REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AVENTIS CROPSCIENCE PHILIPPINES, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 6190

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated
JUL 04 2002
GVApolinario

x - x

DECISION

This case involves a claim for refund filed by petitioner in the amount of P3,250,000.00 allegedly representing the overpaid or excess withholding tax on cash dividends it remitted to Aventis-France SA in the years 1998 and 1999.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at 8th Floor Philamlife Building, Madrigal Business Park, 1207 Acacia Avenue, Alabang 1770, Muntinlupa City (*par. 2, Joint Stipulation of Facts*).

Aventis Cropscience SA (formerly Rhone Poulenc Agro), hereinafter referred to as "Aventis-France," is a company duly established under the laws of France and is not doing business in the Philippines. It owns 100% of the voting stock of petitioner (*pars. 4 and 5, Joint Stipulation of Facts*).

On November 12, 1998, petitioner remitted dividends to Aventis-France in the amount of P15,000,000.00, on which petitioner withheld the amount of P2,250,000.00, representing 15% withholding tax on dividends as prescribed under the provisions of Article 10(2)(a) of the RP-France Tax Treaty. The 15% withholding tax amounting to P2,250,000.00 was paid and remitted by petitioner to the BIR on November 5, 1998, as reflected on its Monthly Remittance Return of Income Taxes Withheld for the month of November 1998 (*Annex B, Petition for Review*).

In a Special Meeting of the petitioner's Board of Directors held on May 6, 1999, the Board of Directors adopted a resolution to declare cash dividends to Aventis-France in the amount of P50,000,000.00, half of which is payable not later than June 20, 1999 and the remaining half payable not later than September 20, 1999 (*Exhibit "M"*).

Consequently, cash dividends in the amount of P25,000,000.00 was remitted to Aventis-France by petitioner on June 18, 1999, on which the amount of P3,750,000.00 was withheld representing the 15% withholding tax on dividends based on the original provisions of Article 10(2)(a) of the RP-France Tax Treaty (*Exhibits "V", "V-1" to "V-3", "W", "W-1", "W-2", "Z-1" and "Z-2"*).

On June 17, 1999, petitioner remitted and paid to the BIR the said amount of P3,750,000.00, as reflected on its Monthly Remittance Return of Income Taxes Withheld (BIR Form 1601) for the month of June 1999 through Land Bank of the Philippines, an authorized agent bank. (*Exhibits "N", "N-1" to "N-4"*)

On September 20, 1999, the remaining P25,000,000.00 was remitted to Aventis-France on which the amount of P3,750,000.00 was also withheld representing 15%

withholding tax on dividends also based on the original provisions of the RP-France Tax Treaty. (*Exhibits "X", "X-1" to "X-3", "Y", "Y-1", "Y-2", "Z"*).

On September 17, 1999, petitioner again remitted and paid to the BIR the amount of P3,750,000.00 representing 15% withholding tax, as reflected on its Monthly Remittance Return of Income Taxes Withheld (BIR Form 1601) through Land Bank of the Philippines (*Exhibits "O", "O-1" to "O-5"*).

On August 22, 2000, upon learning of the **Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic** which reduced, among others, the withholding tax rate on dividends from 15% to 10%, petitioner filed with the BIR amended Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) for the months of November 1998, June 1999 and September 1999 cash dividends remitted to Aventis-France, this time using the reduced 10% withholding tax rate under the amendment to the RP-France Tax Treaty (*Annex E, Petition for Review, Exhs. Q & R, par. 8, Joint Stipulation of Facts*).

Accordingly, on October 27, 2000, petitioner, through SGV and Co., filed with the BIR-International Tax Affairs Division (BIR-ITAD) a formal request for the refund or tax credit of the excess or overpaid withholding tax on dividends amounting to P3,250,000.00 (*par. 9, Joint Stipulation of Facts*).

There being no action on the part of the respondent, petitioner filed a Petition for Review with this Court on October 31, 2000 to toll the running of the two-year prescriptive period for claiming a tax refund and/or credit.

In his Answer filed on November 23, 2000, respondent raised the following Special and Affirmative Defenses:

> "6. The alleged claim for refund is subject to administrative investigation/examination by the respondent. In fact, upon verification with the International Tax Affairs Division on the status of the petitioner's administrative claim for refund, petitioner has not yet submitted certain documents necessary for the determination of its entitlement to refund;
>
> 7. Inasmuch as "taxes are presumed to have been collected in accordance with laws and regulations" (**Caltex Philippines, Inc. vs. Commissioner of Internal Revenue**, CTA Case No.2871, January 29, 1986), petitioner must show that the alleged withholding taxes on cash dividends, which are the subject of the instant petition, were erroneously or illegally collected;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake of the nature of tax exemption (**Commissioner of Internal Revenue vs. Ledesma**, G.R. L-13509, January 30, 1970, 31 SCRA 95), hence, "A claimant has the burden of proof to establish the factual basis of his/her claim for tax credit/refund." (**Citibank NA vs. Court of Appeals**, 280 SCRA 459); and
>
> 9. It is incumbent upon the petitioner to show that it has complied with the provisions of **Sections 204 (c) and 229** of the National Internal Revenue Code, as amended."

On November 12, 2001, counsel for the respondent submitted this case for decision based on the pleadings and petitioner's evidence.

The parties via their Joint Stipulation of Facts and Issues submitted the following issues to this Court, namely:

> 1. Whether or not the 15% withholding tax on the cash dividends declared by petitioner is proper;

2. Whether or not petitioner withheld the aggregate amount of P9,750,000.00 representing the 15% withholding tax on cash dividends remitted to Aventis-France in 1998 and 1999;

3. Whether or not petitioner remitted and paid to the BIR the 15% withholding tax in the aggregate amount of P9,750,000.00 on cash dividends remitted to Aventis-France in 1998 and 1999;

4. Whether or not petitioner overpaid the withholding tax on cash dividends remitted to Aventis-France in 1998 and 1999 in the aggregate amount of P3,250,000.00; and

5. Whether or not petitioner is entitled to a refund and/or issuance of a tax credit certificate in the aggregate amount of P3,250,000.00 representing the overpaid withholding tax on cash dividends remitted to Aventis-France in 1998 and 1999.

That the claims for refund or tax credit of the excess or overpaid withholding tax on dividends and this Petition for Review were filed within the two-year prescriptive period is not disputed (*par. 10, Joint Stipulation of Facts*).

Petitioner paid to the BIR the 15% withholding tax on the dividends on November 5, 1998, June 17, 1999 and September 17, 1999, hence, the petitioner had two (2) years from the date of payment within which to file a claim for refund as provided under Sections 204 and 229 of the Tax Code. Considering that petitioner filed its administrative claim for refund/tax credit with the BIR on October 27, 2000 and this Petition for Review on October 31, 2000, the petitioner has complied with the 2-year reglementary period within which to file the said administrative and judicial claims for refund or tax credit.

After carefully considering the evidence adduced solely by petitioner, the Court rules in its favor.

The testimonial and documentary evidence presented by petitioner during the trial, which were never controverted by the respondent, as well as the law on which this petition is anchored, indisputably supports petitioner's entitlement to the refund/tax credit prayed for.

The withholding of the amount of P2,250,000.00 for the remittance of dividends to Aventis-France on November 12, 1998 and P3,750,000.00 for the remittance on June 18, 1999 and September 20, 1999 were made pursuant to the original provisions of Article 10 of the RP-France Tax Treaty which imposed a 15% withholding tax on dividends paid by a Philippine corporation to a French corporation, viz:

"Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax charge shall not exceed:

   (a) <u>15 percent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;</u>

   (b) In all other cases, 25 per cent of the gross amount of the dividends." (Emphasis supplied)

Considering that Aventis-France, a corporation organized and existing under the laws of France owns 100% of the voting stock of petitioner, the latter withheld the 15% tax pursuant to the RP-France Tax Treaty.

However, the above provisions of **Article 10 of the RP-France Tax Treaty** were subsequently amended through the **Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic**. One of the amendments introduced by the Protocol was the reduction of the withholding tax on dividends paid by a Philippine company to a resident of France which holds at least 15% of the voting shares of the Philippine company from 15% to 10%, (*par. 7, Joint Stipulation of Facts*) viz:

"ARTICLE 5

In Article 10 of the Convention:

- in paragraph 2, the rates of '15 percent' and '25 percent' are replaced respectively by '10 percent' and '15 percent".

- in paragraph 6, the rate of '15 percent' is replaced by '10 percent'." (Emphasis supplied)

The Protocol entered into force on March 31, 1998, which was the date of the French Embassy's reply to the Department of Foreign Affairs Note No. 972153 dated July 21, 1997, as certified by the Office for Legal Affairs of the Department of Foreign Affairs in its memorandum dated April 22, 1998, making the effectivity date of the reduction in the above withholding tax rates on January 1, 1998 (**Essilor Manufacturing Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6178, May 14, 2002**) pursuant to **Article 11 of the Protocol**, viz:

"ARTICLE 11
ENTRY INTO FORCE

x x x

2. Its provisions shall have effect for the first time:

   (a) As regards taxes withheld at source, for amounts payable on or after the first day of January of the calendar year in which the Protocol entered into force;

   (b) As regards other taxes on income, to income derived during the calendar year in which the Protocol entered into force, or relating to the accounting period ended during this year."

Since the reduced 10% withholding tax rate on dividends under the Protocol became effective on January 1, 1998 and since Aventis Cropscience holds more than 15% of the voting stock of the petitioner, the proper applicable withholding tax rate on the dividends remitted by the petitioner to Aventis Cropscience on November 5, 1998, June 17, 1999 and September 17, 1999 is **10% and not 15%**, pursuant to the amended provision of the RP-France Tax Treaty. Thus, the petitioner has an excess or overpaid withholding on dividends amounting to P3,250,000.00, computed as follows:

DATE OF REMITTANCE		**GROSS AMOUNT**	**WITHHOLDING TAX AT 15%**	**WITHHOLDING TAX AT 10%**	**OVERPAYMENT**
NOVEMBER 5, 1998	Php	15,000,000.00	2,250,000.00	1,500,000.00	750,000.00
JUNE 17, 1999		25,000,000.00	3,750,000.00	2,500,000.00	1,250,000.00
SEPTEMBER 17, 1999		25,000,000.00	3,750,000.00	2,500,000.00	1,250,000.00
TOTAL	**Php**	**65,000,000.00**	**9,750,000.00**	**6,500,000.00**	**3,250,000.00**

Clearly, the submitted documentary and testimonial evidence presented by the petitioner sufficiently proved that there was an overpaid or excess withholding tax on the dividends paid to the BIR. This fact being established and undisputed, petitioner merits the refund or tax credit certificate prayed for in the Petition for Review.

WHEREFORE, in view of the foregoing premises, the Court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to the petitioner in the amount of P3,250,000.00 representing the total excess withholding tax on dividends paid to the BIR on November 5, 1998, June 17, 1999 and September 17, 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above 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