REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHIL. AMERICAN LIFE INSURANCE CO., INC., ET AL.,
Petitioners,

-versus - C.T.A. CASES NOS. 3504 & 3943

THE HON. COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/10/93

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D E C I S I O N

This is a consolidated case involving a claim for the refund of the amount of P643,125.00 as allegedly erroneous payment of withholding tax at source for 1980 in C.T.A. Case No. 3504 and an assessment for the similar amount of P643,125.00 as deficiency withholding tax at source for 1979 as a result of the cancellation of a previously issued tax credit memo for the said amount in C.T.A. Case No. 3943.

The cases were consolidated as they involved the same issue and the same parties.

The facts of the case are well recited in the memorandum of the respondent, as follows:

STATEMENT OF THE FACTS

Petitioner Philippine American Life Insurance Co., Inc. (PHILAMLIFE), a domestic corporation, entered into a Management Services Agreement with American International Reinsurance Co., Inc. (AIRCO), a non-resident foreign corporation with principal place of business in Pembroke, Bermuda, whereby, effective January 1, 1972, for a fee of not exceeding $250,000.00 per annum, AIRCO shall perform for PHILAMLIFE the following services, to wit (Pages 9-10, BIR records; Exh. "D")

> "Investment
>
> Reporting on world monetary and investment trends and investigating, analyzing and making recommendations as to particular investment opportunities.
>
> Underwriting and Marketing
>
> (a) Providing advice and recommendations with respect to new products.
>
> (b) Providing assistance in the production of international business in the employee benefits, pension and other fields.
>
> (c) Providing assistance in the sale of ordinary life business.
>
> Education and Training
>
> (a) Providing training courses, seminars, and other educational programs for underwriters, actuaries and other personnel.

(b) Providing scholarship program for personnel of PHILAMLIFE.

Accounting and Auditing

(a) Recommending standard accounting procedures and forms for financial and budgetary statements and other accounting devise.

(b) Providing assistance with regard to data processing.

(c) Arranging and supervising internal audits of PHILAMLIFE.

(d) Providing recommendations with respect to systems and procedures.

PHILAMLIFE U.S. Branch

(a) Provide necessary services for the development of PHILAMLIFE's U.S. Branch.

Corporate

(a) Assuming certain foreign currency obligations on behalf of PHILAMLIFE personnel.

(b) Compensating overseas Directors of PHILAMLIFE for work performed on behalf of PHILAMLIFE.

(c) To continually study, consider and advise PHILAMLIFE with respect to its corporate structure.

Personnel

(a) Providing the services of consulting architects, and other experts in the construction field.

(b) Providing medical services, training and advice to PHILAMLIFE's Medical Department."

On September 30, 1978, AIRCO merged with petitioner American International Group, Inc. (AIGI) with the latter as the surviving corporation and successor-in-interest in AIRCO's Management Services Agreement with PHILAMLIFE (Page 8, BIR records).

On November 18, 1980, respondent issued in favor of PHILAMLIFE Tax Credit Memo (T.R. No. 141-80) in the amount of P643,125.00 representing erroneous payment of withholding tax at source on remittances to AIGI for services rendered abroad in 1979 (Pages 15-16, BIR records; Exh. "E").

On the basis of the aforesaid issuance of tax credit, PHILAMLIFE, in a letter dated March 12, 1981, filed with respondent a claim for the refund of "the second erroneous tax payment of P643,125.00 which was made on December 16, 1980" (Page 14, BIR records). Said claim was followed up by another letter dated July 6, 1982 wherein PHILAMLIFE alleged that the "claim for refund of the amount paid in 1980 is exactly the same subject matter as the previous claim for refund in 1979" (Page 4, BIR records).

Without waiting for respondent to resolve the claim for refund, petitioners filed with the Honorable Court on July 29, 1982 the petition docketed as C.T.A Case No. 3504, seeking said refund.

During the pendency of C.T.A Case No. 3504, respondent, in a letter dated April 15, 1985, denied PHILAMLIFE's claim

> for refund of P643,125.00 as withholding tax at source for 1980. Moreover, respondent cancelled the Tax Credit Memo (T.R. No. 141-80) in the amount of P643,125.00 previously issued to PHILAMLIFE on November 18, 1980 and requested the latter to pay the amount of P643,125.00 as deficiency withholding tax at source for 1979 plus increments (Pages 62-64, BIR records).
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> Without protesting the assessment for the amount of P643,125.00 as deficiency withholding tax at source for 1979, petitioners filed with this Honorable Court on June 14, 1985 the petition, docketed as C.T.A. Case No. 3943, seeking the annulment of said assessment.

Petitioner alleged that the tax credit memo previously issued by the Commissioner of Internal Revenue was in conformity with law as the alleged services were performed by AIGI outside the Philippines, citing jurisprudence on the matter. The same is true with regard to the subsequent 1980 withholding tax at source which should have been granted by the respondent. Petitioner further alleged in CTA 3943 that it appearing that the assessment letter dated April 15, 1985 was only mailed on May 10, 1985, the same has already prescribed.

Respondent on the other hand alleged that the income from which the tax was withheld is considered as income from within the Philippines, specifically falling under Section 37(a)(4)(c), (d) and (f) of the National Internal Revenue Code, as amended by P.D. No. 1457 and BP Blg. 41. Respondent further alleged that CTA Case No. 3943 should be dismissed because petitioner filed the Petition for Review without first filing the formal protest against the assessment.

Issues

(1) For both cases, whether or not payments of PHILAMLIFE to AIGI under the Management Service Agreement are income from sources within or without the Philippines;

(2) In the case of CTA No. 3943, whether or not the assessment has prescribed, on the other hand, if there was a valid assessment issued, whether or not the failure of the Petitioner to file a formal protest with the respondent gave rise to a proper dismissal of the Petition for Review for want of jurisdiction by this Court.

On the first issue, we quote hereunder the pertinent laws involved:

"Section 37. Income from Services within the Philippines. (a) Gross income from sources within the Philippines - the following items of gross income shall be treated as gross income from sources within the Philippines.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Rental and royalties - Rentals and royalties from properties located in the Philippines or from any interest in such property, including rentals or royalties for -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) The supply of scientific, technical, industrial or commercial knowledge or informations;

(d) The supply of any assistance that is auxiliary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property, or right as is mentioned in paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c); or

(e) xxx xxx xxx

> (f) Technical advice, assistance or services rendered in connection with the technical management and administration of any scientific, industrial or commercial undertaking, venture, project or scheme; and
>
> (g) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

A reading of the various management services enumerated in the said Management Services Agreement will show that they can easily fall under any of the aforequoted expanded meaning of royalties. Basically, from the heading "Investments" to "Personnel", the services call for the supply by the non-resident foreign corporation of technical and commercial information, knowledge, advice, assistance or services in connection with technical management or administration of an insurance business - a commercial undertaking. Therefore, the income derived for the services performed by AIGI for PHILAMLIFE under the said management contract shall be considered as income from services within the Philippines. AIGI being a non-resident foreign corporation not engaged in trade or business in the Philippines "shall pay a tax equal to thirty-five (35%) per cent of the gross income received during each taxable year from all sources within the Philippines as interest, dividends, rents, royalties (including renumeration for technical services), salaries, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits and income and capital gains: xxx" (Section 24(6)(I) of the National Internal Revenue Code. (Underscoring for emphasis).

As against the above legal provisions of law, petitioner in support of its stand cited the opinion of the Revenue Examiner as concurred by the Chief of the Appellate Division that the income may be considered as derived from sources without the Philippines and therefore not subject to Philippine tax because the services were performed outside the Philippines. Pursuant to Section 37(a)(3) of the Tax Code, compensation for labor or personal services are considered income from sources within the Philippines where the services are performed within the Philippines and since the services were ascertained by the Examiner to have been rendered outside the Philippines the same should not have been subjected to Philippine tax.

The argument of the Petitioner may be true perhaps prior to the amendment of Section 37(a)(4) by P.D. 1457 on June 11, 1978. Prior to said amendment, the term "rentals or royalties" has a very limited meaning. It refers only to rentals or royalties for "the use of or for the privilege of using in the Philippine patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchise and other like properties". Prior to this amendment the jurisprudence cited by Petitioner and marked as Exh. "B", would apply which states that "in case of income derived from services, the factor which determines the source of income is not the residence of the payor or the place where the contract for the services is entered into or the place of payment. It is the place where the services are actually rendered" (Par 45. 33, Vol VIII, Merten's Law of Federal Income Taxation). However, when the said provision of law was amended to include the expanded meaning of royalties, this jurisprudence is accordingly modified to exclude all the type of services enumerated in the amended law.

Petitioner cited Section 37 (a)(3) of the Tax Code on "compensation for labor or personal services performed in the Philippines" and argued that if the services were performed outside the Philippines they may be considered as income without the Philippines. A more specific provision is found under Section 37(c)(3) of the same Tax Code. These provisions of law refer only to compensation earned by an individual person who rendered labor or personal services as a result of an employment whether on a permanent, regular or contractual basis. This could not refer to services enumerated in the management contract as they fall more specifically under the expanded meaning of "royalties". This manner of interpretation is pursuant to the rule on statutory construction that all provisions of the law, even if apparently contradicting, should be allowed to stand and given effect by reconciling them if necessary (Araneta vs. Concepcion, 99 Phil. 709). A statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all others, and in harmony with the whole (St. Martin, etc. vs. Iberville Parish, etc., 212 LA 886, cited on page 132 of the Handbook on Statutory Construction by Ruperto G. Martin, 1972 ed).

In view of all the foregoing the payment of withholding taxes at source by the Petitioner to the Bureau of Internal Revenue equivalent to 35% of the services fee in the amount of P643,125.00 on two counts for taxable year 1979 and 1980 are believed in order.

On the second issue, this Court believes that the rule on prescription of assessment and the filing of formal protest will not apply in the CTA Case No. 3943. The decision of the Commissioner of Internal Revenue revoking the tax credit memo he has issued and issuing an assessment accordingly was actually a denial of the claim for refund covering the 1979 withholding tax at source which was previously granted. The original action that was filed by the Petitioner which precipitated the so called assessment was the claim for refund filed by Petitioner. Therefore, the rules on prescription of action in the case of recovery of tax erroneously or illegally collected shall apply.

Pursuant to Section 292 (now 230) of the NIRC "no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment". Although counting from the original date of payment of the tax on December 3, 1979, the filing of the instant Petition for Review on June 14, 1985 would appear to have been filed out of time, nevertheless, justice and equity demand that the period during which respondent approved the herein claim for refund up to the time it was subsequently cancelled should be deducted from the counting of the two year prescriptive period. To interpret otherwise, will be opening an avenue for respondent to technically deprive any legitimate claimant-taxpayer of his erroneously or illegally paid taxes by simply granting the same at the start but only to be revoked later upon the expiration of the two-year period. By deducting the period when Petitioner received the tax credit memo on March 9, 1981 to May 15, 1985 when the same was cancelled by the respondent only one year and four months had elapsed from the two year period of prescription when Petitioner filed CTA 3943 on June 4, 1985.

Accordingly, this Court validly assumes jurisdiction over the two cases and on the basis of its findings that the withholding tax at source collected on two occasions were legally collected by the respondent, this Court hereby denies both the claim and that of the tax credit. And thus, Petitioner on the presumption that it has already utilized the tax credit memo already issued, is bound to restore the money equivalent of said tax credit memo under the provision of the Civil Code on "Obligations and Contracts" with interest at the rate of twenty (20%) per centum per annum from the date Petitioner received the said tax credit memo on March 9, 1981 until paid pursuant to Section 54(b) of the National Internal Revenue Code but without surcharge considering that Petitioner was not at fault or negligent under the circumstances of this case. The obligation to pay money mistakenly paid arises from the moment said payment was made and in the instant case it arose from the time Petitioner received the tax credit memo. (Commissioner of Internal Revenue, Petitioner vs. ESSO Standard Eastern, Inc. and the Court of Tax Appeals, GR Nos. 28502-03, April 18, 1989, SCRA Vol 172, pp. 364-365).

WHEREFORE, both petitions for review are hereby dismissed without pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, March 10, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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