REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE EXPLOSIVES CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3185

THE ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - - - x

9/26/86

D E C I S I O N

In its letter dated December 18, 1980 to respondent Commissioner of Internal Revenue, petitioner Philippine Explosives Corporation, as withholding agent, requested for the refund of the amount of ₱264,514.12 representing alleged excess payments of withholding tax on royalties paid to the Imperial Chemical, Inc., for the period from the fourth quarter of 1978 to the third quarter of 1980. No action having been taken seasonably by respondent on the claim for refund, petitioner brought this action to this Court pursuant to Section 292 of the then in force National Internal Revenue Code.

The factual background of this suit is not in controversy, the parties having submitted the case for decision on the basis of the pleadings and the records of the case.

Petitioner is a corporation organized and existing under the laws of the Philippines, with office at Fairlane

Street corner Brixton, Pasig, Metro Manila. It is registered with the Philippine Securities and Exchange Commission under Registration Certificate No. 38634 dated June 19, 1969. Petitioner is also duly registered with the Board of Investments under the provisions of Republic Act No. 5186 as a preferred pioneer enterprise for the production/manufacture of industrial explosives.

The records show that on June 21, 1969, petitioner entered into a technical assistance agreement with the Imperial Chemical, Inc., a non-resident foreign corporation created and domiciled in the United Kingdom (U.K.), under which agreement petitioner would pay the Imperial Chemical, Inc., royalties in consideration of the latter's work carried out under said agreement and also for having provided technical assistance and information to petitioner. And pursuant to the afore-mentioned agreement, petitioner withheld from the Imperial Chemical, Inc.'s remittable royalties of ₱1,322,570.80, for the period from the fourth quarter of 1978 to the third quarter of 1980, the total amount of ₱462,899.75, which is equivalent to 35% of the royalties. It appears that the amounts withheld were duly reported and remitted to the Bureau of Internal Revenue.

On December 19, 1980, petitioner filed with respondent a claim for the refund of the amount of ₱264,514.12

representing erroneously paid withholding tax on the royalties remitted to the Imperial Chemical, Inc., for the period from the fourth quarter of 1978 to the third quarter of 1980, invoking Article 11(2) of the Tax Treaty entered into by the Governments of the Republic of the Philippines and the United Kingdom of Great Britain and Northern Ireland which was already in force, having become effective on January 29, 1978. Article 11(2) states:

> "2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of the State. However, the tax so charged shall not exceed:
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> "(a) 15 per cent of the gross amount of the royalties, where the royalties are paid:
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> "i) by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity
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> or
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> "ii) in respect of cinematograph films or tapes for television or radio broadcasting.
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> "(b) in all other cases, 25 per cent of the gross amount of the royalties."

The amount of ₱264,514.12 was arrived at by subtracting ₱198,385.63, the amount equivalent to 15% of ₱1,322,570.80, from ₱462,899.75 which, as stated above, is equivalent to 35% of the royalties.

Is petitioner entitled to the refund of the amount of ₱264,514.12 as excess payments of withholding tax on royalties paid to the Imperial Chemical, Inc., for the period from the fourth quarter of 1978 to the third quarter of 1980?

The parties are not in controversy on the computation of the withholding tax on royalties paid by, or amount refundable to, petitioner as the case may be.

As one of his special and affirmative defenses, respondent alleges that petitioner has no legal personality to institute the instant petition for review inasmuch as the Imperial Chemical, Inc., a non-resident foreign corporation, which paid the alleged withholding tax on royalties, is the real party in interest.

We do not agree.

The taxability of a foreign corporation's income depends upon the locus of the activity, property or service giving rise thereto. Stated otherwise, the flow of wealth proceeded from, and occurred within, Philippine territory, enjoying therein the protection accorded by our Government. Such flow of wealth should, in consideration for the protection, share the burden of supporting the Government. Precisely, our law adopted the administrative device in Sections 53 and 54 of the National Internal Revenue Code then applicable - withholding of the corresponding income tax at source of the income - to insure collection of whatever tax may be due on income earned in the Philippines by those who are not doing business in the Philippines and have no office or agent here. The fact that a foreign corporation does not engage in business here and had no office or agent is the very reason why its income is subject to withholding tax. (See British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, L-20501, April 30, 1965, 13 SCRA 719.)

And the law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold, whereas, the Commissioner of Internal Revenue and his deputies are not made liable by law. (Philippine Guaranty Co. vs. Commissioner of Internal Revenue and the Court of Tax Appeals, L-22074, September 6, 1965, 15 SCRA 1.)

If the law requires the withholding agent to deduct and withhold from the income of a foreign corporation subject to income tax not engaged in trade or business within the Philippines, file the requisite withholding returns, and pay the tax withheld to the Bureau of Internal Revenue (Secs. 53 & 54, National Internal Revenue Code then in force; Sec. 205, Rev. Regs. No. 2); and makes the withholding agent personally liable for the income tax withheld (Sec. 54, ibid), incurring all penalties incident to delinquency, deficiency and from incorrect returns (Sec. 54, ibid), in the determination of the degree of interest essential to give the requisite standing to a recovery of tax erroneously or illegally paid, public policy would seem to require that the withholding agent should have sufficient interest or right to claim for refund and sue for recovery of any excess amount withheld and remitted by him. We see no significance therefore in the contention of respondent that petitioner has no legal personality to institute the instant petition for review inasmuch as the Imperial Chemical, Inc., a non-resident foreign corporation, which paid the withholding tax on royalties, is the real party interest.

Respondent assails however petitioner's right to the refund of ₱264,514.12 as withholding tax on royalties on the ground that the claim is not supported by adequate evidence, the original of the alleged technical assistance agreement not having presented in court. Thus:

> "The claim for refund is anchored on a technical assistance agreement allegedly entered into between petitioner and ICI pursuant to which petitioner paid ICI royalties. This agreement is vital to the claim because the nature of the royalties paid to ICI can be determined only from the agreement itself, i.e., whether the royalties are indeed royalties within the meaning defined in the RP-UK Tax Treaty as follows:
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> > 'The term royalties used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films casting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.'
>
> Are the royalties paid to ICI in the nature of royalties defined under the RP-UK Tax Treaty and therefore subject to tax at 15% only? This question can be answered only from the provisions of the alleged technical service agreement."

The controlling legal provision is Section 2 of Rule 130, Rules of Court, which textually reads:

> "SEC. 2. Original writing must be produced; exceptions.- There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases:
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> (a) When the original has been lost, destroyed, or cannot be produced in court;
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> (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original is a record or other document in the custody of a public officer;
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> (d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;
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> (e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole."

The language quoted leaves no doubt in our mind that the original of a writing is the writing itself, the contents of which is the subject of inquiry. And such original must be produced, according to the best evidence rule, if the purpose is to prove its contents. As aptly stated by respondent, the contents of the alleged technical assistance agreement is the "subject of inquiry" in this case since the nature of the payments designated as royalties remitted by petitioner to the Imperial Chemical, Inc., pursuant to the alleged agreement can be determined only from the provisions thereof.

It seems to us not understandable why petitioner, despite its reservation during the hearing of this case to produce the original of the alleged technical assistance agreement (t.s.n., pp. 4-7, Nov. 19, 1981), never did so. Then, when petitioner offered in evidence the xerox copy of the alleged technical assistance agreement, and respondent objected to its admission on the ground that the same is a mere xerox copy the original of which was never presented in court, this Court admitted the same only for whatever value and worth it may serve.

Much stress is placed by petitioner on the letter of the then Chairman of the Board of Investments Vicente T. Paterno (Exhibit "B"), approving the alleged technical assistance agreement, contending that since the approval and the letter confirming the same (which are also mere xerox copies the originals of which were never presented) are official acts of the executive department of the Government, judicial notice may be taken by this Court in accordance with Section 1, Rule 129, Rules of Court, and respondent could have secured a copy of the agreement from the Board of Investments.

To begin with, as correctly stated by respondent, in an action for refund, the burden of proof is upon the taxpayer to show that the taxes paid were erroneously or illegally collected and failure to sustain said burden is fatal to the action for refund. Petitioner having failed to sustain the burden placed upon it by presenting adequate and competent evidence that it is entitled to the refund of the amount involved herein, this Court could not look with approval to the grant of the refund. (Caltex /Philippines/ Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986.) The fallacy of petitioner's position is its assumption that it is incumbent upon respondent to secure the necessary documents or proofs to support its claim for refund.

Then, it is to be considered that a refund of taxes undoubtedly partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.) Claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95.) As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, Sept. 12, 1967, 21 SCRA 180: "From 1906, in Catholic Church vs. Hastings to 1966, in Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision, or a claim for refund, should be construed strictissimi juris." (See Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, Aug. 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180; Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975, 67 SCRA 351.)

Petitioner relies on Section 8 of Republic Act No. 1125 which provides that the proceedings in the Court of Tax Appeals shall not be governed strictly by technical rules of evidence, but this Court cannot just grant a claim for refund on the basis of a xerox copy of an alleged technical agreement the original of which has not been shown to have been lost, destroyed or cannot be produced in court. It has already been ruled that the findings of facts of the Court of Tax Appeals are not reviewable when supported by substantial evidence (Commissioner of Internal Revenue vs. Phil. Planters Investment, L-24293, March 28, 1974, 56 SCRA 194; Aznar vs.

Court of Tax Appeals, L-20569, Aug. 23, 1974, 58 SCRA 579; Vi Ve Chemical Products vs. Commissioner of Customs, L-28693, Sept. 30, 1974, 60 SCRA 52; Nasiad vs. Court of Tax Appeals, L-29318, Nov. 29, 1974, 61 SCRA 238; Industrial Textiles Manufacturing Company of the Philippines vs. Commissioner of Internal Revenue and Court of Tax Appeals, L-27718 & L-27768, May 27, 1985), and it is thus to be fairly and justly considered that such substantial evidence implies competent and adequate evidence. For this Court therefore to disregard the basic rules of admissibility of evidence, that would be tantamount to trifling with its proceedings which are strictly judicial in nature (Ursal vs. Court of Tax Appeals, 101 Phil. 209; Auyong Hian vs. Court of Tax Appeals, L-25181, Jan. 11, 1967, 19 SCRA 10; C.E. Sharp & Co. vs. Commissioner of Customs, L-23803, Feb. 26, 1968, 22 SCRA 780), and expose its findings of facts open to question and review. If the technical assistance agreement in question was indeed submitted and approved by the Board of Investments, then such agreement could easily be capable of unquestionable demonstration by means of certified true copy thereof which may be issued by the said Board.

In view of petitioner's failure to produce the original or certified true copy of the alleged technical assistance agreement for ascertainment of the exact nature of the payments of royalties to the Imperial Chemical, Inc. as defined under the Tax Treaty entered into by the Philippines and the United Kingdom of Great Britain and Northern Ireland,which to our mind is necessary to establish its claim for refund of the amount of ₱264,514.12 representing alleged overpaid withholding tax on royalties, petitioner failed to sustain the burden placed upon it of presenting adequate and competent evidence that it is entitled to the refund.

WHEREFORE, finding the petition for review without merit, the same is dismissed and the refund sought is hereby denied.

SO ORDERED.

Quezon City, Metro Manila, September 26, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge