LB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERNATIONAL FLAVORS AND FRAGRANCES (PHILIPPINES), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5127

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 03 1997

x - x

DECISION

This case involves a claim for refund in the amount of P2,927,155.09 representing excess or overpaid final tax withheld by petitioner and remitted to the BIR on royalty payments to International Flavors and Fragrances, Inc. of New York, USA (IFFI for brevity) corresponding to the period from July 1, 1989 to December 31, 1993.

Petitioner is a registered domestic corporation with principal office address at Richgold Industrial Estate Unit, No. 9, First Avenue, Bicutan, Taguig, Metro Manila.

On January 1, 1988, petitioner entered into a licensing, management, technical and marketing assistance agreement with IFFI for a period of five (5) years.

On January 1, 1993, the contracting parties renewed the same agreement for another period of five (5) years.

Both agreements were registered and approved by the Bureau of Patents, Trademark and Technology Transfer

(BPTTT, for short) as evidenced by Certificate of Registration Nos. 800 and 1419.

Pursuant to these Agreements, petitioner should pay and remit an annual fee or royalty at the rate of two percent (2%) of the net sales of petitioner's products sold during each year in the Philippines, payable at the end of each quarter, specifically on the 30th day of January, April, July, and October of each year to IFFI in New York, USA.

For the period from July 1, 1989 to March 31, 1992, petitioner had remitted to the BIR the total amount of P997,964.75 representing 10% final withholding tax on its royalty payments for the said period amounting to P9,979,654.56. The 10% rate of withholding tax on royalty payments was in accordance with the most favored nation clause under Article XIII of the Philippine-United States Tax Treaty in relation to Article 12 of the Philippine-Germany Tax Treaty. This 10% rate of withholding tax on royalty payments to a U.S. recipient was revoked by respondent on July 1, 1992 when it issued Revenue Memorandum Circular (RMC) No. 39-32 which required that the rate should be 25% if the payor is not registered with the Board of Investments (BOI).

In compliance with RMC No. 39-32, petitioner filed on October 28, 1992 a new BIR form 1743W and paid the further amount of P1,496,948.20 representing the additional 15% withholding tax on royalty payments for the period from April 1, 1992 to December 3, 1993.

According to petitioner, the above-mentioned payments of withholding tax on royalties are clearly erroneous, improper and without legal basis, due to a decision rendered by this Court in CTA Case No. 4308 which was promulgated on July 21, 1993 and which has become final and executory as respondent did not appeal said decision. In said decision, We stated that the correct tax rate on royalties paid to U.S. residents is 10% applying the "most favored nation" clause of the Philippine-U.S. Tax Treaty.

Consequently, on May 11, 1994 petitioner filed with the B.I.R. a written request for the refund of the amount of P2,927,155.09 as petitioner's alleged excess or overpaid payments to IFFI for the period from July 1, 1989 to December 31, 1993. Details of computing the amount of P2,297,155.09 are shown hereinbelow.

15% Overpayment to the Bureau of Internal Revenue

Period Covered	Gross Income	10% W/tax	25% W/tax	Excess Payment	Date Paid
7/1/89-9/30/89	1,178,005.07	117,800.51	294,501.27	(176,700.76)	10.28.92
10/1/89-12/31/89	585,855.84	58,585.58	146,463.96	(87,878.38)	-do-
01/01/90-3/31/90	944,140.67	94,414.07	236,035.17	(141,621.10)	-do-
04/01/90-6/30/90	872,279.87	87,227.99	218,069.97	(130,841.98)	-do-
07/01/90-9/30/90	538,210.63	53,821.06	134,552.66	(80,731.59)	-do-
10/1/90-12/31/90	636,369.20	63,636.92	159,092.30	(95,455.38)	-do-

Period Covered	Gross Income	10% W/tax	25% W/tax	Excess Payment	Date Paid
01/1/90-03/31/91	1,201,367.96	120,136.80	300,341.99	(180,205.19)	-do-
04/1/91-06/30/91	977,311.79	97,731.18	244,327.95	(146,596.77)	-do-
07/1/91-09/30/91	827,848.00	82,784.80	206,962.00	(124,177.20)	-do-
10/1/91-12/31/91	952,189.23	95,218.92	238,047.31	(142,828.38)	-do-
01/1/92-03/31/92	1,266,076.30	126,607.63	316,519.08	(189,911.45)	-do-
04/1/92-06/30/92	1,032,818.35	103,281.84	258,204.59	(154,922.75)	7.10.92
07/1/92-09/30/92	1,648,391.71	164,839.17	412,097.93	(247,258.76)	10.12.92
10/1/92-12/31/92	1,422,944.24	142,294.42	355,736.06	(213,441.64)	1.11.93
01/1/93-03/31/93	1,471,620.62	147,162.06	367,905.16	(220,743.09)	4.12.93
04/1/93-06/30/93	1,725,320.37	172,532.04	431,330.09	(258,798.06)	7.12.93
07/1/93-09/30/93	1,285,580.43	128,558.04	321,395.11	(192,837.06)	10.11.93
10/1/93-12/31/93	948,036.98	94,803.70	237,009.25	(142,205.55)	1.25.94
TOTAL	19,514,367.26	1,951,436.73	4,878,591.82	(2,927,155.09)	

As there was no respondent's action or decision on petitioner's request and the two-year period prescribed for filing a petition for review was about to expire, petitioner filed the instant petition on July 8, 1994.

The sole issue to be ventilated in this case is whether or not petitioner is entitled to the refund of the amount of P2,927,155.09 as overpaid 15% final withholding tax on its royalty payments to IFFI for the period from July 1, 1989 to December 31, 1993.

We rule affirmatively in favor of petitioner in the light of our previous decisions in similar cases involving identical issue.

Thus, 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 that:

> "On the basis of the most favored nation clause of the RP-US Tax Treaty, Art. 13(2)(b)(iii), taken in relation to Article 12(2)(b) of the RP-West Germany Tax Treaty and BIR Ruling No. 263-86, petitioner should have withheld and paid only 10% tax instead of 25% on royalties paid by petitioner to General Electric Company in the U.S..
>
> 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 and 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.
>
> 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."

The above-quoted 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, and became final when the entry of judgement was issued on January 26, 1994.

In a later case entitled **"IBM Philippines, Inc. vs. Commissioner of Internal Revenue," CTA Case No. 4308, decided on March 31, 1993,** which was cited by the petitioner in its pleading, this Court reiterated the aforequoted ruling stating that:

> "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 Article 13(2)(b)(iii) of the R.P.-U.S. Tax Treaty.

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.

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 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."

The above-cited rulings/decisions were further reissued by this Court in CTA Case No. 5048, **"Smithkline** and French Overseas Co. vs. **Commissioner of Internal Revenue**," where We ruled that:

> "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.
>
> Prescinding from the above discussions, records of the case reveal that petitioner indeed overpaid its payment on royalties in the amount of P372,884.70 (Exh. F) and thus, should be entitled to the refund of said amount." (p. 9, CTA Case No. 5048, DECISION)

The above-mentioned decision became final when its entry of judgment was issued on January 30, 1996.

In a most recent case decided by this Court on April 23, 1996, it was emphasized that there are two important requirements that should be present and/or complied with before the 10% rate of withholding tax on royalties remitted to a U.S. resident maybe availed of. These are:

> 1. It is necessary that there be an agreement or a contract whereby the royalties paid to the U.S. originate from the use of, or the right to use any patent, trademark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and
>
> 2. The contract or agreement must be duly approved by Philippine competent authorities. (see p. 13, Decision in CTA Case No. 5141, "Jardine Davies, Inc. and Macwhyte Company, a Division of Amsted Industries, Inc. vs. Commissioner of Internal Revenue," promulgated on April 23, 1996).

Petitioner in the instant case presented in evidence the two Agreements it entered into with IFFI: the first

Agreement which was executed on October 27, 1987 but made effective on January 1, 1988 which was marked as Exh. "E" for petitioner (pp. 179-187, CTA records); the other Agreement which was executed on November 12, 1992 but effective on January 1, 1993, was marked as Exh. "F" for petitioner (pp. 190-197, Ibid.). The presentation of these documents is a compliance of the first requirement.

The Agreements were both registered and approved by the Bureau of Patents, Trademark and Technology Transfer as evidenced by Certificates of Registration Nos. 800 and 1419, likewise marked as Exhs. "G" and "H", respectively for petitioner (pp. 198-199, supra.). Offer of these exhibits is a compliance of the second requirement.

As regards the necessity of proving that the amount being claimed as refundable/tax creditable and that it has actually been remitted to the BIR, petitioner presented the Monthly Remittance Returns of Income Tax Withheld for the subject period together with their corresponding confirmation receipts.

With the presentation of these documents which were identified by its sole witness, Ms. Carmen Cervetillo, including all other exhibits which were also material to the issue involved, the Court is convinced all the more to grant to petitioner the refund or tax credit of the amount of P2,927,155.09.

On her part, respondent failed to present any evidence to rebut petitioner's claim which was substantially proven during the hearings conducted.

WHEREFORE, viewed from the foregoing, this Court finds the petition meritorious and hereby **ORDERS** respondent to **ISSUE** in favor of petitioner a TAX CREDIT CERTIFICATE in the amount of P2,927,155.09 as overpaid final withholding tax on royalty payments for the period from July 1, 1989 to December 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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 Consitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals