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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 4414**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

6/21/94

x -x

D E C I S I O N

This petition seeks for the refund of alleged overpaid withholding taxes on cash dividends due to petitioner's non-resident stockholders in the amount of P46,656.30.

Petitioner is a commercial banking corporation organized and existing under Philippine laws. Among its stockholders are non-resident American and British citizens who received cash dividends net of the 30% final withholding tax under Section 22(a)(2) of the National Internal Revenue Code, which provides:

"Sec. 22. **Tax on non-resident alien individuals. - (a) Non-resident alien engaged in trade or business within the Philippines.**

(1) In general. - xxx xxx xxx.

(2) Dividends, share in the net profits of a taxable partnership, interest, royalties, prizes and other winnings. - Dividends from a domestic corporation, share in the net profits of a partnership taxable under Section 24(a), interest, royalties (in any form) and prizes (except prizes amounting to P3,000 or less which shall be subject to tax under paragraph (a) of Section 21) and other winnings (except Philippine Charity Sweepstakes winnings), shall be subject to a tax of thirty percent (30%) on the total amount thereof."

On July 28, 1989, petitioner filed with the respondent a claim for refund of alleged overpaid withholding tax on cash dividends paid to its American and British stockholders (Exh. Y, pp. 150-155, CTA record). During the years 1988 and 1989, it is the contention of petitioner that by virtue of certain tax treaties entered into by our government with the United States of America (USA) and the United Kingdom of Great Britain, it should have only withheld 25% of the cash dividends due to its American and British stockholders. Consequently, it sought for the refund of the amount of P46,656.30, * computed as follows: (pp. 3-4, CTA record)

Re: American Citizens

Name of Stockholders	Date of Payment	Gross Amount	W/H Tax 30%	W/H Tax 25%	Amount to be Refunded
Steiner Sei Hwa Huang	7-07-88	P6,690.00	P2,007.00	P1,672.50	P 334.50
	1-26-89	6,690.00	2,007.00	1,672.50	334.50
	4-21-89	6,690.00	2,007.00	1,672.50	334.50
				Total	P 1,003.50

Name of Stockholders	Date of Payment	Gross Amount	W/H Tax 30%	W/H Tax 25%	Amount to be Refunded
Mary Feng Ling Huang	7-07-88	P9,604.00	P2,881.20	P2,401.00	P 480.20
	1-26-89	9,604.00	2,881.20	2,401.00	480.20
	4-21-89	9,604.00	2,881.20	2,401.00	480.20
				Total	P 1,440.60
Clotilde Hyndman	7-07-88	P 56.00	P 16.80	P 14.00	P 2.80
	1-26-89	56.00	16.80	14.00	2.80
	4-21-89	56.00	16.80	14.00	2.80
				Total	P 8.40
				Amount Refundable	P 2,452.50

Re: British Citizens

Name of Stockholders	Date of Payment	Gross Amount	W/H Tax 30%	W/H Tax 25%	Amount to be Refunded
Cheng Yung Li	7-07-89	P 12,040.00	P3,612.00	P3,010.00	P 602.00
	1-26-89	12,040.00	3,612.00	3,010.00	602.00
	4-21-89	12,040.00	3,612.00	3,010.00	602.00
				Total	P 1,806.00
Carmen Kuo	7-07-88	P299,002.00	P89,700.60	P74,750.50	P14,950.10
	1-26-89	299,002.00	89,700.60	74,750.50	14,950.10
	4-21-89	299,002.00	89,700.60	74,750.50	14,950.10
				Total	P44,850.30
				Amount Refundable	P46,656.30*

(Note: The total amount refundable should be P49,108.80, but petitioner opted to claim for refund only the amount of P46,656.30 in the instant petition.)

Petitioner made a follow-up letter, dated November 28, 1989, on its previous claim for refund, dated July 28, 1989 (Exh. BB, p. 232, CTA record). In the absence of any response from the respondent, the petitioner filed the instant petition on December 28, 1989.

While admitting the foregoing basic facts, the respondent, in her answer, refuted the claim for refund and alleged among others: that the petitioner is not the real party in interest instead it is the non-resident stockholder who should file the instant petition because it was the latter whose dividend income was allegedly excessively taxed, citing the case of Commissioner of Internal Revenue v. Procter & Gamble, et. al., G.R. No. 66838, April 15, 1988; that the aforementioned tax treaties does not apply to the present case; and that the taxpayer has the burden to show that the taxes paid were indeed erroneously paid.

Petitioner presented testimonial and documentary evidence to support its case. Respondent, after having been deemed to have waived her right to cross-examine petitioner's witness, merely submitted the case for decision on the basis of the pleadings and evidence submitted by the petitioner.

Thus, the issues to be resolved in this case are:

1. Whether or not the petitioner has the legal personality to bring this suit for claiming a refund of alleged overpaid withholding taxes on dividends on behalf of its non-resident US stockholders and British stockholders; and

2. Whether or not the petitioner is entitled to the refund claimed for.

We rule in favor of petitioner.

The first issue is not one of first impression. The Supreme Court in a resolution en banc has resolved in favor of the right of a withholding agent (domestic corporation) to file a suit to claim for a refund in behalf of its non-resident foreign stockholders in the case of **Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corp., et. al., G.R. No. 66383, December 2, 1991,** where it had the occasion to reconsider a previous decision (by the Second Division), dated April 15, 1988, and rule as follows:

> "x x x. It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax' and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent, is moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.
>
> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer'. The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as not 'subject to tax.' By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal

interest, to bring a suit for refund of taxes he believes were illegally collected from him.

In Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

x x x x x x x x x.

If, as pointed out in Philippine Guaranty, the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim. This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.

We believe that, even now, there is nothing to preclude the BIR from requiring P&G-Phil. to show some written or telexed confirmation by P&G-USA of the subsidiary's authority to claim the refund or tax credit and to remit the proceeds of the refund, or to apply the tax credit to some Philippine tax obligation of, P&G-USA, before actual payment of the refund or issuance of a tax credit certificate. What appears to be vitiated by basic unfairness is petitioner's position that, although P&G-Phil. is directly and personally liable to the Government for the taxes and any deficiency assessments to be collected, the Government is not legally liable for a refund simply because it did not demand a written confirmation of P&G-Phil.'s implied authority from the very beginning.

> A sovereign government should act honorably and fairly at all times, even vis-a-vis taxpayers.
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a 'taxpayer' within the meaning of Section 30, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim." (Emphases in the original.)

The Procter and Gamble case (supra.) was likewise cited in the case of **Commissioner of Internal Revenue v. The Court of Tax Appeals, et. al., G.R. No. 93901, February 11, 1992** reiterating its ruling that the withholding agent has sufficient legal interest to bring an action to recover tax overpayment.

Anent the second issue, a referral to the treaties mentioned by the petitioner is in order.

Article 11 of the Tax Treaty dated January 1, 1983 entered into between the Philippines and the United States of America provides: (Exh. Z-1, p. 182, CTA record.)

"Article 11

> (1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.
>
> (2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed - -

(a) 25 percent of the gross amount of the dividend; or (Underscoring supplied.)

(b) x x x x x x x x x."

A similar provision is embodied in Article 9 of the Tax Treaty, effective January 29, 1978, entered into between the Philippines and the United Kingdom of Great Britain, to wit: (Exh. AA-1, pp. 222-223, CTA record.)

"Article IX

DIVIDENDS

1. Dividends derived from a company which is a resident of the Philippines by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in the Philippines but where such dividends are beneficially owned by a resident of the United Kingdom the

(a) 15% of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

(b) in all other cases 25% of the gross amount of the dividends." (Emphasis supplied.)

Tax treaties are accepted limitations to the power of taxation. In the above-mentioned treaties, the Contracting States had recognized that cash dividends may be taxed in both countries where they derive such dividends or where the recipients are citizens. It is in order to avoid the rigors of double taxation that the above provision were incorporated in the said treaties.

Respondent does not deny that the petitioner's stockholders include both non-resident American and British citizens enumerated in the petition for review, who received cash dividends from petitioner herein. On the other hand, petitioner submitted the Monthly Remittance Returns of Income Taxes Withheld, Schedules of Taxes Withheld on cash dividends due on its non-resident stockholders, BIR Payment Orders and CB Confirmation Receipts, Applications to Purchase Foreign Exchange, Schedules of Remittance of Dividends to Non-Resident Stockholders, Central Bank Authorization to transmit the Dollar equivalent of the cash dividends remitted by petitioner to its non-resident American and Bristish stockholders all of which sufficiently establish the fact of withholding and payment of the 30% final tax imposed under Section 22(a)(2) in the years 1988 and 1989 and the remittance of cash dividends to its non-resident stockholders.

This Court has no other recourse but to hold that the cash dividends due to petitioner's non-resident American and British stockholders are only subject to a final withholding tax of 25% by virtue of the Tax Treaties entered into by the Philippine Government with the United States of America and the United Kingdom of Great Britain. The withholding tax payments made in the years 1988 and 1989 were therefore in excess of 5% the amount due to the respondent.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. Respondent is hereby ordered to **refund** in favor of petitioner the amount of P46,656.30, representing erroneously paid withholding taxes on cash dividends due to petitioner's non-resident American and British stockholders for the years 1988 and 1989.

No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, June 21, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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