1B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

S. C. JOHNSON AND SON, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5136

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 07 1996

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DECISION

This is a claim for refund of alleged overpaid withholding tax on royalties amounting to P963,266.00.

Petitioner, a domestic corporation organized and operating under Philippine laws, entered into a license agreement with SC Johnson and Son, United States of Ameriica (USA), a non-resident foreign corporation based in the U.S.A. pursuant to which the petitioner was granted the right to use the trademark, patents and technology owned by the latter including the right to manufacture, package and distribute the products covered by the Agreement and secure assistance in management, marketing and production from SC Johnson and Son, USA.

The said license Agreement was duly registered with the Technology Transfer Board of the Bureau of Patents, Trade Marks and Technology Transfer under Certificate of Registration No. 8064 (Exh. "A").

For the use of the trademark or technology, Petitioner was obliged to pay the SC Johnson and Son, USA royalties based on a percentage of net sales and subjected the same to 25% withholding tax on royalty payments which Petitioner paid for the period covering July 1992 to May 1993 in the total amount of P1,603,443.00 (Exhs. "B" to "L" and submarkings).

On October 29, 1993, Petitioner filed with the International Tax Affairs Division (ITAD) of the BIR a claim for refund of overpaid withholding tax on royalties arguing that, "the antecedent facts attending petitioner's case fall squarely within the same circumstances under which the said <u>McGeorge</u> and <u>Gillette</u> rulings were issued. Since the agreement was approved by the Technology Transfer Board, the preferential tax rate of 10% should apply to the petitioner. We therefore submit that royalties paid by the petitioner to SC Johnson and Son, USA is only subject to a 10% withholding tax pursuant to the most-favored nation clause of the RP-US Tax Treaty [Article 13 Paragraph 2(b)(iii)] in relation to the RP-West Germany Tax Treaty [Article

12(2)(b)]" (Petition for Review, par. 12). Petitioner's claim for the refund of P963,266.00 was computed as follows:

Month/ Year	Gross Royalty Fee	25% Withholding Tax Paid	10% Withholding Tax	Balance
July 1992	559,878	139,970	55,988	83,982
August	567,935	141,984	56,794	85,190
September	595,956	148,989	59,596	89,393
October	634,405	158,601	63,441	95,161
November	620,885	155,221	62,089	93,133
December	383,276	95,819	38,328	57,491
January 1993	682,451	170,613	68,245	102,368
February	565,845	141,461	56,585	84,877
March	547,253	136,813	54,725	82,088
April	660,810	165,203	66,081	99,122
May	603,076	150,769	60,308	90,461
	P6,421,770	P1,605,443	P642,177	P963,266

Respondent did not act on said claim for refund. Hence, this appeal.

During the trial of the case, Petitioner's claim for refund was met without strong opposition from the Respondent, probably because the issue involved has already been settled with finality not only with this Court but also in the higher courts.

We believe so.

The sole issue raised is: Whether or not Petitioner is entitled to the claim for refund in accordance to the "most favored nation clause" as provided in the R.P.-U.S. Tax Treaty, Article 13 (2)(iii) in relation to Article 12 (2)(b) of the R.P.-West Germany Tax Treaty.

We answer in the affirmative.

In the case of **General Electric Philippines Meter and Instrument Co., Inc., vs. Commissioner of Internal Revenue,** CTA Case No. 4158, December 5, 1991 this Court ruled, thus:

> On the basis of the most favored nation clause of the RP - U.S. Tax Treaty, Art. 13 (2) (b) (ii), taken in relation to Article 12 (2) (b) of the RP - West German Tax Treaty and BIR Ruling No. 263-86, petitioner should have withheld and paid only 10% tax instead of 25% on the royalties paid by petitioner to General Electric Company in the U.S..
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> Of the accrued royalties in 1984 in the amount of P15,570,208.22 paid in 1985 - 25% tax was actually paid by petitioner on May 10, 1985 by way of withholding tax in the amount of P81,743.59 (Exhs. I, K & J, pp. 53-54, CTA rec.). Since the tax due thereon is only 10%, according to the above provision of law, the sum of P54,495.73 was due and paid resulting to an overpayment of P27,247.86.
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> Of the technical service fee of P168,474.91, petitioner paid on June 10, 1985 the 15% withholding tax in the sum of P25,271.23. (Exhs. E, G, & F, pp. 50-51 CTA rec.). Since the tax due is only 10%, according to the above provision of law, the sum of P14,440.71 was due and paid resulting to an overpayment of P10,830.52.

Said decision was affirmed by the Court of Appeals in **Commissioner of Internal Revenue vs. General Electric Philippines Meter and Instrument Co., Inc.** C.A. G.R.-No. 30674. This case became final when the entry of judgment was issued on January 26, 1994.

In a latter case, this Court reiterated the above ruling, thus:

> On the second issue, whether or not petitioner should be taxed at the reduced rate of 10% withholding tax on royalties in accordance with Article 12 (2) (b) of the R.P.- West Germany Tax Treaty and not 25% withholding tax on royalties under Articles 13 (2) (b) (iii) of the R.P.- U.S. Tax Treaty.
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> This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by then Commissioner of Internal Revenue, Bienvenido Tan, (BIR Ruling No. 456-88, supra., that under the most favored nation provision of the R.P.- U.S. 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 R.P.- 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.
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> Thus, inasmuch as the Agreement between World Trade and IBM Phils. as well as the Agreement between IBM and IBM Phils. had been approved by the Central Bank of the Philippines, royalties arising in the Philippines and payable to World Trade as well as to IBM by IBM Phils. should be taxed at the rate of 10% because said rate is indicated in the R.P.- West Germany Tax Treaty and pursuant

to Article 13, paragraph 2 (b) (iii), of the RP - US Tax Treaty.

(**IBM Philippines Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 4308, March 31, 1993 pp. 10-12)

The Entry of Judgment on said case was issued on December 15, 1993 after the Court of Appeals granted petitioner's (herein respondent) withdrawal of the case. (**Commissioner of Internal Revenue vs. IBM Philippines, Inc.**, C.A. G.R.-SP No. 31791)

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

WHEREFORE, in all the foregoing, Respondent is hereby **ORDERED** to **ISSUE** a TAX CREDIT CERTIFICATE in the amount of P963,266.00 representing overpaid withholding tax on royalty payments beginning July, 1992 to May, 1993.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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