REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

YARDLEY INTERNATIONAL, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 3934

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - x

11/11/87

D E C I S I O N

Suit for recovery of the amount of ₱31,527.22 paid to the Bureau of Internal Revenue as profit remittance tax on the ground that the profit upon which the remittance tax was paid was not remitted. Petitioner Yardley International, Ltd., filed its claim for refund or tax credit with respondent Commissioner of Internal Revenue, but since no action thereon was seasonably taken by respondent, petitioner brought this case to this Court.

The facts are not in dispute, the parties having submitted this case for decision on the basis of the pleadings and evidence presented by petitioner.

Petitioner is a foreign corporation duly licensed to do business in the Philippines and with Philippine address at c/o its resident agent, Mr. Alonzo Q. Ancheta, 706 Don Pablo Building, 114 Amorsolo St., Legaspi Village, Makati, Metro Manila.

On May 9, 1983, petitioner paid the 15% profit remittance tax of ₱31,527.22 on branch profit of ₱210,181.44 which it intended to remit to its head office in London. (Exhibits "C", "C-1", "D" and "D-1".)

It appears that petitioner, through the Chartered Bank, filed with the Central Bank an application to purchase foreign exchange for remittance of profits worth ₱210,181.44. (t.s.n., pp. 13-14, November 25, 1985; Exhibits "D" and "D-1".) However, because of certain requirements petitioner was not able to comply, approval was not immediately obtained. (t.s.n., pp. 15-16, November 25, 1985.)

Be that as it may, the evidence shows that the intended remittance was not effected because of losses subsequently incurred by petitioner. (t.s.n., p. 16, November 25, 1985; Exhibits "E" and "F".)

On July 23, 1984, petitioner therefore filed with respondent a claim for refund or tax credit for its unused profit remittance tax of ₱31,527.22.

(t.s.n., p. 18, November 25, 1985.) No action, however, was taken by respondent upon said claim. (t.s.n., p. 18, November 25, 1985.)

Meanwhile, petitioner stopped, as shown by the record, its operations in the Philippines. (t.s.n., p. 18, November 25, 1985; Exhibits "H" and "I".)

Hence, the instant petition for review.

Is petitioner Yardley International, Ltd., entitled to a tax refund of ₱31,527.22?

At the outset, it should be stressed that respondent did not present any evidence controverting the correctness of the material facts stated above. As a factly matter, respondent simply submitted this case for decision on the basis of the pleadings and the records after petitioner has presented and offered its evidence. It may suffice that "Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted" (Bauermann vs. Casas, 10 Phil. 386;

Evangelista vs. De la Rosa, et al., 76 Phil. 115), respondent may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidence presented, which was not disputed by respondent, sufficiently establishes petitioner's right to the refund. (Commonwealth Managment and Service Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 3232, June 26, 1985.) We hesitate to further fashion an issue into a satisfactorily settled rule. (Commonwealth Management and Service Corporation vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 3754 and 3794, July 31, 1987.)

Even in his special and affirmative defenses in his answer, respondent does not dispute that no profit was actually remitted to petitioner's head office. As a matter of fact, respondent did not even bother to file a memorandum in support of his case although he was given ample time to do so.

That petitioner did not remit any profit and that it in fact incurred a net loss is shown in petitioner's Statement of Assets and Liabilities dated September 30, 1984. (Exhibit "E".) And on September

30, 1984, petitioner retired from business and its license to do business cancelled, and petitioner ceased operations in the Philippines.

As observed by Judge Alex Z. Reyes in Commonwealth Management and Service Corporation vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 3383 and 3578, June 30, 1987, the case before us hardly presents a "gripping question or require a tortured ratiocination. As thus shown the basis for the claim(s) are (is) not short of specific support in terms of tractable data openly laid and fully disclosed. xxx xxx xxx. Respondent points to no factual errors nor superfluities which need be abridged."

The profit remittance tax of ₱31,527.22 involved in this appeal was paid by petitioner to respondent's office as tax on branch profit which petitioner intended to remit abroad. Due to losses subsequently incurred by petitioner, no profit however was actually remitted. It is thus clear beyond doubt that no profit remittance tax became due and payable to the Bureau of Internal Revenue.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant the refund to petitioner Yardley International, Ltd., the amount of ₱31,527.22 representing erroneously paid profit remittance tax. No costs.

SO ORDERED.

Quezon City, Metro Manila, November 11, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge