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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MOBIL PETROLEUM CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2818

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Internal Revenue denying a claim for refund and/or tax credit of P2,022,552.60 withholding taxes erroneously collected.

On March 1, 1974, a Deed of Assignment was executed by and between the ESSO Eastern Inc., a non-resident corporation organized and existing under the laws of the State of Delaware, U.S.A., petitioner, Mobil Petroleum Co., Inc., equally a non-resident corporation organized under the State of Delaware, U.S.A., and the Bataan Refining

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Corporation (BRC for short), a corporation organized under the laws of the Philippines.

Under this Deed of Assignment, ESSO Eastern Inc., with consent of the Bataan Refining Corporation (BRC) assigned to the Mobil Petroleum Co., Inc., petitioner herein, all its rights and obligations under a Service and Technical Agreement originally executed by and between BRC and Standard Oil Company on March 29, 1962, which agreement, on the date of assignment was in force and effect between ESSO Eastern Inc. and BRC.

By virtue of assignment, petitioner Mobil Petroleum Co., Inc., supplied BRC with the management services contemplated in the agreement all of which were rendered in the Philippines.

For the first quarter of 1974, respondent Commissioner of Internal Revenue assessed BRC, as alleged withholding agent, the amount of P387,639.87 purporting to be withholding tax at source, plus interest of P4,900.93, or a total of P387,540.80.

This assessment which BRC paid "Under Protest" on June 28, 1976, in the amount of P387,540.80, was premised on the assumption of respondent

Commissioner of Internal Revenue, that the payments by BRC to petitioner Mobil Petroleum Co., Inc., were "royalty payments". Similar quarterly payments were made by BRC to respondent's Bureau "Under Protest" as follows:

Second Quarter - 1974 paid July 25, 1974	-	P452,437.55
Third Quarter - 1974 paid October 25, 1974	-	P421,771.73
Fourth Quarter - 1974 paid January 24, 1975	-	P433,956.36
First Quarter - 1975 paid April 25, 1975	-	P326,846.16

which toge ıer with the amount of P387,540.80, totals P2,022,552.60.

On June 4, 1976 and June 9, 1976, petitioner Mobil Petroleum Co., Inc., filed with respondent Bureau's Appellate Division a claim for refund and a supplemental letter to the claim, respectively, copies of which, together with their respective annexes, were made integral parts as Annexes "A" and "B".

That the basis of the claim for refund is that the fees received by petitioner Mobil Petroleum Co., Inc., from the Bataan Refining Corporation (BRC), are not royalties as contemplated in the Tax

Code but personal services rendered outside of the Philippines under Section 37(c) of the National Internal Revenue Code.

Respondent Commissioner of Internal Revenue has not to date refunded or decided the claim for refund. Hence, petitioner filed the instant petition for review.

In response, however, to the petition for review filed by petitioner on June 24, 1976, respondent Commissioner of Internal Revenue answered that the Service and Technical Agreement executed on March 29, 1962, assigned to petitioner on March 1, 1974, provided for a grant or license in favor of the Bataan Refining Corporation (BRC) for its exclusive use in the Philippines of certain patents, secret processes, formulas and inventions belonging to petitioner without which BRC cannot operate its refinery units.

The only issue in this case for our determination is whether the payments made by the Bataan Refining Corporation (BRC) to petitioner Mobil Petroleum Co., Inc., were for technical, management and administrative services rendered

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outside of the Philippines by petitioner or for royalties subject to withholding tax at source.

The law involved in this case is Section 37(c)(3) of the National Internal Revenue Code which provides as follows:

> "(c) Gross income from sources without the Philippines. The following items of gross income shall be treated as income from sources without the Philippines.
>
> xxx xxx xxx
>
> (3) Compensation for labor or personal services performed without the Philippines." (Underlining Ours.)

The petitioner has shown that it is a non-resident foreign corporation; that the income subject of the assessment made in this case by the Commissioner of Internal Revenue was derived outside or without the Philippines; that under the Service and Technical agreement assigned to petitioner on March 29, 1962, petitioner's services to Bataan Refining Corporation (BRC) consisted merely of technical, management and administrative advice; and that no royalty payment is involved. This was devolved in an affidavit of William C. Whitham, Jr., Vice President for Technical Services of Bataan Refining Corporation (BRC), dated September 13, 1979, who was familiar with the technical services rendered by Mobil Oil Corporation of New York or its subsidiary Mobil Petroleum to its affiliates all over the world, having been employed in Mobil Oil Corporation Service in 1951 and have been assigned from one affiliate to another, and who stated as follows:

> "5) When I assumed my present position in BRC in August, 1977, I reviewed the requests for and results of technical studies or services made by BRC to Mobilpet under the Service and Technical Agreement between BRC and Standard Oil Company (Esso) dated March 29, 1962 which Agreement was assigned by Esso to Mobilpet on March 1, 1974; the review was for the purpose of finding out which studies were actually incorporated in BRC's facilities and/or operations;
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> 6) In the course of my review, I became familiar with the services performed by Mobil Oil Corporation, Mobilpet, Mobil Research and Development Corporation and under Mobil affiliates during 1974 and 1975 under the Services and Technical Agreement dated March 29, 1962, and assigned to Mobilpet on March 1, 1974;
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> 7) All the technical studies or services made by Mobil Oil Corporation or Mobilpet for BRC for the period March 1, 1974 to the first quarter of 1975 were performed in New York or Princeton, U.S. or otherwise outside the Philippines by Mobil engineering, research, purchasing or other groups;

8) Such services consisted of, and include the following:

a. General technical advice, service and information regarding operations of the Refinery;

b. Specific detailed technical advice and operating and maintenance information regarding each Unit, including the results of research, development, technical service and engineering activities of Mobil and its affiliates which are pertinent thereto;

c. Immunity from liability for infringement of any patents owned or controlled by Mobil and its affiliates (in the sense of having the right to grant licenses thereunder without accounting therefor to others) where such liability arises from operation of any Unit during the term of this Agreement; and

d. General management and administrative advice and service on operating, corporate, accounting, financial, legal, employee relations, recruitment, training safety and other general matters as required to keep the Refinery operating in a safe and efficient manner.

9) The above services did not include the use by BRC in the Philippines of any patents, secret processes, formulas or inventions belonging to Mobil Oil Corporation or any of its affiliates;

10) Whatever patents or formulas were given or granted by Mobil Oil Corporation to BRC were given in 1962 when

> the refinery was constructed and started up with no obligation on the part of BRC to pay any royalty fees; no additional patents or propriety formulas were given or provided BRC after the assignment of the Agreement to Mobilpet in 1974;
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> 11) The technical services and engineering research rendered in 1974 and 1975 by Mobil Oil Corporation to BRC under the Agreement could have been rendered by another equally developed research and engineering company;
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> 12) The management fee of US$0.03 remitted to Mobilpet for each barrel of crude processes at BRC paid for the cost of the above-mentioned technical services and engineering research; any portion of the cost of such services not covered by the management fee was absorbed by Mobil Oil Corporation."

Also, in a certification issued by Antonio G. Mackay, Vice President of the Philippine National Oil Company, dated September 29, 1983, he certified that for the period January, 1974 to March 27, 1975, Mobil Petroleum Company, Inc., of New York, U.S.A. "performed technical services, researches and studies through its Technical Staff situated and working in New York, U.S.A. and Princeton, New Jersey, U.S.A. for Bataan Refining Corporation pursuant to a then existing Service and Technical Agreement dated March 29, 1962 between Standard Oil Company and Bataan Refining Corporation, and which was assigned in favor of Mobil Petroleum Company, Inc., by the Agreement of Assignment dated March 1, 1974, and which took effect on March 1, 1974, that the service fees paid by Bataan Refining Corporation under the said Service and Technical Agreement were fees for the performance of said services and did not include any royalty for any patent or other propriety technology of Mobil Petroleum Co., Inc., or its affiliates." (Exh. S, p. 1, Vol. II, BIR rec.)

And in a certified copy of the agreement dated March 5, 1962 between Socony Mobil Oil Company, Inc., and Bataan Refining Corporation, it will appear in par. 2.01, the fact that the latter is granted an irrevocable, royalty-free, the unrestricted freedom to use, operate and maintain Socony Process Units.

> "2.01 SOCONY hereby grants to LICENSEE for the SOCONY Process Units an irrevocable, royalty-free, non-exclusive license and immunity under SOCONY's Patent Rights to the extent that such license and immunity is required to afford LICENSEE the unrestricted freedom to use, operate and maintain the SOCONY Process Units

(including replacements thereof at the same 'ocation) and to dispose of the produc : therefrom throughout the world."

The evidence of respondent, Exhs. 1 to 3, does not point out categorically that the fees paid were derived from sources within the Philippines, or that said fees are in reality royalties. Royalty fee is payment by the grantor or licensor for the use of a property or property rights, such as patents, secret processes, copyrights and the like. Nowhere in the Service and Technical Agreement does it show the characteristics and features of a royalty agreement. As far as we see, in Sec. 1.01, MOBIL agrees to supply BRC the ff:

"SECTION 1.01. Jersey agrees to supply Bataan:

(a) General technical advice, service and information regarding operations of the Refinery;

(b) Specific detailed technical advice and operating and maintenance information regarding each Unit, including the results of research, development, technical service and engineering activities of Jersey and its affiliates which are pertinent thereto;

(c) Immunity from liability for infringement of any patents owned or controlled by Jersey and its affiliates (in the sense of having the right to grant licenses thereunder without accounting therefor to others) where such liability

> arises from operation of any Unit during the term of this Agreement; and
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> (d) General management and administrative advice and service on operating, corporate, accounting, financ al, legal, employee relations, recrui ent, training and other general matters as required to keep the Refinery operating in a safe and efficient manner.

It is therefore a Service and Technical Agreement, by Mobil Petroleum Co., Inc., the services of which were performed in New York or Princeton, U.S.A., or otherwise outside of the Philippines.

WHEREFORE, judgment is hereby rendered ordering respondent Commissioner of Internal Revenue to grant a refund or tax credit in favor of petitioner Mobil Petroleum Co., Inc., the sum of P2,022,552.60, as income tax and interest erroneously withheld at source and paid by the Bataan Refining Corporation.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 15, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

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WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
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

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