REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

WESTIN HOTELS & RESORTS -
Philippine Branch,
Petitioner,

-versus-

C. T. A. CASE NO. 4697

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

7/8/94

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D E C I S I O N

This is a case for refund of a 1989 branch profit remittance tax in the amount of P1,715,619.$\underline{^{04}}$.

Westin Hotels and Resorts, Philippine Branch, the petitioner in this case, is a resident foreign corporation duly licensed to engage in hotel management business in the Philippines. It is domiciled in the State of Delaware, United States of America.

On January 22, 1990, petitioner filed its monthly remittance return of income taxes withheld for 1989 (Branch profit remittance tax), wherein it paid and remitted to the Bureau of Internal Revenue the sum of P1,715,619.$\underline{^{04}}$.

Consequently, on April 16, 1990, petitioner filed its 1989 Income Tax Return (tentative) showing a net income of P19,964,157.00 together with a preliminary financial statement prepared by its external auditor, SGV & Co., indicating, among others, the share of petitioner in home office expenses amounting to P38,663,007.00. The report of the external auditor accompanying the income tax return explicitly stated that said financial statements are subject to any additional adjustments as may be disclosed upon the completion of the examination of said statements. In other words, the audit of the accompanying statements have not been completed and no opinion then was expressed by the auditors.

In a document prepared for Westin Hotel Company and Subsidiaries entitled "Schedule of Allocable Corporate Office Income and Expenses" for the year ended December 31, 1989, petitioner was accorded allocable corporate office expenses for its worldwide operations in the amount of US$2,796,572.00. This was duly authenticated by KPMG Peat Warwick, Certified Public Accountants, duly notarized in the State of Washington, with the final authentication of a Philippine

Consulate official in Washington as to the genuineness and due execution of the aforesaid accompanying documents.

With these documents on hand, principally the Schedule of Allocable Corporate Office Income and Expenses for Philippine operations in the sum of US$2,796,572.00, petitioner filed on May 16, 1990, its Final Income Tax Return for 1989 showing that after adjustments of its allocable home office expenses for said year, petitioner's operations resulted to a net loss of P5,570,555. However, the Reconciliation of Income Before Income Tax as Per Tentative and Final Income Tax Returns (1989) submitted by its external auditors, SGV & Co., showed a net loss of P5,337,074. It likewise indicated a computation of the final share in Home Office Expenses for the year ended December 31, 1989:

$$\text{Share of Philippine Branch} = \frac{\text{Philippine Management Fees}}{\text{Allocable Corporate Office Income}}$$

Application :

$$\frac{\$\ 2,796,572}{\$75,961,921} = 3.68\ \%$$

$$\text{Share in Home Office Expenses} = \%\ \text{Share of Phil. Branch} \times \text{Allocable Corporate Office Expenses}$$

Application:

3.68 % x $79,378,234 = $2,921,119*

Peso equivalent = P 63,659,946

* converted at the exchange rate of P21.793 to US$1.

On January 10, 1992, petitioner, through its external auditors, filed a letter-claim for tax refund of the branch remittance tax it paid for the year 1989 in the amount of P1,715,619.04. No action was made by respondent on said claim.

The instant petition for review was filed before this Court to suspend the running of the two-year prescriptive period as set forth in Section 204 of the Tax Code.

Before us, respondent, duly represented by counsel, failed even to comment on the formal offer of evidence presented by petitioner within the time given by the Court (Order of March 2, 1993). No evidence was submitted by respondent to support its case, much less rebut or contravene the evidence submitted by petitioner. Instead, respondent's counsel merely manifested that the case was being submitted for decision based on the record and pleadings. She further chose not to file any memorandum which is the usual practice (Hearing of July 1, 1993). We have noted that respondent did not even transmit to the Court the records of the case in her possession as required by Section 2, Rule 7 of the Rules of the Court of Tax Appeals.

Quaere: Did Petitioner fully substantiate its claim for refund of branch profit remittance tax in the sum of P1,715,619.04?

Based on the evidence adduced, we answer in the affirmative.

The allocation of home office expenses to a Philippine branch of a multinational company which precipitated the present claim for refund is allowable under Section 36(b) of the Tax Code which states:

> "**(b) Taxable income from sources within the Philippines. - (1) General rule.** - From the items of gross income specified in subsection (a) of this section, there shall be deducted the expenses, losses and other deductions properly allocated thereto and a ratable part of expenses, interests, losses, and other deductions effectively connected, with the business or trade conducted exclusively within the Philippines which cannot definitely be allocated to some items or class of gross income: Provided, That such items of deductions shall be allowed only if fully substantiated by all the information necessary for its calculation. The remainder, if any, shall be treated in full as taxable income from sources within the Philippines (As amended by E.O. No. 37)."

Further, Revenue Regulation No. 16-86 (September 26, 1986) which amended Section 160 of Revenue Regulation No. 2, provides thus:

"**Section 160. (a) Apportionment of deductions.** - From the items specified in Section 37 (a) as being derived specifically from sources within the Philippines, there shall be deducted the expenses, losses, and other deductions properly allocated thereto and a ratable part of any other expenses, losses and other deductions effectively connected with the business or trade conducted exclusively within the Philippines which cannot definitely be allocated to some items or class of gross income. The remainder shall be included in full as net income from sources within the Philippines. The ratable part shall be based upon any of the following ratios consistently followed from year to year:

1. Gross income from sources within the Philippines to the total gross income.

2. Net sales in the Philippines to total net sales.

3. If any other method of allocation is adopted a written permission from the Commissioner of Internal Revenue shall first be secured.

(b) External Auditor's Certificate. - The income tax return to be filed should be accompanied by a certification from an independent and reputable Certified Public Accountant containing the following information:

1. The home office deductions for the year involved have been examined in accordance with generally accepted auditing standards and such other auditing procedures as were considered necessary in the circumstances.

2. The deductions pro-rated to the Philippine Branch do not include -

   (a) Net losses of any operating unit or branch;
   (b) Income tax payment;
   (c) Capital expenditures; and
   (d) Expenses directly chargeable to any branch.

3. The amount of allocable overhead expenses used in the pro-rata allocation to the Philippine Branch is the same amount used in the pro-ration of all branches worldwide and the amount disallowed in other countries because of government requirement is not added back to the allocable amount.

4. Should there be an exception or qualification on the above-requested certification, an explanation with supporting documents should be submitted.

As borne by the evidence on record, petitioner first filed a tentative annual income tax return with a Statement of Income and Expenses and Changes in Home Office Account for the year ended December 31, 1989, reflecting as its share in Home Office Expenses the amount of P38,663,007. On April 6, 1991, petitioner received from its Home Office (abroad) its 1989 Schedule of Allocable Office Expenses for its Philippine operations in the sum of $2,796,572 duly certified by its external auditors, KPMG Peat Warwick. Accordingly, petitioner filed its 1989 Final Income Tax Return thereby incorporating its share of home office allocable expenses for 1989 thus reflecting a net loss of P5,337,074 (as reconciled) for its 1989 operations, as summarized:

Income before Income Tax per Tentative Return -	P 20,197,038
Less: Adjustment to Mgt. Fees Account made by the COA -	537,733
Adjustment to Share in Home Office Expense account as computed below -	24,996,939
	(P 5,337,074)

Computation of Adjustment in Share in Home Office Expenses:

Should-be Balance per Final Return (Schedule 1)	P 63,659,946
Balance per books as shown in Tentative Return	38,663,007
Additional Share in Home Office Expenses	P 24,996,939

As a result thereof, petitioner should not have paid branch profit remittance tax in the amount of P1,715,619.04 which now constitutes the refundable amount.

As provided for by Section 36 (b) of the Tax Code, as well as its implementing Revenue Regulation, petitioner has fully substantiated its claim for refund based on all the information necessary for its calculation.

The procedure and evidence adduced by the petitioner is further bolstered by the decision of the Supreme Court in the case of Commissioner of Internal Revenue vs. Court of Tax Appeals and

Smith Kline & French Overseas Co. (Phil. Br.), G. R. No. 54108, January 17, 1984, which is similar in its essentials with the present case.

As previously stated, petitioner's claim for refund in the administrative level as well as before this Court was not contested by respondent. It was ruled by us in the case of General Foods Corporation vs. Commissioner of Internal Revenue, C. T. A. Case No. 3900, February 2, 1988 that:

> "Considering that respondent Commissioner had not presented any witness or evidence to prove its allegations of non-allowance and decided to rest its case by submitting the case based upon the pleadings, we therefore, stand by the truth of petitioner's evidence."

WHEREFORE, judgment is hereby rendered ordering respondent to refund petitioner the sum of P1,715,619.04. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 8, 1994.

RAMON O. DE VEYRA
Associate Judge

DECISION-
CTA CASE NO. 4697

WE CONCUR:

Dissenting

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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