Revenue Jose U. Ong issued BIR Ruling No. 079-91 on May 3, 1991 confirming petitioner BPI's opinion[6]. This ruling provides in part:

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> In reply, please be informed that your opinion to the effect that the license fees and royalties you are paying to Systematics Inc., a non-resident U.S. Corporation, pursuant to your "Software License Agreement" with said corporation are subject to a 10% withholding tax under Article 12, paragraph 2(b)(iii) of the RP-US Tax Treaty in relation to Article 12, paragraph 2(b) of the RP-West Germany Tax Treaty is hereby confirmed. Under the most favored nation provision of the RP-US Tax Treaty [Article 12, paragraph 2(b)(iii)], the tax imposable on royalties (which likewise embrace license fees) 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 RP-West Germany Tax Treaty , effective January 1, 1985 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 arising from the use of or the right to use of, any patent, trademark, design or model, plan, secret formula, or from the use of, or the right to use, industrial, commercial or scientific

[5]Exhs. "D" and "D-1".
[6]Exh. "E".

> experience. The said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitations of the tax rate mentioned under (b) shall, in 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.
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In line with the above ruling, petitioner BPI filed on July 25, 1991 a claim for refund with respondent's Legislative Ruling and Research Division asking for the over remittance of withholding taxes in the amount of P1,514,877.30 paid by petitioner SI.[7] The over remittance is computed as follows:

License fee paid to SI	$ 271,800.00
Multiply by peso rate	22.294
License fee paid in pesos	P6,059,509.20
Multiply by regular tax rate	35%
Total tax remitted to BIR	P2,120,828.22
Actual tax liability (6,059,509.20 x 10%)	605,950.92
Over remitted withholding tax	P1,514,877.30

However, respondent did not grant the refund nor even answered BPI's letter leaving no recourse but to file a suit before this Court. Therefore, a petition for review was filed on November 5, 1991 in order to interrupt the running of the two-year prescriptive period under Sec. 230 of the National Internal Revenue Code, as amended.

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[7]Exhs. "F" and "F-1".

This case was submitted by respondent's counsel for decision on the basis of the BIR record[8], petitioner's evidence[9] and the pleadings. Both parties failed to submit their respective memoranda.

The sole issue to be resolved by this Court is whether or not petitioners are entitled to the refund of P1,514,877.30 representing overpaid withholding tax of SI, a non-resident foreign corporation, pursuant to the RP-US Tax Treaty.

Based on the evidence presented, this Court finds no reason why We can not grant petitioners' claim.

As stated by Commissioner Jose U. Ong on his ruling:

> (i)nasmuch as the 'Software License Agreement' between you and Systematics Inc. had been duly registered and approved by the Technology Transfer Board of the Department of Trade and Industry on July 27, 1989 under Certificate of Registration No. 950, royalties and license fees arising in the Philippines and payable to Systematics Inc., a non-resident foreign corporation based in Arkansas, U.S.A., are subject to the Philippine tax at the rate of 10% because this rate appears in the RP-West Germany Tax Treaty and pursuant to Article 13, paragraph 2(b)(iii) of the RP-US Tax Treaty. xxx.

Since petitioners were able to prove that the withholding tax on license fee they paid and remitted to

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[8]The BIR records was not transmitted to the Court.
[9]Counsel for respondent did not object to the admission of petitioners' exhibits.

the Bureau of Internal Revenue amounts to 35%, where it should be 10%, the excess of 25% should be refunded to them.

WHEREFORE, respondent is hereby ordered to REFUND to petitioners the amount of P1,514,877.30 representing overpaid withholding income tax on license fee pursuant to RP-US Tax Treaty.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals