file

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 3887

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

5/31/88

D E C I S I O N

This is a claim for the refund of an amount of P7,554.38, representing allegedly overpaid withholding tax on dividends to non-resident stockholders.

Petitioner is a domestic corporation with non-resident stockholders. For the second quarter of 1983, dividends amounting to P137,422.80 and P7,632.80 were paid to its non-resident individual and corporate stockholders, respectively. Of the amount paid, petitioner withheld 30% or the sum of P41,226.84, of the aggregate dividends remittable to its non-resident individual stockholders and 35% or P2,671.48 of the dividends remittable to its non-resident corporate stockholders, or a total of P43,898.32.

Under Section 22(b) in relation to Section 53(e)(1) of the 1977 Tax Code, non-resident aliens are taxed at 30% on gross dividends received from a domestic corporation, for which reason P41,226.84 was withheld by petitioner from the total dividends of P137,422.80. Under Section 24(b)(1) in relation to Section 53(e)(2) of the same Tax Code, non-resident corporate stockholders are taxed at 35% on gross divide is received from domestic corporation, for which reason the amount of P2,671.48 was withheld by petitioner.

Under the RP-US Tax Treaty, however, the tax collectible on such dividends remitted to U.S. citizens and corporations is fixed at the rate of 25%. Petitioner now claims for a refund of P7,554.38 representing the difference between the amount actually withheld and paid to the Bureau of Internal Revenue (Payment Order No. B-0815226 dated April 11, 1983 and CB Confirmation Receipt No. A-375651 dated April 13, 1983) and the amount due and payable under the said Treaty.

Since the filing of the claim for refund with the respondent's Office on May 17, 1984 to the date of the instant petition for review no action had been taken by the respondent.

It does not appear that the respondent disputes the relatively simple material facts but for the questions on whether or not petitioner is the proper party to claim the refund and as to whether the report of respondent's examiner is binding.

Respondent does posits an unvarying impression that every action must be prosecuted and defended in the name of the real party in interest (Rules of Court, Rule 3, Sec. 2). And, the herein petitioner is neither the real party in interest nor acts in a representative capacity when it filed the action. "No evidence was presented by petitioner to prove that it had the personality to claim the refund or that it was authorized by the U.S. resident stockholders to claim the refund. In other words, petitioner has no cause of action against the respondent."

We do not reach the same conclusion.

As aptly averred by the petitioner, "Where one person pays the tax for another, the person so paying the tax may recover the tax if it represents an overpayment (Mertens, Law on Federal Income

Taxation, 19 Ed. Vol. 10, s. 58.11)." This view is made more positive by a ruling that, a "Party required to withhold tax imposed on all compensation paid to any non-resident alien and made liable for such tax in failing to so withhold should alien fail to pay tax, held, 'taxpayer' within the Revenue Act providing for application to Board of Tax Appeals to review determination x x x (Houston Street Corporation vs. Commissioner of Internal Revenue, 84 (F2d) 821)." (underscoring supplied). Under the circumstances We can say that as a matter of law petitioner's position as a withholding agent comports with the statutory intendment of a taxpayer, hence a party in interest.

Moreover, it may suffice to state that the issue now raised was squarely met in a recent case similar in many or so in tenor and terms as the instant case, where as there, so here, the ruling equally applies, inter alia, thus -

> In any event, the submission of petitioner that Wander is but a withholding agent of the government and therefore cannot claim reimbursement of the alleged overpaid taxes, is untenable. It will be recalled that said corporation is first and foremost a wholly owned subsidiary of Glaro. The fact that it became a withholding agent of the government which was not by choice but by

> compulsion under Section 53(b) of the Tax Code, cannot by any stretch of the imagination be considered as an abdication of its responsibility to its mother company. Thus, this Court construing Section 53(b) of the Internal Revenue Code held that 'obligation imposed thereunder upon the withholding agent is compulsory'. It is a device to insure the collection by the Philippine Government of tax on incomes, derived from sources in the Philippines, by aliens who are outside the taxing jurisdiction of this Court (**Commissioner of Internal Revenue v. Malayan Insurance Co., Inc.,** 21 SCRA 944). In fact, Wander may be assessed for deficiency withholding tax at source, plus penalties consisting of surcharge and interest (**Section 54, NIRC**). Therefore, as the Philippine counterpart, Wander is the proper entity who should claim for the refund or credit of overpaid withholding tax on dividends paid or remitted by Glaro. (**Commissioner of Internal Revenue v. Wander Philippines, Inc. and the Court of Tax Appeals,** G.R. No. 68375, April 15, 1988)

We shall be less than respecting the full and compelling import of the said holding should We pose a narrow and unvarying application and meaning of the party in interest and thus foreclose and stultify altogether the intended scope.

Although the reach of the issue upon which We rest our decision renders the resolution of the apparent contentious quibble on the binding effect of subordinate's findings and recommendation unnecessary it may suffice to repeat what this

Court said and what so plainly apply to the case at bar, that -

> The report itself furnishes the best means of its own exposition. The factual findings are not short of specific support in terms of tractable data and relevant records openly laid and fully disclosed by petitioner. As such, the report deserves the credence that should normally be accorded in the absence of contrary evidence. Respondent points to no factual errors and superfluities which need be abridged. And, not that the examiner's credentials are impeccable but to his favor must be conceded the presumption of regularity in the performance of official duties (Section m-5, Rule 131, Revised Rules of Court; U.S. v. Escalante, 36 Phil. 743; C.J.S. 799) which has not been disproved by any affirmative evidence of irregularity or unlawful conduct. Accordingly, We feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility. (Prima Business Machines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2990, August 31, 1981).

ACCORDINGLY, the refund of the amount sought representing overpaid withholding tax on dividends is hereby ordered the respondent. No costs.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1988.

ALEX Z. REYES
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals