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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GRAPHICS INTERNATIONAL, INC.,
Petitioner,

-versus -

C.T.A. CASE NO. 4156

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

9/30/93

D E C I S I O N

This is a claim for refund involving alleged overpaid branch profit remittance taxes for taxable years 1983, 1984 and 1985 in the total amount of P279,908.22.

Petitioner, Graphics International, Inc., is a resident foreign corporation duly licensed to engage in the manufacturing, printing and sale of printing equipment and merchandise. It is the licensor in the Philippines of "Hallmark" and other greeting cards and derives royalty income as such licensor.

For the years 1983, 1984 and 1985, Petitioner computed its total branch profit remittance tax based on the branch profits per financial statement in the amount of P7,019,003.⁰⁰. For the said years it included interest income net of withholding taxes in the total amount of P956,711 as branch profits which Petitioner alleged should have been excluded in the computation of the branch profit remittance tax. Furthermore, it likewise alleged that it erroneously used as tax base the branch profits to be remitted instead of branch profits actually remitted.

Petitioner computed the amount allegedly refundable as follows:

Branch profits remitted for the years 1983, 1984 and 1985 which included interest income	P7,019,003.00
Less: Interest income for the years 1983 to 1985	956,711.00
Branch profits excluding interest income	6,062,292.00
Less: Branch profit remittance tax at 15%	909,343.80
	P5,152,945.50
Branch profit remittance tax due based on actual remittance (15% of P5,152,945.50)	772,942.23

Amount refundable:	
Branch profits remittance actually paid	1,052,850.45
Less: Branch profits remittance actually due	772,942.23
Total amount refundable	(P 279,908.22)

There were no factual issues raised by the parties but confined the controversy on two legal issues:

(1) Whether or not interest income should be included in the branch profits for purposes of computing the branch profit remittance tax;

(2) Whether or not the tax base should be the branch profits to be remitted abroad or the branch profits actually remitted abroad.

On these issues, we quote hereunder the pertinent provisions of law applicable on the matter:

> **Section 24. Rates of tax on corporations.**
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> xxx xxx xxx
>
> **(b) Tax on foreign corporations —**
>
> xxx xxx xxx

> **(2)(ii) Tax on branch profits remittance.** — *Any profit remitted by a branch to its head office shall be subject to a tax of 15% [except those registered with the Export Processing Zone Authority].* **Provided,** *That any profit remitted by a branch to its head office authorized to engage in petroleum operations in the Philippines shall be subject to tax at 7-1/2%. In both cases, the tax shall be collected and paid in the same manner as provided in Sections 51 and 52 of this Code: and* **Provided, further,** *That interests, dividends, rents, royalties, including remunerations for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.*

Note that pursuant to the said provision of law "interests, xxx shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines. In other words, if the income is not connected with the conduct of the trade or business in the Philippines, it will not form part of the branch profits of the taxpayer. The phrase "effectively connected" was interpreted to mean income derived from the business activity in which the corporation is engaged (Compania General De Tabacos De Filipinas [Philippine Offices] vs. The Commissioner of Internal Revenue, C.T.A. 4451, August 23, 1993).

Petitioner has been licensed by the Securities and Exchange Commission to engage in the manufacturing, printing and sale of printing equipment and merchandise as evidenced by a certificate issued by the Securities and Exchange Commission dated January 8, 1975. Petitioner is the licensor in the Philippines of "Hallmark" and other greeting cards and derives royalty income from the same. In fact, bulk of its income is royalty as shown below:

	1983	1984	1985
Royalty income	P2,502,891	P3,699,836	P4,112,000
Interest income	108,937	406,358	441,416
Miscellaneous income	6,378	87,486	45,734
	P2,618,206	P4,193,680	P4,559,150

Total interest income for the years 1983, 1984 and 1985, net withholding taxes amounted to P956,711.00.

We could not agree with the Respondent that placing your money in savings, time and money market placements is effectively connected with Petitioner's trade or business. Placing your money in banks whether in savings, time or money market placements is done not only by all business entities but also by individuals primarily to safekeep their money and secondarily to earn some interest in the process. This is done by business entities regardless of the purpose for which the business is established. The only business which could be related or can be considered effectively connected with the taxpayer's main business is if the taxpayer is an investment, banking or financing company which main line of business is necessarily connected with investing money for interest.

Furthermore, pursuant to Section 24 of the Tax Code in relation to Section 51 (now Section 50) of the same Code, withholding tax on interests on bank deposits and deposit substitutes are considered final tax. To include them again as part of branch profits subject to branch profit remittance tax under the same section of the Tax Code would be contrary to law.

On the second issue, we found for the Respondent. This court believes that Petitioner has not fully appreciated the jurisprudence established in the Burroughs Limited case where the Supreme Court upheld the application of an earlier BIR ruling dated January 21, 1980 because the branch profit remittance tax was paid on March 14, 1979. The Supreme Court did not apply Revenue Memorandum Circular No. 8-82 dated March 17, 1982 in the light of Section 327 of the Tax Code which provides for the non-retroactivity of the application of the rules and regulations if the revocation or modification is prejudicial to the taxpayers.

So that in the recent case of Commissioner of Internal Revenue vs. Bank of America NT & SA and the Court of Tax Appeals, CA-GR SP No. 22529, September 19, 1990, the Court of Appeals upheld the validity of Revenue Memorandum Circular No. 2-82. The Court of Appeals stated that "the use of the word remitted may well be understood as referring to that part of the said total branch profits which would be sent to the head office as distinguished from the total profits of the branch (not all of which need be sent or would be ordered remitted abroad)." Likewise, this court in the very recent case of Compania General de Tabacos de Filipinas (Philippine Office) vs. The Commissioner of Internal Revenue, C.T.A. Case No. 4451 dated August 23, 1993, has upheld the application of Revenue Memorandum Circular No. 8-82 (March 17, 1982) that the 15% branch profit remittance tax should be computed on the basis of the amount actually applied for by the branch with the Central Bank of the Philippines as profits to be remitted abroad without prior deduction of the withholding tax on branch profits.

As correctly pointed out by the Respondent, branch profit remittance tax is a withholding tax at source. It is a tax due to a foreign corporation specifically the head office of the branch located in the Philippines. Necessarily, as in the case of all other withholding tax at source, such as in the case of interest on saving deposits, rentals payable by a lessee and wages payable by the employer to its employees, the base on which the tax is computed has always been the amount to be paid by the payor to the payee without first deducting the tax.

WHEREFORE, in view of the foregoing, the refund of the Petitioner should be computed as follows:

Branch profits remitted for the years 1983, 1984 and 1985 which included interest income		P7,019,003.00
	Less: Interest income for the years 1983 to 1985	956,711.00
Branch profits to be remitted abroad x 15% of rate		6,062,292.00 15%
Branch profit remittance tax		P 909,343.80
Branch profit remittance tax actually paid		1,052,850.45
	Less: Branch profit remittance tax due	909,343.80
Refundable amount		P 143,506.65

Wherefore, Respondent, Commissioner of Internal Revenue is ordered to refund in favor of Petitioner, Graphics International, Inc., the amount of P143,506.65 representing overpaid 15% branch profit remittance tax corresponding to the interest erroneously included in the original branch profits. No costs.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals