REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BURROUGHS LIMITED,
Petitioner,

- versus - C.T.A. CASE NO. 3204

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

6/21/83

D E C I S I O N

The factual background of this suit is not in controversy, respondent Commissioner of Internal Revenue having submitted the case for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue bearing on the case.

Petitioner Burroughs Limited is a foreign corporation authorized to engage in trade or business in the Philippines, with principal office and business address at De la Rosa corner Esteban Streets, Legaspi Village, Makati, Metro Manila. In March 1979, petitioner remitted to its head office in the United States branch profits amounting to ₱6,499,999.30 and paid on March 14, 1979 15% branch profit remittance tax in the sum of ₱1,147,058.70. The 15% branch profit remittance tax of ₱1,147,058.70 was arrived at as follows:

Net profit after Philippine income tax	₱7,647,058.00
15% branch profit remittance tax	15%
Tax paid to the government	₱1,147,058.70
Net profit after Philippine income tax	₱7,647,058.00
Less: Tax paid to the government	1,147,058.70
Net amount actually remitted	₱6,499,999.30

Relying however on the provisions of Section 24(b)(2) of the 1977 National Internal Revenue Code, as amended, the pertinent portion of which reads at the time as follows:

> "(2) Resident Corporations - A corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines; x x x x Provided, further, That any profit remitted abroad by a branch office to its mother company shall be subject to tax of fifteen per cent (except those registered with the Export Processing Zone Authority)." (Underscoring supplied.)

And the ruling dated January 21, 1980 of respondent construing Section 24(b)(2), wherein he held that:

> "In reply to your letter of November 3, 1978, relative to your query as to the tax base upon which the 15% branch profit remittance tax provided for under Section 24(b)(2) of the 1977 Tax Code shall be imposed, please be advised that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made." (Underscoring supplied.)

Petitioner avers that it should have paid only the amount of ₱974,999.89 in remittance tax computed by taking 15% of the profits actually remitted, thus:

Profits actually remitted ---	₱6,499,999.30
Remittance Tax rate ------	15%
Remittance Tax due --------	₱ 974,999.89

Petitioner therefore claims an overpayment in the amount of ₱172,058.90 computed as the difference between the remittance tax actually paid of ₱1,147,058.70 and the remittance tax that should have been paid of ₱974,999.89.

On December 24, 1980, petitioner filed with respondent's office a claim for refund or tax credit of the amount of ₱172,058.90 representing its alleged overpaid branch profit remittance tax. And apparently, the claim for refund or tax credit was filed within two years from March 14, 1979 when the alleged overpayment of the branch profit remittance tax was made. However, without waiting for the decision of respondent Commissioner of Internal Revenue on its claim for refund or tax credit, petitioner commenced this suit on February 24, 1981 for recovery of the amount of ₱172,058.90 representing alleged erroneously paid branch profit remittance tax paid by it, pursuant to Section 292 of the present National Internal Revenue Code.

In his answer to the petition for review, respondent alleges as special and affirmative defenses, among others, that:

Respondent may rectify any error he may have committed in the implementation of tax laws and regulations on the ground that the government is not bound by the mistakes of its agents (Pineda v. Court of First Instance of Tayabas, 52 Phil. 303).

Respondent has the authority to revoke, repeal or abrogate the rulings of his predecessor in office because the construction of a statute by those who administer it, is not binding on their successors if thereafter the latter becomes satisfied that a different construction should be given (Association of Clerical Employees vs. Brotherhood of Railway & Steamship Clerks, 85F (2d) 152, 109, A.C.R. 345 cited in Hilado vs. Collector, L-9408, October 31, 1956, 100 Phil. 288).

Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24(b)(2) of the Tax Code the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made. Based on such ruling petitioner should have paid only the amount of ₱974,999.89 in remittance tax computed by taking the 15% of the profits of ₱6,499,999.30 actually remitted to its head office in the United States, instead of ₱1,147,058.70, on its net profit of ₱7,647,058.00. Undoubtedly, petitioner has overpaid its branch profit remittance tax in the amount of ₱172,058.90.

Respondent contends, however, as stated earlier, that he has the authority to revoke, repeal or abrogate the rulings of his predecessor in office because the construction of a statute by those who administer it is not binding on him if thereafter he becomes satisfied that a different construction should be given. Nevertheless, the records of this case and the pleadings, on the basis of which respondent submitted this case for decision, do not show of any revocation, modification or reversal of respondent's ruling of January 21, 1980. While there appears on pages 38 and 39 of the BIR records a certified xerox copy of a Revenue Memorandum Circular No. 8-82 issued to all internal revenue officers and others concerned, the subject of which is:

> "Clarification as to proper tax base in the computation of the 15% branch profit remittance tax."

and which prescribes:

> "Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad."

the said revenue memorandum circular is dated March 17, 1982 and it is devoid of any provision or intent that it operates retrospectively. underlining supp.

On the assumption that Revenue Memorandum Circular No. 8-82 revoked, repealed or abrogated respondent's ruling of January 21, 1980 and the proper tax base of the 15% branch profit remittance tax should be the amount actually applied for by the branch with the Central Bank as profit to be remitted and not on the profit actually remitted abroad, in point is Section 327 of the National Internal Revenue Code which provides:

> Sec. 327. Non-retroactivity of rulings. - Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the

> taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers. The prejudice to petitioner of the retroactive application of Revenue Memorandum Circular No. 8-82 is beyond question. It was issued only on March 17, 1982, or almost one and one-half years after petitioner had filed with respondent's office its written claim for refund or tax credit of overpaid branch profit remittance tax, and more than one year after the suit for recovery of such overpaid branch profit remittance tax had been commenced in this Court. As a matter of fact, respondent has not denied or taken any action on petitioner's claim for refund or tax credit except the bare allegations in his answer that he may rectify any error he may have committed in the implementation of tax laws and regulations on the ground that the government is not bound by the mistakes of its agents; and his authority to revoke, repeal or abrogate rulings of his predecessor in office. And in so far as the enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them. (See ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals and Commissioner of Internal Revenue, L-52306, October 12, 1981, 108 SCRA 142.)

Without in the least attempting to express, in this proceeding, an opinion as to the proper tax base of the 15% branch profit remittance tax provided for under Section 24(b)(2) of the Revenue Code, it will be noted that in his ruling dated January 21, 1980, respondent clearly and specifically held that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted and not on the total branch profit out of which the remittance is to be made". The accent is on the words "profit actually remitted". And the ruling even stressed that it is "not on the total branch profit out of which the remittance is to be made". We are not to indulge in statutory construction. Based on said ruling, petitioner has overpaid, as shown earlier, the amount of ₱172,058.90 and entitled, therefore, to the refund or tax credit thereof. If there was miscomprehension or misconception on the part of respondent as to the correct interpretation of Section 24(b)(2), the issuance of Revenue Memorandum Circular No. 8-82 on March 17, 1982 prescribing that the tax base of the 15% branch profit remittance tax should be the amount actually applied for by the branch with the Central Bank as profit to be remitted abroad should not be given retroactive application.

We are not unaware of the well-entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. (Visayan Cebu Terminal Co. Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, 1965; Zamora vs. Court of Tax Appeals, 36 SCRA 77, 1970; Balmaceda vs. Corominas & Co. Inc., 66 SCRA 555, 1975.) In fact, utmost caution should be taken in this regard. (Senator James Couzens, 11 BTA 1040, 1928; 48 Harvard Law Review 1281, 1300, cited in 10A Mertens, Law of Federal Income Taxation, Sec. 60.13, p. 189.) But, like other principles of law, this also admits of exception in the interest of justice and fairplay. The insertion of Section 338-A into the National Internal Revenue Code, which is now Section 327, as held in the case of Tuason,Jr.

vs. Lingad, 58 SCRA 170, 1974, is indicative of legislative intention to support the principle of good faith. In fact, in the United States, from where Section 24(b) was patterned, it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom (Ford Motor Co. vs. U.S., 9 F. Supp. 590, 1935), or where there has been a misrepresentation to the taxpayer (Tuason, Jr. vs. Lingad, 58 SCRA 170, 1974; Connel Bros. Co. [Phil.] vs. Collector of Internal Revenue, 10 SCRA 470, 1964). (See ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals & Commissioner of Internal Revenue, supra.)

ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Burroughs Limited the amount of ₱172,058.90. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 27, 1983.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge