REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WARNER BROS. (F.E.) INC.
Petitioner,

- versus -

C.T.A. CASE NO. 4207

COMMISSIONER OF INTERNAL REVENUE.
Respondent.

12/21

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D E C I S I O N

Petitioner is a foreign corporation duly licensed by Philippine laws to engage in business through its Branch Office.

Within a period covering the years 1985 to 1986, the petitioner paid the following 15% branch profit remittance taxes with a total amount of P1,247,573.62, the computation of which was based on the net profits:

Date Paid	Branch Profits	15% Tax Paid on Gross Amount Remittable
Feb. 1, 1985	P1,609,894.62	241,484.21
July 19, 1985	P4,018,193.18	602,728.98
Mar. 17, 1986	P2,609,069.52	403,360.42
T O T A L	P8,317,157.42	P1,247,573.62

On March 11,1987, the petitioner requested respondent for a tax credit on alleged overpayment of the above stated branch profit remittance tax in the amount of P162,727.00 representing the difference between the 15% tax paid on branch profits remittable amounting to P8,317,157.42 and the amount of P7,232,310.80 actually remitted which it allegedly should have been the basis of the computation of the branch profit remittance tax. Petitioner contends that in computing the 15% branch remittance tax on its net profits, it should have first deducted therefrom the branch profit remittance tax itself. In support of its contention, the petitioner cites the ruling in the case of Commissioner of Internal Revenue vs. Burroughs Ltd. (142 SCRA 324) and Our own ruling in the case of Bank of America NT & SA vs. Commissioner of Internal Revenue (CTA Case No. 3799, October 29, 1986).

However, in a letter dated November 10, 1987, the respondent denied the petitioner's claim contending that:

> "While in the Burroughs case, the withholding tax was based on the branch profit actually remitted citing BIR Ruling dated January 21, 1980, for the reason that the remittance involved therein refers to the year 1979, the said BIR Ruling was already superseded or revoked

by Revenue Memorandum Circular No. 8-82, dated March 17, 1982, which explicitly provides:

'Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax based should be the amount actually applied for by the branch with the Central Bank as profit to be remitted abroad.

Likewise, while the Court of Tax Appeals in the aforesaid case of Bank of America NT & SA interpreted the provisions of Section 24(b)(2)(ii) of the Tax Code to the effect that the withholding tax should be based on the branch profit actually remitted, this decision was appealed by the Bureau of Internal Revenue to the Supreme Court (G.R. No. 76512). Hence, the same is not yet final and cannot be cited as the applicable jurisprudence in this case.

Since the transactions, which are the subject of the present claim, refer to the years 1985 and 1986, the ruling applicable thereto is clearly Revenue Memorandum Circular No. 8-82 (BIR Ruling No. 212-87, dated July 17, 1987). Accordingly, your claim should be as it is hereby denied.'"

This constitutes the final decision of this Office on the matter.'"

The sole issue in this case as to whether or not the branch profits tax are computed based on the profits actually remitted abroad or on the total branch profits out of which the remittance is made had been squarely ruled upon by this Court in the very recent case of **Compania General de Tabacos de Filipinas (Philippine Offices) vs. Commissioner of Internal Revenue (CTA Case No. 4451, August 23, 1993)** which we hereby reiterate and reproduce as follows:

> "The case in question is readily distinguishable from the Burroughs Limited case (supra), where the Supreme Court upheld the application of BIR Ruling of January 21, 1980 because the branch profit remittance tax was paid on March 14, 1979. The High Court added that Memorandum Circular No. 8-82, dated March 17, 1982, cannot be given retroactive effect in the light of Section 327 of the NIRC. Section 327 provides for the non-retroactive application of rules and regulations revoking, modifying or reversing prior ones if the revocation, modification or reversal is prejudicial to the taxpayers.
>
> "In an earlier case, involving the same parties and issue regarding the taxable base for the imposition of the 15% branch profit remittance tax, this Court, in a decision which has already become final and executory, has this to say:
>
> > 'A fortiori, the holding in the Burroughs Limited case lends settling cognizance to the validity of the Memorandum Circular no. 8-82, where as ruled by the Supreme Court -
> >
> > What was applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because the private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1982.

Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code xxx.'

"Stated otherwise, the circular must be prospective in application. Established at bar is a payment effected on August 16, 1982 subsequent to the issuance thereof. Hence, petitioner's case falls within the compelling import and force of the Revenue Memorandum Circular No. 8-82 dated March 17, 1982." **[Compania General De Tabacos De Filipinas (Philippine Branch), v. The Commissioner of Internal Revenue, CTA Case No. 3827, October 14, 1988.]**

"In the recent case of Commissioner of Internal Revenue v. Bank of America NT & SA and the Court of Tax Appeals, CA-G.R. SP No. 22529, September 19, 1990, the Court of Appeals upheld the validity of Revenue Memorandum Circular No. 8-82. This Court adopts the reasoning of the Court of Appeals when it ruled:

'xxx. The use of the word remitted may well be understood as referring to that part of the said total branch profits which would be sent to the head office as distinguished from the total profits of the branch (not all of which need be sent or would be ordered remitted abroad). If the legislature indeed had wanted to mitigate the harshness of successive taxation, it would have been simpler to just lower the rates without in effect requiring the relatively novel and complicated way of computing the tax, as envisioned by the herein private respondent. The same result would have been achieved.

"The attempt to deduce legislative

intent with regard to Section 24(b)(2)(ii) of the Tax Code would only serve to allow captious and strained intendment of the law. NIMIA SUBTILITAS IN JURE REPROBATUR, ET TALIS CERTITUDO CERTITUDIMEM CONFUNDIT (The law does not allow of a captious and strained intendment, for such nice pretence of certainty confounds true and legal certainty). As held in the case of United States vs. Wurzbach, 280 U.S. 396, 398:

> 'There is no warrant for seeking refined arguments to show that the statute does not mean what it says.'

"In view of the foregoing, this Court finds that the clear import of Section 24(b)(2)(ii) of the Tax Code mandates the imposition of fifteen per cent (15%) tax on the branch profits remittance, which in tax parlance is alluded to as the "tax handle" with the total amount remitted (not the total amount of the branch profits) as base for the tax." **[cited in Commercial Union Assurance Company v. The Commissioner of Internal Revenue, CTA Case No. 4189, September 8, 1992.]**

"Thus, in view of the fact that petitioner's branch profit remittance tax for 1985 (partial) and 1986 were paid on May 3, 1988, after the effectivity of Revenue Memorandum Circular No. 8-82 (March 17, 1982), then what should apply as taxable base in computing the 15% branch profit remittance tax is the amount applied for with the Central Bank as profit to be remitted abroad and not the total amount of branch profits."

Viewed in the same light, inasmuch as the branch profit remittance tax in the present case were paid by the petitioner herein during the years 1985 and 1986 or during the effectivity of Revenue Memorandum Circular No. 8-82, it suffices to state that the petitioner's claim of overpayment of the said tax is without merit.

WHEREFORE, judgment is hereby rendered dismissing the instant petition. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 21, 1993

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

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 Sectoion 13, Article VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals