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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

THE COCA-COLA EXPORT CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 4823**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x ---------------------- x

6/22/94

D E C I S I O N

This is a claim for tax refund or tax credit in the amount of ₱310,684.81.

Petitioner alleges that it is a corporation organized and existing under the laws of the State of Delaware, United States of America, with principal place of business in the City of Atlanta, State of Georgia, United States of America, and licensed to do business in the Philippines with its Philippine Branch office at 10th Floor King's Court Building, 2129 Pasong Tamo, Makati, Metro Manila, Philippines; through its Philippine Branch, Petitioner is engaged in the manufacture and sale of beverage base and concentrates, and in addition thereto, petitioner is an investor, independently of its Philippine Branch, in Sixty Thousand

(₱60,000) Preferred Shares of the Capital Stock of Coca-Cola Bottlers Philippines, Inc. (CCBPI for short), a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. On April 19,1990, CCBPI declared cash dividends and it paid to petitioner a gross dividend of ₱6,213,698.63 from which 20% tax amounting to ₱1,242,739.60 was withheld by CCBPI and the said amount was remitted by CCBPI to the respondent on June 25, 1990.

Petitioner contends that the aforesaid amount of ₱1,242,739.60 is in excess by ₱310,684.81 because only 15% and not 20% of the dividend paid to petitioner should have been the amount of tax thereon. Petitioner argues that the dividend is paid to it as a non-resident foreign corporation which amount is taxable under Section 25(b)(5)(B) of the National Internal Revenue Code.

Respondent failed to submit his answer despite repeated motions for extension of the period to do so. On January 7, 1993 petitioner filed its Motion to Declare Respondent in Default. The following day, January 8, 1993 respondent filed a Motion To Admit Answer. Both motions were heard on February 2, 1993 and in a Resolution promulgated on February 6, 1993, petitioner's motion for default was granted and respondent's motion to admit answer was denied.

The case was then set for reception of petitioner's evidence and the following were then offered and admitted:

Exhibit	Description
"A"	Central Bank Letter of Authority to remit foreign exchange representing payment cash dividends on preferred shares, dated August 21, 1990.
"B"	Central Bank Confirmation Receipt No. B20111590 dated June 25, 1990 for taxpayer Coca-Cola Bottlers Phils., Inc. in the amount of ₱1,242,739.60.
"C"	Bureau of Internal Revenue Payment Order No. C 8242772 dated June 25, 1995 for taxpayer Coca-Cola Bottlers Phils., Inc. in the amount of ₱1,242,739.60.
"D"	BIR Form No. 174360 (Monthly Remittance Return of Income Taxes Withheld) filed on June 26, 1990 by withholding agent Coca-Cola Bottlers Philippines, Inc. for tax withheld in the amount of ₱1,242,739.60.

"E"	Petitioner's letter request dated June 22, 1992 for refund or credit of ₱310,684.81 representing excess tax withheld on dividends paid by Coca-Cola Bottlers Philippines, Inc.

The Court also admitted the testimonies of petitioner's witness, namely: Evangeline Cayaba, Melita V. Reyes and Atty. Nelson D. Empalmado.

We find for petitioner.

Petitioner had sufficiently established that it is a non-resident foreign corporation. Although it has a branch in the Philippines, it holds investment directly and independently of its branch, in the capital stock of CCBPI, a domestic corporation. CCBPI paid dividends directly to the petitioner after withholding the amount of ₱1,242,739.60 representing 20% of the gross dividends; and that petitioner seasonably filed its claim for refund/credit with this Court in the amount of ₱310,684.81 on the basis of its contention that only 15% and not 20% should have been withheld as tax on the dividends remitted to it by the CCBPI.

As contended by Petitioner, the Tax on dividends is governed by Section 25 (b) 5 (B) of the National Internal Revenue Code which provides as follows:

> "(B) On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 50(a) of the National Internal Revenue Code, as amended, subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this subparagraph."

Petitioner has established.

The Supreme Court ruled in Marubeni Corporation vs. Commissioner of Internal Revenue (G.R. No. 76573) that dividends on investments made directly by a corporation which are remitted directly to its Home Office abroad are considered dividends paid to nonresident corporation and the applicable, provision of the Tax Code is Section 24 (b)(1)(iii) which is now Section 25 (b)(5)(B) as aforequoted.

Petitioner has also shown, through its counsel, Atty. Nelson D. Empalmado, that the condition in the aforequoted provision of the Tax

Code is satisfied inasmuch as the Tax Code of the United States where Petitioner is domiciled allows a credit against the tax payable to the U.S. from the petitioner, taxes deemed to have been paid in the Philippines equivalent to 20% representing the difference between the regular 35% tax and the reduced 15% tax on dividends. Petitioner cited the following specific provisions of the U.S. Tax Code:

> "Sec. 901. TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF THE UNITED STATES.
>
> (a) ***ALLOWANCE OF CREDIT.*** - If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of Section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under Sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this Chapter such taxable year.
>
> (b) ***AMOUNT ALLOWED.*** - Subject to the applicable limitation of Section 904, the following amounts shall be allowed as the credit under subjection (a):
>
> > (1) ***CITIZENS AND DOMESTIC CORPORATIONS.*** - In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or

accrued during the taxable year to any foreign country or to any possession of the United States; and

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Sec. 902. ***CREDIT FOR CORPORATE STOCKHOLDER IN FOREIGN CORPORATION.***

(a) **TAXES PAID BY FOREIGN CORPORATION TREATED AS PAID BY DOMESTIC CORPORATION.** - For purposes of this subpart, domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such corporation's post-1986 foreign income taxes as -

(1) the amount of such dividends (determined without regard to Section 78), bears to

(2) such foreign corporation's post-1986 undistributed earnings.

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(c) DEFINITIONS AND SPECIAL RULES. - For purposes of this section -

(1) **POST-1986 UNDISTRIBUTED EARNINGS.** - The term 'post-1986 undistributed earnings means the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986 -

(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

(2) **POST-1986 FOREIGN INCOME TAXES.** - The term 'post-1986 foreign income taxes' means the sum of -

(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed; and

(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not deemed paid with respect to dividends distributed by the foreign corporation in prior taxable years.

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(4) FOREIGN INCOME TAXES -

(A) IN GENERAL - The term 'foreign income taxes' means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

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(6) TREATMENT OF DISTRIBUTIONS FROM EARNINGS BEFORE 1987. -

(A) IN GENERAL - In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation -

(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

(B) DIVIDENDS PAID FIRST OUT OF POST-1986 EARNINGS - Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made out of post-1986 undistributed earnings to the extent thereof.

(7) REGULATIONS. - The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and section 960, including provisions which provide for the separate application of this section and section 960 to reflect the separate application of section 904 to separate types of income and loss.

(d) CROSS REFERENCES. -

(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.

(2) For application of subsection (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for year for which certain information is not furnished, see section 6038."

"**Sec. 78.** - DIVIDENDS RECEIVED FROM CERTAIN FOREIGN CORPORATION BY DOMESTIC CORPORATIONS CHOOSING FOREIGN TAX CREDIT.

"Sec. 11 - TAX IMPOSED

(b) AMOUNT OF TAX. - The amount of the tax imposed by Subsection (a) shall be the sum of -

(1) 15 percent of so much of the taxable income as does not exceeds $50,000,

(2) 25 percent of so much of the taxable as exceeds $50,000 but does not exceeds $75,000.

(3) 34 percent of so much of the taxable income as exceeds $75,000.

"**Sec. 904 (a) LIMITATION.** - The total amount of the credit taken under Section 901 (a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

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(d) SEPARATE APPLICATION OF SECTION WITH RESPECT TO CERTAIN CATEGORIES OF INCOME -

(1) IN GENERAL - The provision of Subsections (a), (b), and (c) and Sections 902, 907, and 960 shall be applied separately with respect to each of the following items of income.

> (e) in a case of a corporation, dividends from each noncontrolled 902 corporation"-

Petitioner has further shown that the tax credit for tax deemed paid on dividend received by US Corporations from Philippine corporation's exceeds 20% of the dividend received:

In the case of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation,* G.R. No. 66838, December 2, 1991, the Supreme Court had occasion to rule, thus:

> "xxx, Section 24 (b)(1), NIRC, does not in fact require that the 'deemed paid' tax credit shall have actually been granted *before* the applicable dividend tax rate goes down from thirty-five (35%) to fifteen percent (15%). As noted several times earlier, Section 24 (b)(1) merely requires, in the case at bar; that the USA '*shall allow* a credit against the tax due from [P & G -USA for] taxes deemed to have been paid in the Philippines xxx. There is neither statutory provision nor revenue regulation issued by the Secretary of Finance requiring the actual grant of the 'deemed paid' tax credit by the US Internal Revenue Service to P & G-USA before the preferential fifteen percent (15%) dividend rate becomes applicable. Section 24 (b)(1), NIRC, does not create a tax exemption nor does it provide a tax credit; *it is a provision which specifies when a particular (reduced) tax rate is legally applicable.*" (Commissioner of Internal Revenue vs. Procter & Gamble Philippine

Manufacturing Corporation G.R. No. 66838, December 2, 1991.)"

WHEREFORE, respondent Commissioner of Internal Revenue is directed to refund to or credit in favor of petitioner, the amount of Three Hundred Ten Thousand Six Hundred Eighty Four Pesos and Eighty One Centavos (₱310,684.81) which is the excess of taxes withheld from the dividends remitted by CCBPI to the petitioner.

No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, 22 June 1994

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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