REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA,
Petitioner,

- versus - C.T.A. CASE NO. 3799

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

10/29/86

DECISION

This is a suit to recover alleged overpaid branch profit remittance tax paid by petitioner Bank of America National Trust and Savings Association under Section 24(b)(2)(ii) of the 1977 National Internal Revenue Code.

The material facts are not in dispute, petitioner having submitted, without objection of respondent Commissioner of Internal Revenue, the case for decision on the basis of the pleadings and the records. As borne by the pleadings and summarized by respondent:

> Petitioner is a foreign corporation duly licensed to engage in business in the Philippines with Philippine branch office at BA Lepanto Bldg., Paseo de Roxas, Makati, Metro Manila. On July 20, 1982 it paid 15% branch profit remittance tax in the amount of ₱7,538,460.72 on profits from its regular banking unit operations and ₱445,790.25 on profits

from its foreign currency deposit unit operations or a total of ₱7,984,250.97. The tax was based on net profits after income tax without deducting the amount corresponding to the 15% tax.

Petitioner filed a claim for refund with the Bureau of Internal Revenue of that portion of the payment which corresponds to the 15% branch profit remittance tax, on the ground that the tax should have been computed on the basis of profits actually remitted, which is ₱45,244,088.85, and not on the amount before profit remittance tax, which is ₱53,228,339.82. Subsequently, without awaiting respondent's decision, petitioner filed a petition for review on June 14, 1984 with this Honorable Court for the recovery of the amount of ₱1,041,424.03 computed as follows:

Net Profits After Income Tax But Before Profit Remittance Tax	Profit Remittance Tax Paid	Tax Due Alleged by Petitioner	Alleged Overpayment Item 1-2
A. Regular Banking Unit Operations (₱50,256,404.82)			
1. Computation of BIR 15% x ₱50,256,404.82-₱7,538,460.72			
2. Computation of Petitioner $-\frac{₱50,256,404.82}{1.15} \times 15\%$		₱6,555,183.24	- ₱983,277.48
B. Foreign Currency Deposit Unit Operations (₱2,971,935)			

1. Computation of BIR
15% x -₱2,971,935.00 ₱ 445,790.25

2. Computation of Petitioner
-₱2,971,935.00 x 15% / 1.15 ₱ 387,643.70 ₱ 58,146.55

T O T A L . . . . ₱7,984,250.97- ₱6,942,286.94-₱1,041,424.02

The issue being purely legal in nature, the parties agreed to submit the case on the basis of the pleadings and the BIR records.

The only issue in this case is the proper and correct tax base in computing the 15% profit remittance tax.

The controlling statute is Section 24(b)(2)(ii) of the 1977 National Internal Revenue Code, as amended, which, insofar as pertinent hereto, textually reads:

> "(ii) Tax on branch profits remittances:- Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) x x x."

In Burroughs Limited vs. Commissioner of Internal Revenue, CTA Case No. 3204, June 27, 1983, affirmed by the Supreme Court in Commissioner of Internal Revenue vs. Burroughs Limited and the Court of Tax Appeals, G.R. No. 66653, June 19, 1986, this Court observed that:

> Without in the least attempting to express, in this proceeding, an opinion as to the proper tax base of the 15%

> branch profit remittance tax provided for under Section 24(b)(2) of the Revenue Code, it will be noted that in his ruling dated January 21, 1980, respondent clearly and specifically held that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted and not on the total branch profit out of which the remittance is to be made". The accent is on the words "profit actually remitted". And the ruling even stressed that it is "not on the total branch profit out of which the remittance is to be made". We are not to indulge in statutory construction. Based on said ruling, petitioner has overpaid, as shown earlier, the amount of ₱172,058.90 and entitled, therefore, to the refund or tax credit thereof. If there was miscomprehension or misconception on the part of respondent as to the correct interpretation of Section 24(b)(2), the issuance of Revenue Memorandum Circular No. 8-82 on March 17, 1982 prescribing that the tax base of the 15% branch profit remittance tax should be the amount actually applied for by the branch with the Central Bank as profit to be remitted abroad should not be given retroactive application.

It should be stated that in response to a query of the Sycip, Gorres, Velayo & Co. dated November 3, 1978, the Bureau of Internal Revenue rendered a ruling, contained in a letter dated January 21, 1980, on the tax base upon which the 15% profit remittance tax should be imposed. The ruling is quoted in full as follows:

"January 21, 1980

In reply to your letter of November 3, 1978, relative to your query as to the tax base upon which the 15% branch profit remittance tax provided for under Section 24(b)(2) of the 1977 Tax Code shall be imposed, please be advised that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made.

Please be guided accordingly.

Very truly yours,

EFREN I. PLANA
Acting Commissioner of Internal Revenue"

The said ruling makes reference to Section 24(b)(2) of the 1977 Tax Code, but Section 24(b)(2) and Section 24(b)(2)(ii) of the applicable National Internal Revenue Code both contain similar provisions as quoted above.

In Burroughs Limited vs. Commissioner of Internal Revenue, *supra*, respondent Commissioner of Internal Revenue contended that the taxpayer is no longer entitled to the refund involved therein because Revenue Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed Bureau of Internal Revenue ruling of January 21, 1980. The said memorandum circular enjoins that:

> "Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad."

In finding the Commissioner's contention without merit, this Court however ruled against the applicability of Revenue Memorandum Circular No. 8-82 dated March 17, 1982 to the Burroughs Limited case because the taxpayer paid the branch profit remittance tax involved therein on March 14, 1979 in accordance with the ruling of the Commissioner of Internal Revenue dated January 21, 1980. In view of Section 327 of the then in force National Internal Revenue Code, Revenue Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect because any revocation or modification of any ruling or circular of the Bureau of Internal Revenue should not be given retroactive application if such revocation or modification will, subject to certain exceptions not pertinent thereto, prejudice taxpayers. As stated above, the Supreme Court upheld the decision of this Court in Burroughs Limited.

Since the branch profit remittance tax involved in this appeal was paid by petitioner Bank of America on July 20, 1982, after the effectivity of Revenue Memorandum

Circular dated March 17, 1982, we see no significance therefore in the argument of petitioner that the case should be decided in the light of Burroughs Limited.

Theorizing that the 15% branch profit remittance tax is imposed and collected at source, respondent argues that the proper tax base upon which the tax is to be computed should be the amount actually applied for by the branch office with the Central Bank of the Philippines as profit to be remitted abroad. Respondent's theory is not implausible but it must yield to the specific language of the law which is controlling. The controlling legal ~~provision~~ employs the term "any profit remitted abroad" - NOT "any profit to be remitted abroad". The difference between profits remitted and profits to be remitted, is obvious: the first refers to such profits actually remitted while the second would refer to profits to be remitted. If it had been the intent to impose and collect the branch profit remittance tax on the amount applied for remittance before the remittance tax, the law-making authority could have easily done so by stating "any profit to be remitted abroad", and the like. We cannot ignore the principle that statutes imposing taxes are not to be construed to include within the subject taxed anything which is not clearly intended by the legislature to be so included. (51 Am. Jur. 360-361; Gould vs. Gould, 245 U.S. 151.) As stated in Manila Railroad vs. Collector of Customs, 52 Phil. 950, burdens are not to be imposed nor presumed to be imposed, beyond what the statutes expressly and clearly declare.

The statutory language clearly and specifically refers only to "any profit remitted abroad" as being subject to the branch profit remittance tax of 15%. By "remitted" is simply meant "sent", "transmitted", or "forwarded". (Hollowell vs. Life Insurance Company, 35 S.E. 616; Nicolleti vs. Bank of Los Banos, 214 P. 51.) Nothing there speaks of "profit to be remitted abroad" or "profit actually applied for by the branch with the Central Bank". The law is clear and unequivocal. It is well-settled that a statute, free from any constitutional infirmity, should be enforced as written. To our mind, the law is plain and unambiguous. It merely calls for application as thus worded. There is no room for interpretation.

Nonetheless, respondent would unfold a thesis that the 15% branch profit remittance tax under the provision of Section 24(b)(2)(ii) of the Tax Code is a withholding tax at source, with the branch acting as withholding agent of the 15% profit remittance tax on the profits remitted by it to its head office upon whom the tax is imposed and collected. Thus, respondent would argue that "in all situations or cases where the mechanism of withholding at source operates to ensure the current collection of a tax or contribution, the base on which the tax or contribution is computed has always been the amount to be paid or remitted or sent by the payor or remitter (branch in the instant case) to the payee or recipient (head office in the case at bar) without first deducting the tax or contribution". And "citing familiar examples under the Tax Code on the mechanism of withholding a particular tax at source to ensure collection of most taxes in a current manner (as against the erstwhile out-mode 'year-end' or 'end-of-fiscal period' manner) are the withholding tax on interests earned on savings deposits payable by the bank to the depositor (at 15%), on dividends payable by a domestic corporation say to a citizen shareholder (at 15%), or on rental payments payable by the lessee to the lessor (at 5%), x x x the base on which the tax to be withheld is to be computed is the amount of interests earned on the savings deposit payable by the bank to the depositor, the amount of the dividends payable by the corporation to the shareholder, the amount of the rental payment payable by the lessee to the lessor, without in each case first deducting the tax from the interest, dividend or rental" (pp. 52-53, CTA records), respondent would thus consider the 15% branch profit remittance tax as imposed and collected at source and fix the amount actually applied for by the branch with the Central Bank as profits to be remitted abroad as the tax base.

Respondent misses the point. In all the situations or cases cited by him where the mechanism of withholding of taxes at source operates to ensure collection of the tax, and which respondent claims the base on which the tax is computed is the amount to be paid or remitted, the law applicable expressly, specifically and unequivocally mandates that the tax is on the total amount thereof which shall be collected and paid as provided in Sections 53 and 54 of the Tax Code. Thus:

> "Dividends received by an individual who is a citizen or resident of the Philippines from a domestic corporation, shall be subject to a final tax at the rate of fifteen (15%) per cent on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code." (Emphasis supplied; Sec. 21, Tax Code)

> "Interest from Philippine Currency bank deposits and yield from deposit substitutes whether received by citizens of the Philippines or by resident alien individuals, shall be subject to a final tax as follows: (a) 15% of the interest or savings deposits, and (b) 20% of the interest on time deposits and yield from deposits substitutes, which shall be collected and paid as provided in Sections 53 and 54 of this Code: x x x" (Underlining supplied; Sec. 21, Tax Code applicable.)

And on rental payments payable by the lessee to the lessor (at 5%), also cited by respondent, Section 1, paragraph (C), of Revenue Regulations No. 13-78, November 1, 1978, provides that:

> Section 1. Income payments subject to withholding tax and rates prescribed therein.- Except as therein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.

> xxx xxx xxx

> (C) <u>Rentals</u> - When the <u>gross rental</u> or the payment required to be made as a condition to the continued use or possession of property, whether real or personal, to which the payor or obligor has not taken or is not taking title or in which he has no equity, exceeds five hundred pesos (₱500.00) per contract or payment whichever is greater - five per centum (5%). (Underscoring supplied.)

Note that the basis of the 5% withholding tax, as expressly and unambiguously provided therein, is on the <u>gross rental</u>. Revenue Regulations No. 13-78 was promulgated pursuant to Section 53(f) of the then in force National Internal Revenue Code which authorizes the Minister of Finance, upon recommendation of the Commissioner of Internal Revenue, to require the withholding of income tax on the same items of income payable to persons (natural or judicial) residing in the Philippines by the persons making such payments at the rate of not less than 2½% but not more than 35% which are to be credited against the income tax liability of the taxpayer for the taxable year.

On the other hand, there is absolutely nothing in Section 24(b)(2)(ii), <u>supra</u>, 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.

The conclusion reached is bolstered by the incidence of the tax which is levied and imposed, as clearly and specifically provided by Section 24(b)(2)(ii), on a resident foreign corporation engaged in trade or business within the Philippines on profits remitted abroad by the branch to its head office; and not on a foreign corporation not engaged in trade or business in the Philippines, which is taxable on its gross income received from all sources within the Philippines, on an item of income taxable to the latter and which is subject to withholding tax at source. Hence:

> "SEC. 14. Rates of tax on corporations.- (a) Tax on domestic corporations.- xxx xxx xxx
>
> (b) Tax on foreign corporations.- (1) Non-resident corporations.- xxx xxx xxx xxx xxx
>
> (2) Resident corporations - (a) In general.- xxx xxx xxx
>
> (2)(ii). Tax on branch profits remittances.- xxx xxx xxx

To our mind, profits, for purposes of the branch profits remittance tax, are not synonymous with taxable income subject to income tax, but rather are based upon actual net income and expenses, after income tax, as stated by respondent in his statement of facts quoted above. The concept is much closer to the earned surplus determined by the accountant than to taxable net income or income subject to tax. And since profits have already been subjected to income tax, and upon their remittance abroad by the branch to its head office, again to profits remittance tax, which likewise might be declared for taxation purposes by the head office thereat, the philosophy behind the law in imposing the profit remittance tax on profits actually remitted, it might be said, is to mitigate at least the harshness of successive taxation of the same profits.

In the light of the above, and it appearing that the parties are not in dispute on the computation of the branch profit remittance tax paid by, and the amount refundable to petitioner, as the case may be, this Court finds petitioner Bank of America National Trust and Savings Association entitled to the recovery of overpaid branch profits remittance tax in the amount of ₱1,041,424.03 for taxable year 1982.

WHEREFORE, finding the petition for review to be well-taken, the same is granted and the refund/credit of the amount sought is hereby ordered. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 29, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge