REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

CITIBANK, N. A.,
Petitioner,

-versus-

C. T. A. CASE NO. 4185

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 16 1994

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# D E C I S I O N

This is a judicial claim for a tax credit or refund in the amount of P38,386,674.86 representing fifteen percent (15%) branch profit remittance tax filed by petitioner corporation against respondent Commissioner of Internal Revenue.

Petitioner is a corporation duly organized and existing under the laws of the United States of America, and duly licensed to operate a branch and engage in banking activities in the Philippines.

For the year 1985 and prior years, petitioner generated total branch profits in the amount of P1,706,074,483.91 out of which it paid on various dates to the government the amount of P255,911,165.84 representing 15% branch profits remittance tax, summarized as follows:

| Date of Payment | Amount |
|---|---|
| August 6, 1985 | P 13,329,592.82 |
| August 14, 1985 | 2,358,741.80 |
| September 9, 1985 | 3,254,345.92 |
| October 2, 1985 | 107,834,199.22 |
| December 10, 1985 | 1,050,014.67 |
| May 15, 1986 | 1,465,288.02 |
| May 16, 1986 | 91,477,825.20 |
| TOTAL | P255,911,165.84 |

Petitioner filed with respondent a claim for tax refund or credit for overpaid branch profit remittance tax in the amount of P38,386,674.86 as specified in its letter of July 20, 1986, stating, among others, that the aforesaid amount of P255,911,165.84 representing 15% profit remittance tax which it has paid is erroneous because the profits it actually remitted to its head office for the years in question amounted to only P1,450,163,273.08 upon which it should have paid only the amount of P217,524,490.80, thus leaving a difference of P38,386,674.80 constituting overpaid profit remittance tax. Computed in detail as shown in Table 1 (next page) is the overpaid Profit Remittance Tax (PHP) for 1981-1985.

Respondent did not act on the claim for refund/tax credit filed by petitioner, hence the present petition for review to beat the two-year period prescribed in Section 243 of the National Internal Revenue Code.

The facts are not disputed by the respondent, principally as to the quarterly returns of income tax withheld, the confirmation receipts, tax payments specified by the petitioner totalling P255,911,165.84 representing the 15% branch profit remittance tax, and the detailed computation of overpaid profit remittance tax (1981 to 1985) which also incorporated the profits actually remitted by the petitioner to its head office and upon which the 15% branch profit remittance tax should be based. Respondent however took exception to the "collective purpose" for which said evidence was offered maintaining that the tax base used in the computation of the 15% branch profit remittance tax is proper and correct, being in accordance with Revenue Memorandum Circular No. 8-82, dated March 17, 1982, and in conformity with the decision of this Court in the case of Compania General de Tabacos de Filipinas (Philippine Offices), CTA Case No. 3827, dated October 14, 1988, and the more recent case of Commercial Union Assurance Co. vs Commissioner of Internal Revenue, CTA Case No. 4189, dated September 8, 1992.

In her Answer, respondent further alluded to the decision of this Court in Bank of America NT & SA vs. the Commissioner of Internal Revenue, CTA Case No. 3799 which respondent stated was appealed to the Supreme Court.

Respondent submitted her case on the basis of the records and pleadings "as well as the decision of the Supreme Court" (Minutes of court proceedings, April 22, 1993). After both parties filed their respective Memorandum, this case was submitted for decision.

The only issue to be resolved in this case is the interpretation of Section 25 (a) (5) [formerly Section 24(b) (2) (ii)] of the National Internal Revenue Code which provides thus:

"Rates of tax on foreign corporations."

xxxx xxxx xxxx

(a) Tax on resident foreign corporations

xxxx xxxx xxxx

(5) Tax on branch profit remittances. - Any <u>profit remitted</u> by a branch to its

> head office shall be subject to a tax of 15%. [underscoring supplied]

This issue has been finally put to rest in the very recent decision of the Supreme Court in "Bank of America NT and SA vs The Honorable Court of Appeals and the Commissioner of Internal Revenue," G. R. No. 103092 and G. R. No. 103106, promulgated on July 21, 1994, which is in all fours with the present case and henceforth, the ruling case on this point which determines the result. In fact, this case of the high court originated from this Court which, as stated earlier, has been alluded by the respondent and of which, it expected to rely upon.

It may be stated that in this case, i.e., Bank of America NT & SA vs the Commissioner of Internal Revenue, CTA Case No. 3799, this Court upheld petitioner bank in its claim for refund of overpaid branch profit remittance tax. Quoting from our decision in said case:

> *". . . there is absolutely nothing in Section 24 (b) (2) (ii) supra, which indicates that the 15% tax on branch profit remittance tax is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 annd 54 of the Tax Code. The statute employs "Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen percent (15%) - without more. Nowhere is there said of "based*

> *on the total amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, which shall be collected and paid as provided in Section 53 and 54 of this Code." Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer or better canon of interpretaiton than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term "any profit remitted abroad" can only mean such profit as is "forwarded, set or transmitted abroad" as the word "remitted" is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for by the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words."* [emphasis supplied]

In this case (CTA 3799), respondent Commissioner of Internal Revenue filed a timely appeal to the Supreme Court (docketed as G. R. No. 76512) which referred it to the Court of Appeals following the former's pronouncement in Development Bank of the Philippines vs Court of Appeals, et. al. (180 SCRA 609).

On September 19, 1990, the Court of Appeals in Commissioner of Internal Revenue vs Bank of America NT & SA and the Court of Tax Appeals, CA-GR Sp. No. 22529, set aside the appealed decision of this Court. Hence, the Petition for Review before the Supreme Court in G. R. No. 103092 and

G. R. No. 103106 filed separately by two law firms in representation of the petitioner bank in the same case.

We can only but quote the pertinent portion of the *ratio decidendi* of this precedent-setting decision of the Supreme Court (Vitug, J., ponente) which has affirmatively ruled on the issue at hand:

> *"In the 15% remittance tax, the law specifies its own tax base to be on the 'profit remitted abroad.' There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.*
>
> *"The remittance tax was conceived in an attempt to equalize the income burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35% applicable to resident foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, divident payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries vis-a-vis local branch offices, a*

> *20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax pari-passu ends between domestic branches and subsidiaries of foreign corporations.*
>
> *"The Solicitor General suggests that the analogy should extend to the ordinary application of the withholding tax system and so with the rule on constructive remittance concept as well. It is difficult to accept the proposition. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest. It is hardly the case, however, in the imposition of the 15% remittance tax where there is but one taxpayer using its own domestic funds in the payment of the tax. To say that there is constructive remittance even of such funds would be stretching far too much that imaginary rule. Sound logic does not defy but must concede to facts." [underscoring ours]*

The Supreme Court therefore in this ruling case law reversed and set aside the decision of the Court of Appeals and reinstated the decision of this Court in CTA Case No. 3799.

We find no justifiable reason in discussing other matters raised by the parties in this case which may only sidetrack the crux of the matter which has now been clearly resolved and finally disposed of by the Supreme Court.

WHEREFORE, respondent is hereby ordered to grant petitioner a tax credit or refund in the amount of P38,386,674 representing overpaid branch profit remittance tax. No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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 Section 13, Article VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

# TABLE 1

## COMPUTATION OF OVERPAID PROFIT REMITTANCE TAX (PHP) (1981 TO 1985)

| | 1981 | 1982 | 1983 | 1984 | 1985 | Staff Fundings (Various Years) | TOTAL |
|---|---|---|---|---|---|---|---|
| A) Branch Profit | 7,983,066.73 | 177,652,914.51 | 425,632,325.62 | 426,546,970.22 | 619,420,754.82 | 48,838,407.01 | 1,706,074,438.91 |
| B) 15% Profit Remittance Tax Paid | 1,197,460.01 | 26,647,927.18 | 63,844,848.84 | 63,982,045.53 | 92,913,113.22 | 7,325,761.05 | 255,911,155.83 |
| C) Profits actually remitted | 6,785,606.72 | 151,004,977.33 | 361,787,476.78 | 362,564,924.69 | 526,507,641.60 | 41,512,645.96 | 1,450,163,273.08 |
| D) 15% Profit Remittance Tax that should have been paid | 1,017,841.01 | 22,650,746.60 | 54,268,121.52 | 54,384,738.70 | 78,976,146.24 | 6,226,896.90 | 217,524,490.97 |
| E) Overpaid Profit Remittance Tax [ (b) less (d) ] | 179,619.00 | 3,997,180.58 | 9,576,727.32 | 9,597,306.83 | 13,936,966.98 | 1,098,864.15 | 38,386,664.86 |