REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EXXON CHEMICAL EASTERN, INC.,
(Formerly Esso Eastern
Chemicals, Inc.),
Petitioner,

- versus - C.T.A. CASE NO. 3137

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

9/30/86

D E C I S I O N

The case before Us presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other by a quibble on the proper import of "any profit remitted abroad" as a basis for the 15% branch profit remittance tax imposed under Section 24(b)(2) of the Tax Code.

Petitioner is a foreign corporation incorporated under the laws of the United States and is licensed to do business in the Philippines through its local branch with office at the Bank of the Philippine Islands Building, Ayala Avenue cor. Paseo de Roxas, Makati, Metro Manila.

On September 4, 1978 and September 25, 1979 said branch office paid the branch profit remittance taxes in the respective amounts of ₱244,635.00 and ₱361,380.15 computed at 15% of the total branch profits of ₱1,630,900.00 for calendar Year 1977 and ₱2,409,201.00 for 1978 out of which the actual remittances were made.

On January 21, 1980 the Acting Commissioner of Internal Revenue issued a ruling where he held as follows:

> "x x x relative to your query as to the tax base upon which the 15% branch profit remittance tax provided for under Section 24(b)(2) of the Tax Code shall be imposed, please be advised that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is made."

Section 24(b)(2) of the Tax Code insofar as pertinent provides:

> "x x x Provided further, That any profit remitted abroad by a branch office to its mother company shall be subject to tax of fifteen per cent (15%) (except those registered with the Export Processing Zone Authority) x x."

Hewed close to the context of Section 24(b)(2) *supra* as construed by the aforesaid *Ruling* of January 21, 1980, petitioner claims that it should have paid the branch profit tax of only ₱212,726.09 instead of ₱244,635.00 and ₱314,243.61 instead of ₱361,380.15 of its actual profit remittances for the years 1977 and 1978, respectively. As a consequence it overpaid the branch profit remittance taxes in the total amount of ₱79,045.45, computed as follows:

Date Paid	Net Profit After Income Tax	Branch Remittance Tax (BRT)	Correct BRT	Overpayment
1977 Profit				
Tax computed and paid ..	15% of ₱1,630,900.00	₱244,635.00		
Should be ..	15% of ₱1,418,174.91*		₱212,726.09	₱31,908.91
1978 Profit				
Tax computed and paid ..	15% of ₱2,409,201.00	₱361,380.15		
Should be ..	15% of ₱2,094,457.39*		₱314,243.61	₱47,136.54
	Amount claimed for refund or credit			₱79,045.45

(*Remitted amount)

On August 26, 1980 petitioner filed with the respondent's Office a claim for the refund or tax credit of the amount of ₱79,045.45 representing its alleged overpaid branch profit tax liabilities.

On September 2, 1980 in order to toll the two--year statutory period of limitation had this petition filed with this Court.

Respondent takes no issue as to the clear and unambiguous language of the ruling of January 21, 1980, supra, that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the branch profit out of which the remittance is to be made. Rather, he invokes the right to rectify any error committed in the implementation of the tax laws and regulations on the ground that the government is not bound by the mistakes of its agents (Pineda v. CFI Tayabas, 52 Phil. 803), and accordingly cites Revenue Memorandum Circular No. 8-82 dated March 17, 1982, providing, inter alia, "Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted."

Suffice it to state that the argument agitated by the respondent was squarely met and rejected in a case similar in many or so in tenor and circumstances. It may be necessary to repeat what the Supreme Court said and what so plainly apply to the petitioner in the case at bar, that -

> "Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1979. Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 (Non-retroactivity of rulings) of the National Internal Revenue Code x x.. (Underscoring supplied)
>
> "The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of ₱172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them." (Commissioner of Internal Revenue v. Burroughs Limited and CTA, G.R. No. L-66653, June 23, 1986)

Going by the said pronouncement, there can be no occasion to speculate upon where to base the 15% branch profit remittance imposition before March 17, 1982 or the issuance of the questioned Revenue

Circular. Otherwise, there would be a random quirk in the equal tax treatment of cases similarly circumstanced. We therefore hesitate to further fashion an issue into a satisfactorily settled legal situation.

Accordingly we view with ease petitioner's righteous indignation in prying loose from the legal constraint of retrospective application of the subject Circular, having stretched too far the effective range of expediency. Petitioner has proved entitlement to a favorable determination as a matter of fact and law.

WHEREFORE, finding the petition to be well taken, the same is granted and the refund/credit of the amount sought is hereby ordered. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge