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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WARNER LAMBERT PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5163 and 5169

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 25 1997

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DECISION

These consolidated petitions filed by petitioner seek for the refund of P1,668,039.00 (CTA Case No. 5163) and P 2,262,411.00 (CTA Case No. 5169) alleged to be erroneously withholding taxes on royalties paid by the petitioner to Parke Davis & Company, U.S.A., covering the period January 21, 1992 to June 30, 1993.

Petitioner is a corporation duly organized and existing under Philippine laws (Exh. "A"). It entered into a LICENSING AND TECHNICAL ASSISTANCE AGREEMENT (Exhs. "B" to "B-3") with **Parke Davis & Company**, a non-resident foreign corporation duly organized and existing under the laws of the State of Michigan, U.S.A., with principal office in Morris Plains, New Jersey, U.S.A. (Exhs. "C" to "D"), for the manufacture of certain licensed pharmaceutical and health care products.

Under this License Agreement, petitioner is obliged to pay the licensor royalty equivalent to 3% of net sales for the pharmaceutical licensed products sold and 2% of the net sales for the health care licensed products sold as consideration of the rights, licenses and assistance granted by the licensor. The Agreement shall be effective for five (5) years beginning March 21, 1989.

In a letter-agreement, dated June 7, 1989 (Exhs. "E" to "E-3", inclusive), between the licensor and the petitioner, the aforementioned License Agreement was amended by reducing the royalty rate to a uniform 2% of net sales for both the pharmaceutical and health care licensed products, pursuant to the requirements of the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) of the Department of Trade and Industry.

As an addendum to the Licensing Agreement, the licensor and the petitioner entered into another agreement, dated August 1, 1991 (Exh. "F"), to include a product known as Accupril subject to royalty rate of 3% of net sales.

The License Agreement and its amendments were duly registered and approved by the BPTTT under Certificate of Registration No. 952-A, valid for a period of five (5) years beginning March 21, 1989 to March 20, 1994 (Exhs. "G" to "G-2").

On April 1, 1989, petitioner entered into another LICENSING AND TECHNICAL ASSISTANCE AGREEMENT (Exhs. "H" to "H-3") **with Warner Lambert Company**, a non-resident foreign corporation, organized and existing under the General Corporation Law of the State of Delaware, U.S.A. (Exhs. "I" to "J") for the manufacture of certain pharmaceutical, health and confectionary licensed products.

This License Agreement provides that petitioner shall pay the licensor Warner Lambert Company, U.S.A., a remuneration of 3% of net sales for pharmaceutical licensed products, 2% of net sales for health care licensed products and 1% of net sales for confectionary licensed products, as consideration for the rights, licenses and assistance granted by the latter. The Agreement shall be effective for a period of five (5) years beginning April 1, 1989.

In a letter-agreement, dated July 19, 1989 (Exhs. "K" to "K-3"), petitioner and licensor amended Article VI-A of the Licensing Agreement pursuant to the registration requirement of BPTTT to reduce the royalty rate to 2% of net sale for pharmaceutical and health care licensed products, except for Lopid and Dilzem which will have a royalty rate of 3%, and 1% of net sales for confectionary licensed products.

On August 1, 1989, through another letter-agreement, petitioner and licensor, Warner Lambert Company, U.S.A., agreed to delete a product known as Accupril from the coverage of the License Agreement because as earlier stated Accupril is considered as an additional product licensed by Parke Davis & Company, U.S.A.

The above License Agreement and its amendments was duly registered and approved by BPTTT per Certificate of Registration No. 963-B, valid for a period of five (5) years from April 1, 1989 to March 31, 1994 (Exhs. "M" to "M-2").

Petitioner, in compliance with Revenue Memorandum Circular No. 39-92, withheld and paid to the Bureau of Internal Revenue, on October 30, 1992, the additional 15% withholding tax on royalties paid to its licensors; Parke Davis and Company, U.S.A., and Warner Lambert Company, U.S.A, amounting to P1,668,039.00, computed as follows:

Period Covered	Royalty Payable	10% Tax Withheld	Additional 15% Tax Withheld
PARKE DAVIS:			
January 21-24, 1992	P 341,794.00	P 34,179.00	P 51,270.00
February 1992	634,542.00	63,454.00	95,182.00
March 1992	620,106.00	62,011.00	93,016.00
April 1992	1,068,734.00	106,874.00	160,310.00
May 1992	613,038.00	61,304.00	91,956.00
June 1992	1,156,026.00	115,603.00	173,404.00
July 1992	748,358.00	74,836.00	112,254.00
August 1992	757,545.00	75,755.00	113,631.00
September 1992	913,584.00	91,359.00	137,037.00
Total	P6,853,727.00	P 685,375.00	P1,028,060.00
WARNER LAMBERT:			
January 21-24, 1992	P 184,781.00	P 18,478.00	P 27,717.00
February 1992	443,665.00	44,366.00	66,550.00
March 1992	482,094.00	48,209.00	72,315.00
April 1992	576,349.00	57,635.00	86,452.00
May 1992	446,284.00	44,628.00	66,943.00
June 1992	560,492.00	56,049.00	84,074.00
July 1992	479,273.00	47,927.00	71,891.00
August 1992	482,164.00	48,216.00	72,325.00
September 1992	611,414.00	61,142.00	91,712.00
Total	P 4,266,516.00	P 426,650.00	P 639,979.00
GRAND TOTAL	P11,120,243.00	P1,112,025.00	P1,668,039.00

On December 22, 1992, petitioner through its lawyers, filed a written claim for refund or tax credit with the respondent for the alleged overpaid or erroneously remitted taxes withheld on royalties in the amount of

P1,668,039.00, covering for the period January 21, 1992 to September 1992 (Exh. "II").

Petitioner continued to remit 25% withholding tax on royalties paid to its licensors Parke Davis & Company, U.S.A., and Warner Lambert Company, U.S.A. For the period October 1992 to July 1993, petitioner remitted the total amount of P3,770,685.00, representing 25% withholding tax on royalties computed as follows:

Period Covered	Royalty Payable	25% Tax Withheld	15% Tax For Refund
PARKE DAVIS:			
October 1992	876,251.00	P 219,063.00	P 131,438.00
November 1992	321,036.00	80,259.00	48,155.00
December 1992	1,489,622.00	372,406.00	223,444.00
January 1993	959,082.00	239,770.00	143,862.00
February 1993	941,617.00	235,404.00	141,242.00
March 1993	1,124,677.00	281,170.00	168,702.00
April 1993	1,058,364.00	264,591.00	158,755.00
May 1993	1,028,047.00	257,012.00	154,207.00
June 1993	1,054,977.00	263,744.00	158,246.00
July 1993	688,423.00	172,106.00	103,264.00
Total	P9,542,096.00	P2,385,525.00	P1,431,315.00
WARNER LAMBERT:			
October 1992	P 541,541.00	P 135,385.00	P 81,231.00
November 1992	216,261.00	54,065.00	32,440.00
December 1992	755,770.00	188,942.00	113,365.00
January 1993	544,909.00	136,227.00	81,736.00
February 1993	745,384.00	186,346.00	111,808.00
March 1993	696,356.00	174,089.00	104,453.00
April 1993	567,526.00	141,882.00	85,129.00
May 1993	494,213.00	123,553.00	74,132.00
June 1993	531,848,00	132,962.00	79,777.00
July 1993	446,832.00	111,708.00	67,025.00
Total	P5,540,640.00	P1,385,160.00	P 831,096.00
Grand Total	P15,082,736.00	P3,770,685.00	P2,262,411.00

On November 22, 1993, petitioner filed another claim for refund or tax credit with the respondent for the alleged overpaid or erroneously paid withholding taxes amounting to P2,262,411.00, for the period October 1992 to July 1993 (Exh. "XX").

Considering that the two-year period, mandated under Sections 204 and 230 of the Tax Code, is about to expire and the inaction of the respondent on its first and second claims for refund or tax credit, in the amounts of P1,688,039.00 and P2,262,411.00, respectively; petitioner filed before this Court, on October 24, 1994 (CTA Case No. 5163) and on November 3, 1994 (CTA Case No. 5169), the instant consolidated petitions for review.

Petitioner, in both petitions alleged that under the so-called "most favored nation" provision found in Article 13(2)(b)(iii) of the RP-US Tax Treaty, the tax imposable on royalties derived by a resident of the United States of America from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state. It further maintained that under Article 12(2)(b) of the RP-West Germany Tax Treaty, royalties arising in the Philippines and paid to a resident of West Germany may be taxed in the Philippines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for so long as the transfer of technology under Philippine law has been approved by Philippine competent authorities, the tax rate shall be 10%.

In the case at bar, the Licensing Agreements were duly registered and approved by the BPTTT of the Department of Trade and Industry and the recipients are residents of the United States, hence, the disputed royalties are subject to 10% withholding tax pursuant to the most-favored nation clause of the RP-US Tax Treaty in relation to Article 12, paragraph 2(b) of the RP-West Germany Tax Treaty.

Respondent professed that in an action for tax refund, the taxpayer has the burden of proving that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action. Respondent added that tax refunds are construed strictly against the taxpayer. Lastly, the taxpayer has no cause of action. However, inadvertently or otherwise, respondent failed to offer any evidence nor did she submit any memorandum in support of her answer.

We are simply tasked to resolve the following familiar issues:

1. Whether or not the correct rate of withholding tax on royalties paid by the petitioner to its U.S. licensors, namely: Parke Davis & Company, U.S.A., and Warner Lambert Company, U.S.A., is 10% or 25%; and

2. Whether or not petitioner is entitled to the tax refund or tax credit in the aggregate amount of P3,930,450.00 (P1,668,039.00 for CTA Case No. 5163, and P2,262,411.00 for CTA Case No. 5169) representing overpaid or erroneously paid withholding tax on royalties for the period January 21, 1992 to July 1993.

The foregoing issues had long been settled by this Court through a number of cases which affirmed the ruling pronounced by then Commissioner of Internal Revenue, Bienvenido Tan, Jr. in BIR Ruling No. 456-88, which provides that a 10% tax rate shall be imposed on royalties derived by a resident of the United States from sources within the Philippines pursuant to the most favored nation provision of the RP-US Tax Treaty under Article 12(b)(iii) in relation to Article 12(2)(b) of the RP-West Germany Tax *Treaty (Abbot Laboratories, (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5119, September 9, 1996; S.C. Johnson and Son, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5136, May 7, 1996; Armco Marsteel Alloy Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5115, February 6, 1996; Gilette (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4248, February 8, 1995; SmithKline and French Overseas Company vs. Commissioner of Internal Revenue, CTA Case No. 5048, September 22, 1995; General Electric Philippines Meter and Instrument Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4158, December 5, 1991; IBM Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4308, March 3, 1993; Kimberly-Clark Corporation (U.S.A.) and Kimberly-Clark (Philippines) Inc. vs. Commissioner or Internal Revenue, CTA Case No. 4288, January 30, 1992).*

In the case of **S.C. Johnson & Sons, Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 5136, May 7, 1996,** we ruled:

> "This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by the then Commissioner of Internal Revenue, Bienvenido Tan, Jr. (BIR Ruling No. 456-88, supra), that under the most favored nation provision of the RP-US Tax Treaty (Article 13, paragraph 2(b)(iii), the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same

kind paid under similar circumstances to a resident of a third state. Article 12, paragraph 2(b) of the RP-West Germany Tax Treaty, provides that royalties arising in the Philippines and paid to a resident of West Germany may also be taxed in the Philippines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitation of the tax rate in case of royalties arising in the Philippines, apply if the contract giving rise to such royalties has been approved by Philippine competent authorities."

We do not intend to depart from the wisdom of said rulings and thus, the same should be applied in the case at bar.

To prove its claim, petitioner presented evidences properly identified by its witnesses, on the amount sought to be refunded by submitting during the trial of this case the following:

(1) Licensing and Technical Assistance Agreement, Amended Agreement and Addendum to the Agreement between Warner Lambert Philippines, Inc., and PARKE, DAVIS & COMPANY, USA, duly authenticated by the Philippine Consul and proper authorities in the United States (Exhs. "B" to "B-3", inclusive, "E" to "E-3", inclusive, and "F");

2) Certificate of Registration No. 952-A issued by the BPTTT registering the License Agreement and its Amendments between Warner Lambert Philippines, Inc. and PARKE, DAVIS & COMPANY, USA, valid for a period of five years from March 21, 1989 to March 20, 1994. (Exh. "G" and "G-2);

3) Licensing and Technical Assistance Agreement, Amended Agreement and Agreement of Deletion of Accupril from the Coverage between Warner Lambert Philippines, Inc. and WARNER LAMBERT COMPANY, USA, duly authenticated by the Philippine Consul and proper authorities in the United States (Exhs. "H" to "H-3", inclusive, "K" to "K-3", inclusive, and "L");

4) Certificate of Registration No. 963-B issued by the BPTTT registering the License Agreement and its Amendments between Warner Lambert Philippines, Inc. and WARNER

LAMBERT COMPANY, USA, valid for a period of five years from April 1, 1989 to April 1, 1994. (Exhs. "M" and "H-2");

5) Amended Monthly Remittance Return of Income Taxes Withheld covering the period January 1992 to September 1992, Amount Paid, Cleared Bank Checks issued by the petitioner in favor of the Commissioner of Internal Revenue, Indorsements by the BIR Receiving Agent Bank at the back of said checks and Bank Machine Validation by the BIR Authorized Agent Bank at the bottom of the remittance tax returns (Exhs. "N" to "N-4", inclusive, "O" to "O-4", inclusive, "P" to "P-4", inclusive, "Q" to "Q-4", inclusive, "R" to "R-4",inclusive, "S" to "S-4", inclusive, "T" to "T-4", inclusive, "U" to "U-4", inclusive, and "V" to "V-4", inclusive);

6) Monthly Remittance Return of Income Taxes Withheld (before amendment) covering the period January 1992 to September 1992, Amount Paid, Cleared Bank Checks issued by the petitioner in favor of the Commissioner of Internal Revenue, Indorsements by the BIR Receiving Agent Bank at the back of said checks and Bank Machine Validation by the BIR Authorized Agent Bank at the bottom of the remittance tax returns (Exhs. "W" to "W-4", inclusive, "X" to "X-4", inclusive, "Y" to "Y-4", inclusive, "Z" to "Z-4", inclusive, "AA" to "AA-4", inclusive, "BB" to "BB-4", inclusive, "CC" to "CC-4", inclusive, "DD" to "DD-4", inclusive, and "EE");

7) Royalty Withholding Tax Recomputation and Amount Claimed for the period January 21, 1992 to September 25, 1992 (Exhs. "FF" and FF-1")

8) Royalty Schedules, Applications to Remit Foreign Currency, Bank Debit Advices and Bank Payment Transactions for the Remittance of Royalties (Exhs. "GG" to "GG-3", inclusive, and "HH" to "HH-3", inclusive);

9) Claim for Tax Refund or Tax Credit of Overpaid Withholding Tax in the Aggregate Amount of P1,668,039.00 on Royalties paid to Warner Lambert Company, USA, and Parke Davis Company, USA, filed with the International Tax Affairs Division of the BIR on December 22, 1992 (Exh. "II");

10) Monthly Remittance Return of Income Taxes Withheld covering the period October 1992 to July 1993, Amount Paid, Cleared Bank Checks issued by the petitioner in favor

of the Commissioner of Internal Revenue, Indorsements by the BIR Receiving Agent Bank at the back of said checks and Bank Machine Validation by the BIR Authorized Agent Bank at the bottom of the remittance tax returns (Exhs. "JJ" to "JJ-5", inclusive, "KK" to "KK-5", inclusive, "LL" to "LL-4", inclusive, "NN" to "NN-5", inclusive, "OO" to "OO-5", inclusive, "PP" to "PP-5", inclusive, "QQ" to "QQ-5", inclusive, "RR" to "RR-5", inclusive, "SS" to "SS-5", inclusive, and "TT" to "TT-5", inclusive);

11) Royalty Withholding Tax Recomputation and Amount Claimed for the period October 1992 to July 1993 (Exhs. "UU" and UU-1")

12) Amended Monthly Remittance of Income Taxes Withheld for December 1992, Amount Paid, Cleared Bank Checks issued by the petitioner in favor of the Commissioner of Internal Revenue, Indorsements by the BIR Receiving Agent Bank at the back of said checks and Bank Machine Validation by the BIR Authorized Agent Bank at the bottom of the remittance tax returns (Exh. "MM" to "MM-5", inclusive);

13) Claim for Tax Refund or Tax Credit of Overpaid Withholding Tax in the Aggregate Amount of P2,262,411.00 on Royalties paid to Warner Lambert Company, USA, and Parke Davis Company, USA, filed with the Commissioner of Internal Revenue, Appellate Division, on November 22, 1993 (Exh. "XX"); and

14) Royalty Schedules, Bank Debit Memos, Applications for Remittance of Foreign Currency, Bank Checks issued by petitioner to the Banks and Bank Indorsements at the back of the checks (Exhs. "VV" to "VV-5", inclusive, and "WW" to "WW-2", inclusive).

After a thorough examination of all the evidences presented by the petitioner, this Court finds that petitioner had overpaid the withholding tax on royalties, hence, entitled to a refund.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund to petitioner the aggregate amount of P3,930,450.00, representing overpaid taxes withheld on royalties from January 21, 1992 to July 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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