REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL ELECTRIC TECHNICAL SERVICES COMPANY, INC. - PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5819

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 29 2004

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DECISION

This case involves assessments for deficiency income tax, penalties for non-withholding of tax on compensation, late payment of branch profit remittance tax and value-added tax in the aggregate amount of P21,565,431.35, inclusive of surcharge, interest and compromise penalties covering the taxable year 1993.

Petitioner is the Philippine branch of General Electric Technical Services Company, Inc., (GETS Co.-US), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America, with office address at No. 2291 Don Chino Roces Avenue Extension, Makati City.[1]

On June 26, 1998, petitioner received Formal Assessment Notices Nos. 00000032-93-427 and 02-197-93B-98-B2-427, both dated June 23, 1998, issued by the Assessment

[1] Joint Stipulation of Facts and Issues, par. 1.

Division of Revenue Region No. 8, Makati City[2] requiring it to pay deficiency tax assessments, inclusive of surcharge, interest and compromise penalties, in the total amount of P21,565,431.35 for the calendar year ended December 31, 1993.

Formal Assessment Notice No. 00032-93-427 issued against petitioner pertains to a deficiency income tax, penalties incident to non-withholding tax on compensation, and increments on the late payment of branch profit remittance tax for calendar year ended December 31, 1993[3], which were computed as follows:

a. Deficiency Income Tax Assessment - P 9,217,655.15

Net income per return	P 2,147,998.00
Add: Disallowance per investigation Direct Labor/Employees Benefits-not subject to withholding tax on compensation	10,294,344.13
Net income per investigation	P12,712,342.13
Income tax due thereon	P 4,354,820.00
Less: Tax due per return	751,800.00
Deficiency income tax	P 3,603,020.00
25% surcharge	900,755.00
20% interest from 4.16.94-6.30.98	4,688,880.15
Compromise penalty	25,000.00
TOTAL	P 9,217,655.15

b. Deficiency Penalties for Non-withholding of Tax on Compensation Assessment – P4,385,329.42

Gross income reported by personnel in their respective income tax returns	P29,495,975.00
Income taxes due thereon	9,616,313.00
25% surcharge for non-withholding	2,404,078.25
20% interest from 2.1.93-4.15.93	1,741,251.17
Compromise penalty	240,000.00
Total	P14,001,642.42

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[2] *Ibid.* par. 3.

[3] Exhibits A, B & B-1.

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Less: income taxes paid	9,616,313.00
Amount due and payable	P 4,385,329.42

c. Deficiency Increments for the Late Payment of Branch Profits

Remittance Tax Assessment	P 130,934.86
Branch profit remittance tax paid on November 29,1995	P 200,264.15
25% surcharge for late payment	P 50,066.15
20% interest from 1/29/94-11/29/95	64,868.71
Compromise penalty	16,000.00
Total	P 130,934.86

Formal Assessment Notice No. 02-197-93B-98-B2-427, dated June 23, 1998, issued against petitioner relates to a deficiency value-added tax assessment for calendar year ended December 31, 1993 in the amount of P7,831,511.92,[4] which was computed as follows:

Gross service income per return	P 33,073,273.77
10% value added tax due thereon	P 3,307,327.38
25% surcharge for late payment	826,831.84
20% interest from 1.21.94-6.30.98	3,672,352.97
Compromise penalty	25,000.00
Total	P 7,831,511.92

On July 24, 1998 or within thirty (30) days from the receipt of the subject formal assessment notices, petitioner filed with the Bureau of Internal Revenue (BIR) its letter-protest dated July 23, 1998 contesting the subject deficiency tax assessments and requested for the withdrawal and cancellation of the same, after reinvestigation.[5]

Respondent did not act or finally resolve petitioner's protest against the aforesaid deficiency assessments for taxable year 1993 within the 180-day period under Section

[4] Exhibits C, C-1 & C-2.
[5] Exhibit D, Joint Stipulation of Facts and Issues, par. 6.

228 of the National Internal Revenue Code of 1997[6] despite the fact that petitioner submitted the necessary and relevant documents in support of its protest to the said assessments within the sixty (60)-day period allowed by law.[7]

On March 23, 1999, the 180-day period provided under Section 228 of the Tax Code of 1997 within which the respondent should resolve the protest of petitioner had lapsed.[8] Thus, on April 19, 1999, petitioner filed the instant petition to forestall the finality of the disputed assessments.

By way of an Answer, respondent raised the following Special and Affirmative Defenses:

a) The adjustments to net income as addition thereto per findings of the Examiner are in order;
b) The assessments in question were made and issued in accordance with existing laws, rules and regulations;
c) That petitioner failed to submit documents to controvert the assessment; and
d) All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 Phil. 290).

The parties have jointly stipulated the issues to be resolved by this court, to wit:

1. Whether or not the disallowance of the amount of P10,294,344.13, allegedly representing direct labor/employee benefits which have not been subject to withholding tax, hence resulting in the alleged deficiency income tax assessment for calendar year ended December 31, 1993 is valid and proper;

2. Whether or not for calendar year ended December 31, 1993, Petitioner was legally obliged to withhold on the compensation income of its personnel and technical advisors, hence, subject to penalties in case of non-withholding thereof;

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[6] Joint Stipulation of Facts and Issues, par. 8.
[7] *Ibid.* par. 7.
[8] *Id.* par. 9.

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3. Whether or not Petitioner was legally obliged to pay branch profit remittance tax on April 15, 1994, and not in 1995 when the branch profit was actually remitted, hence subject to penalties in case of late payment thereof; and

4. Whether the assessment for deficiency value-added tax for calendar year ended December 31, 1993 is proper and valid.

Anent the first issue, respondent disallowed a portion of direct labor and employee benefits in the amount of P10,294,344.13 on the ground that petitioner allegedly failed to withhold the corresponding tax due thereon. It is the position of the respondent that such amount should be disallowed pursuant to Section 29(j) of the 1993 Tax Code.

On the other hand, petitioner argues that the respondent erred in disallowing the amount of P10,294,344.13 as part of the deduction from its gross income. From the respondent's working papers, it can be gleaned that the P10,294,344.13 was computed as follows:

Direct Labor – Philippines	P21,427,178.33
Employees Benefits	18,363,140.80
Total	P39,790,319.13
Less: Income Reported in the income tax returns of the personnel	29,495,975.00
Variance	P10,294,344.13[9]

According to the petitioner, based on the above computation, the respondent admitted the deductibility of the P29,495,975.00 but disallowed the P10,294,344.13. But if the above figures were to be compared with those of petitioner's income tax return and audited financial statements and the books of accounts, it is clear that the above computation is incorrect. Petitioner maintains that the details of the Schedular Deductions in petitioner's income tax return and audited financial statements show that

[9] Exhibit D-1.

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the Direct Labor claimed was only P14,151,826.00 while the Employee Benefits amounted to only P16,483,460.00 *(Exhibit E-2)*. Taken together, these two items would amount to only P30,635,286.00 and not P39,790,319.13 as contended by the respondent. By comparing the total Direct Labor and Employee Benefits claimed per income tax return of P30,635,286.00 with the P29,495,975.00 allowed by the respondent, there is a difference of only P1,139,311.00 and not P10,294,344.13. The petitioner explains that the difference of P1,139,311.00 corresponds to the DE MINIMIS benefits given to all employees of GETSCO, which is not subject to withholding of tax at the time the payments were made. As testified to by Mr. Angel Agbulos, Manager of Financial Analysis and Treasury Services, in 1993 there were US pension & other direct cost payments in the amounts of US$206,550 and US$309,208, respectively, made on behalf of the employees of the Philippine branch.[10] Therefore, petitioner was correct in not subjecting the said amount to withholding tax.

After a careful scrutiny of the documentary evidence and arguments raised by the parties, this court noted that the direct labor and employee benefits of P18,363,140.80 and P21,427,178.33, respectively, were taken from Journal Entry Number 3,[11] which represents reclassifying entry of petitioner for the year 1993, *viz*:

	DR	CR
Direct Labor	**P18,363,140.80**	
Employee Benefits	**21,427,178.33**	
Branch Transfers	2,437,988.20	
Share in HO Expenses (Income)		P9,155,033.57
Service Income		33,073,273.77
To reclass to proper accounts.		

[10] TSN, April 7, 2000, pages 23& 24; Exhibits BB & CC.
[11] BIR Records, page 53.

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The foregoing amounts of Direct Labor and Employees Benefits in the sum of P39,790,319.13 became the bases for 1993 deficiency income tax of petitioner. However, in the same working paper, respondent failed to consider the offsetting of accounts in Journal Entry Number 7,[12] thus:

	DR	CR
Share in HO operating income	P9,155,033.00	
Direct Labor		**P4,211,315.00**
Employees Benefits		**4,973,718.00**
Offset.		

The above entry has the effect of decreasing the amounts of direct labor and employee benefits to P14,151,826.00 and P16,483,460.00, respectively, computed hereunder:

Direct Labor		Employees Benefits	
DR	CR	DR	CR
P18,363,140.80	P4,211,315.00	P21,427,178.33	P4,973,718.33
P14,151,825.80		P16,483,460.00	

These amounts of P14,151,826.00 as direct labor and P16,483,460.00 as employee benefits were the amounts deducted by petitioner from its gross income as reflected in its 1993 Income Tax Return.[13] Consequently, the total direct labor and employees benefits claimed by petitioner amounted only to P30,635,285.80. Considering that the respondent only allowed the sum of P29,495,975.00 as deductions,[14] there appears a discrepancy in the amount of P1,139,311.00.

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[12] *Ibid*, page 52.
[13] Exhibit E, inclusive of sub-markings.
[14] BIR Records, pages 132-144.

Petitioner asserts that the difference of P1,139,311.00 pertains to DE MINIMIS benefits given to all employees of GETSCO[15]. To support this allegation, petitioner presented Exhibits BB and CC, which are invoices from GETSCO International Power System Department. Said exhibits showed that the US pensions and other direct costs for the first half and second half of 1993 amounting to US$206,550.00 and US$309,208.00, respectively, were made in behalf of the employees of the Philippine branch by GETSCO International Power System Department.

We are not convinced that the sum of US$515,758.00 (US$206,550.00 and US$309,208.00) pertains to DE MINIMIS benefits.

A circumspect study of the records revealed that the aforesaid amounts have Peso equivalent of P5,599,078.34 and P8,688,058.44, respectively, or an aggregate amount of P14,287,136.78.[16] If we add this amount of P14,287,136.78 to the other deduction appearing in the BIR records relating to the account Direct Travel and Living amounting to P7,140,041.56, would result to a sum of P21,427,178.34. It should be observed that the amount of P21,427,178.34 was the unadjusted employees benefits before taking into consideration the entries in Journal Entry Number 7. Undoubtedly, the equivalent Peso amounts of US pension and other benefits claimed by petitioner were part of the account "**employee benefits.**"

However, petitioner did not offer any substantial explanation to buttress its claim that the P1,139,311.00 pertains to DE MINIMIS benefits. There was no breakdown that would persuade us that the amount of P1,139,311.00 refers to DE MINIMIS benefits.

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[15] Per petitioner's memorandum. It can be inferred that this refers to GETSCO-Philippines.
[16] BIR Records, page 107.

Accordingly, we disallow the deduction of said amount. Hence, we uphold the assessment for deficiency income tax but in the reduced amount of P917,689.95, computed as follows:

Direct Labor and Employee Benefits per Income Tax Return	P30,635,286.00
Gross Income of personnel/technical advisor	29,495,975.00
Direct Labor and Employee Benefits not subjected to withholding tax	P 1,139,311.00
Add: Net Income per Income Tax Return	2,147,998.00
Adjusted Net Income	P 3,287,309.00
Income Tax Due (35% of the Adjusted Net Income)	P 1,150,558.15
Less: Tax Due per Income Tax Return	751,800.00
Basic Deficiency Income Tax	P 398,758.15
25% Surcharge	99,689.54
20% Interest 4/16/94 – 6/30/98	419,242.26
Total Deficiency Income Tax	P 917,689.95

We do not impose compromise penalty because there was no compromise agreement reached by the parties [*Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, promulgated on August 29, 2002]*.

With respect to the second issue, respondent imposed penalties for the alleged failure on the part of the petitioner to withhold taxes on the monthly compensation income paid to its personnel and technical advisors. The details of the computation of the penalties are shown below:[17]

Gross income reported by personnel in their respective income tax returns	P29,495,975.00
Income Tax Due Thereon	P 9,616,313.00
25% Surcharge for non-withholding	2,404,078.25
20% interest from 2/1/93 to 4/15/93	1,741,251.17
Compromise Penalty	240,000.00
Total	P14,001,642.42
Less: Income Taxes Paid	9,616,313.00
Deficiency Tax	P 4,385,329.42

[17] Exhibit A.

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Respondent maintains that this case falls in any of the cases under Section 248 of the 1993 Tax Code, which would justify the imposition of the 25% surcharge. Petitioner disagrees. It posits that there is no basis for the imposition by the respondent of the 25% surcharge, nor of the interest, which in itself is based and imposed on the 25% surcharge, on two grounds. One, petitioner is not the employer of the technical advisors and expatriates. It exercised no control over the compensation payments to the technical advisors and expatriates since it is GETSCO-US, petitioner's Head Office, which made the payments in question. Throughout the rendition of the service to clients, the compensation payments to the personnel and technical advisors were made directly by GETSCO-US (*Exhibits F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U*). Inasmuch as it was GETSCO-US that had control over the payments on compensation, petitioner could not have withheld the necessary amounts on a monthly basis. It was not privy to the transaction. Two, the technical advisors and expatriates were outside the control of the petitioner. Petitioner could not have determined the individual length of stay of the payees for tax purposes. Thus, assuming for the sake of argument that petitioner is charged with the responsibility of withholding tax, petitioner would not have been able to do so since it had no way of determining whether the activity performed by GETSCO-US personnel would exceed 180 days pursuant to the RP-US Tax Treaty (Art. 5(1)(i)). According to petitioner, GETSCO-US's technical advisors and personnel, having been deployed in the Philippines on a project basis, the nature of their respective assignment was indefinite and the duration of their individual stay was indeterminable at the time of monthly withholding. It was only upon the second request made by petitioner on April 8, 1994 that it was furnished by GETSCO-US with the complete information on the

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summary of number of full days stay in the Philippines, the earnings and income taxes of GETSCO-US's technical advisors and expatriates. Upon receipt of said information from GETSCO-US, the employer of the technical advisors and expatriates concerned, petitioner withheld and remitted the taxes on the compensation payments to said technical advisors and expatriates.[18] However, petitioner only did this as it chose to take the more conservative position under the circumstances, while maintaining that said payments were not subject to withholding tax for the reasons already mentioned.

We do not agree with the petitioner.

Petitioner is a branch office of GETSCO-US. It cannot now advance the argument that it is not the employer of the technical advisors and expatriates and had no control over their compensation payments. Where else would GETCO-US course the payment of compensation of these technical advisors and expatriates but through the branch? We consider petitioner and GETSCO-US to be one and the same entity. Therefore, it is the employer of the said employees. Being the employer of the said technical advisors and expatriates, petitioner is charged with the withholding of the tax on compensation so paid.

We are not satisfied with petitioner's ratiocination either that it could not withhold the tax on compensation for the reason that the concerned employees were deployed in the Philippines on a project basis and that since their respective assignment was indefinite and the duration of their individual stay was indeterminable at the time of the monthly withholding, petitioner should not be penalized for such failure to withhold.

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[18] TSN, January 17, 2000, pages 16-25.

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As branch office, petitioner was certainly in a position to know who its technical advisors and expatriates were, as well as the duration of their individual stay in the Philippines. But granting that it had no control over the said employees, petitioner could easily inquire from the head office. With the modern communications technology, obtention of information is no longer difficult. Moreover, the fact that petitioner was able to withhold and remit the tax on compensation of the concerned employees belied petitioner's assertion that it was not the employer thereof. After all, there was the monetary source to consider. On April 15, 1994 when petitioner withheld and remitted the tax on compensation of the subject employees, their salaries had already been paid and petitioner averred that GETSCO-US did not withhold the tax thereon as it believed that it was not bound to do so being a non-resident foreign corporation. Furthermore, the employees having been hired on a project basis, they were presumably no longer connected with GETSCO-US by then. We are in quandary why should petitioner bother if not for the reason that being a branch of GETSCO-US it is the employer of the said technical advisors and expatriates.

Petitioner theorizes that GETSCO-US being a non-resident foreign corporation, is not bound to effect the withholding of the taxes notwithstanding the fact that the income on the part of the personnel came from sources within the Philippines.

We disagree.

All income derived from sources within the Philippines are taxable with certain exceptions. And even for the sake of argument that GETSCO-US is not bound to withhold the income on compensation of the concerned employees, this only confirms that petitioner, being a branch of GETSCO-US, has the responsibility of withholding said

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income. This is so because the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction.[19] In other words, if ever the government finds that a tax is due against GETSCO-US, the former can always assess the branch office for the deficiency. Otherwise, the government will have no protection and will always be left holding an empty bag. On the other hand, if the branch office finds that a tax refund is proper, it can always file a claim for and in behalf of the parent company.[20]

In view thereof, we uphold respondent's findings on petitioner's liability for non-withholding of tax on compensation except for the compromise penalty:

Gross income reported by personnel in their respective income tax returns	P29,495,975.00
Income Tax Due Thereon	P 9,616,313.00
25% Surcharge for non-withholding	2,404,078.25
20% interest from 2/1/93 to 4/15/93	1,741,251.17
Total	P13,761,642.42
Less: Income Taxes Paid	9,616,313.00
Deficiency Tax	P 4,145,329.42

As regards the third issue, respondent avers that the branch profit remittance tax should have been paid on April 15, 1994 simultaneously with the filing of petitioner's income tax return and not in 1995 when the branch profits were actually remitted to the Head Office. Respondent finds anchor on Sections 50 and 51 of the then Tax Code respecting the withholding of final tax on certain incomes, the filing of returns therefor and the payment of the appropriate taxes.

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[19] Phil. Guaranty Co., Inc. vs. Commissioner of Internal Revenue, 15 SCRA 1.
[20] Commissioner of Internal Revenue vs. Wander Phils., Inc., 160 SCRA 573; Commissioner of Internal Revenue vs. Procter & Gamble Phil. Manufacturing Corp., 204 SCRA 377.

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Petitioner, however, opines that under Section 25(a)(5) of the Tax Code of 1993, the branch profit remittance tax is imposed on "any profit remitted by a branch to its head office." The said Tax Code explicitly requires, among others, that the branch profit must be remitted before the branch profit remittance tax is paid. It does not impose any branch profit remittance tax on income that available for remittance, based on the audited financial statements. Petitioner relied upon the cases of *Commissioner of Internal Revenue vs. Burroughs Limited, et. al* (G.R. No. 66653, June 19, 1986) and *Bank of America NT & SA vs. Honorable Court of Appeals, et. al.* (G.R. Nos. 103092 and 103106, July 21, 1994), wherein the Supreme Court held that in the computation of the branch profit remittance tax to be paid, the tax base must be the branch profits actually remitted abroad. Based on the above doctrine, petitioner insists that the branch profit remittance tax is imposable and payable to the Bureau of Internal Revenue only upon actual remittance thereof.

In the case at bar, petitioner admits having remitted branch profits in the amount of P5,529,002.00 to its Head Office only in 1995 *(Exhibits QQ, QQ-1 and RR)* and for which it withheld and paid the corresponding taxes due upon filing of its Monthly Remittance of Income Taxes Withheld for November 1995 *(Exhibit RR; Exhibit 4)*. But since no actual remittance of branch profit was made by petitioner for 1993 *(Exhibit PP-1)*, the 1993 deficiency branch profits remittance tax assessment is without basis.

We agree with the petitioner.

Unlike in the present Tax Code[21] wherein it is clearly provided that "any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%)

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[21] Section 28(A)(5).

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which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof", Section 25(a)(5) of the 1993 Tax Code merely provided that the 15% branch profit remittance tax is imposed on any profit remitted by a branch to its head office. Thus, this court, in interpreting the above provision in the case of ***Bank of America NT & SA vs. The Commissioner of Internal Revenue***, CTA Case No. 3799, October 29, 1986, held in this wise:

> On the other hand, there is absolutely nothing in Section 24(b)(2)(ii), *supra*, which indicates that the 15% tax on branch profit remittance is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 and 54 of the Tax Code. The statute employs "Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%)" - without more. Nowhere is there said of "base on the total amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, which shall be collected and paid as provided in Sections 53 and 54 of this Code". Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer nor better canon of interpretation than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term "any profit remitted abroad" can only mean such profit as is "forwarded, sent, or transmitted abroad" as the word "remitted" is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for by the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words.

In affirming our pronouncement in the above case, the Supreme Court ruled:[22]

> In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad". There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further.

[22] Bank of America NT and SA vs. The Honorable Court of Appeals, 234 SCRA 302.

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Prescinding from the above law and jurisprudence, the assessment for late payment of branch profit remittance tax is not proper and should be cancelled.

Proceeding now to the last issue, respondent contends that petitioner's income should be subject to 10% VAT under Section 102(a) of the 1993 Tax Code in relation to BIR Ruling No. 80-89, dated April 25, 1989 and Section 155 of the Revenue Regulations No. 2.

In BIR Ruling No. 80-89, the Commissioner of Internal Revenue ruled, among others, that the Philippine branch is subject to the 10% VAT under Section 102(a) of the 1993 Tax Code. The direct payments made by a third party to a foreign corporation for services rendered by the Philippine branch of the foreign corporation is considered as Philippine sourced income based on Section 155 of Revenue Regulations No. 2, quoted below:

> Section 155. *Compensation for labor or personal services.* – Gross income from sources within the Philippines includes compensation for labor or personal services performed within the Philippines regardless of the residence of the payor, of the place in which the contract for service was made, or of the place of payment. If a specific amount is paid for labor or personal services performed in the Philippines, such amount shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the Philippines can be made, or when such labor or service is performed partly within and partly without the Philippines, the amount to be included in the gross income shall be determined by an apportionment of the time basis, i.e., there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the Philippines bears to the total number of days of performance of labor or services for which the payment is made. Wages received for services rendered inside the territorial limits of the Philippines and wages of an alien seaman earned on a coastwise vessel are to be regarded as from sources within the Philippines.

Petitioner counters that respondent's reliance on Section 155 of Revenue Regulations No. 2 as applied in BIR Ruling No. 80-89 is erroneous. Section 155 prescribes the source of income rule with respect to compensation for labor and services for purposes of income tax. For Value-Added Tax purposes, the governing law should be the pertinent provisions of the Tax Code on VAT.

Petitioner alleges that where services are rendered in the Philippines, then as a general rule, such services are subjected to 10% VAT. However, the provisions on zero (0%) rate on certain sales of services necessarily govern this case in pursuance to Section 102(a)(2) of the old Tax Code of 1993, which provides that:

> **Section 102.** ***Value-added tax on sale of services.*** **–**
>
> (a) xxx Provided that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) xxx
>
> (2) Services other those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency which is remitted inwardly to the Philippines and accounted for in accordance with the rules and regulations of the Central Bank of the Philippines.

Petitioner further argues that the value-added tax contemplated in the case at bar is due to service income which was paid for in foreign currency inwardly remitted to the Philippines. Said income should be subject to zero percent (0%) VAT. According to petitioner, the service income in question pertains to field engineering services performed by the petitioner, **"as directed"** by GETSCO-US, which is the assignee of General Electric Company ("GE-NY"). GE-NY had been subcontracted by Mitsui Corporation (Mitsui) in 1988, pursuant to a contract entered into between Mitsui and National Steel Corporation ("NSC") for the construction project of its hot strip mill. And that the

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contractors and subcontractors in question were all foreign corporations, which ultimately, remitted payments in U.S. Dollars to herein petitioner as payment for the actual services performed.

It is the contention of the petitioner that for services rendered, as a general procedure, GETSCO-USA invoices GE-NY. GE-NY then collects from Mitsui. GE-NY then remits the money collected to GETSCO-USA, which in turn remits the said payment to petitioner. Payment made by Mitsui, the subsequent remittance to GETSCO-USA and the final remittance to the petitioner were all transacted in US dollars, an acceptable foreign currency under Philippine laws *(Exhibit Y)*.

We concur.

It is clear from the language of Section 102(a)(2) of the 1993 Tax Code that services performed in the Philippines, the consideration of which is paid for in acceptable foreign currency remitted inwardly to the Philippines, is subject to VAT at zero (0%) percent. The law does not mandate that the "other services" mentioned in Section 102(a)(2) of the Tax Code should be consumed abroad. What is left for petitioner to prove is the inward remittance of foreign currency payments for services it rendered.

Petitioner claims that of the P33,073,274.00 income for 1993 *(Exhibit E)*, US$86,768 or P2,437,988.20 was actually inwardly remitted to the Philippines. Accordingly, the reduced remittance to petitioner was due to the practice of offsetting of accounts between GETSCO-USA and the petitioner *(Exhibits E-5, DD, FF-1 and HH-1)*. GETSCO-USA after receipt of payment from GE-NY applies the portion of the payment due to petitioner for the direct cost expenses, actual travel and living expenses, direct labor it advanced.

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Based on the evidence on record, we were able to determine that out of the total income of P33,073,274.00, the amount $86,768 or an equivalent of P2,437,988.20 was actually remitted in the Philippines as evidenced by credit advice from Citibank N.A. *(Exhibit DD)* and Bank Memo Register *(Exhibit EE-1)*.

However, with respect to petitioner's alleged offsetting of accounts, while it is no longer required to secure approval for the agreement for offsetting from the *Bangko Sentral ng Pilipinas*, petitioner must still prove that there was actual offsetting of accounts. This offsetting would be tantamount to proving that constructive foreign currency exchange proceeds were inwardly remitted as required under Section 106(a) of the Tax Code.[23]

Upon verification of the documents extant, we find that petitioner failed to present convincing evidence to support its alleged offsetting of accounts. We cannot determine whether there was an actual offsetting of accounts as to the balance of P30,635,285.80 (P33,073,274.00 minus P2,437,988.20). The exhibits presented by the petitioner only proved the actual remittance and there was nothing to support its allegation on the actual offsetting of accounts. Petitioner should have presented supporting documents such as the trial balance and journal entries for the actual offsetting of accounts shown in Exhibits BB and CC. It should be noted that Exhibits BB and CC are just billing statements and are not conclusive evidence of offsetting of accounts.

Consequently, only the amount of P2,437,988.20 qualifies as zero-rated sales for VAT purposes. The assessment for VAT should still stand with respect to the amount of

[23] Cebu Toyo Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5650, Resolution, May 31, 2000.

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sales not duly supported by inward remittance (the documents showing actual offsetting of accounts) in the reduced amount of P7,228,668.46, computed hereunder:

Gross Service Income	P33,073,274.00
Less: Service income supported by inward remittance	2,437,988.20
Service income not supported by inward remittance	P30,635,285.80
10% value added tax due thereon	P 3,063,528.58
25% Surcharge	765,882.14
20% interest from1.21.94–6.30.98	3,399,257.74
Total deficiency value added tax	P 7,228,668.46

IN VIEW OF ALL THE FOREGOING, petitioner is hereby **ORDERED** to **PAY** to respondent the total amount of P12,291,687.83 comprising of deficiency income tax, value added tax and penalties for non-withholding of tax on compensation for the taxable year 1993, computed as follows:

Deficiency income tax	P 917,689.95
Deficiency value-added tax	7,228,668.46
Deficiency penalties for non-withholding of tax on compensation	4,145,329.42
Total	P12,291,687.83*

(*Plus 20% delinquency interest from July 25, 1998 until full payment thereof pursuant to Section 249(c)(3) of the Tax Code, as amended.)

The assessment for deficiency increments for the late payment of branch profits is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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