REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL ELECTRIC PHILIPPINES METER & INSTRUMENT CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4878

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 28 1995

x - x

D E C I S I O N

In this petition for review, petitioner seeks to recover by filing a claim for refund or issuance of a tax credit certificate with the respondent the amount of P558,675.00, representing overpaid withholding tax at source on cash dividends paid and remitted to General Electric Co. (USA), for taxable years 1990 to 1992.

The facts, as gathered by this Court, are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of manufacturing and distributing electric watt-hour meters. It is 65% owned by General Electric Co. (U.S.A.), a non-resident foreign corporation organized and existing under the laws of the State of

Delaware, U.S.A., with Headquarters in Fairfield, Connecticut, U.S.A..

For the taxable years 1990 to 1992, petitioner's Board of Directors declared on three separate occassions cash dividends amounting to P5,730,000.00 to its stockholders of record on October 17, 1990, May 5, 1992 and August 27, 1992 or a total of P17,190,000.00. Petitioner paid and remitted to the BIR 20% withholding tax at source on all cash dividends paid to General Electric Co. (U.S.A.), a non-resident stockholder owning 65% of its capital stock. The withholding tax rate of 20% was based on the provision of Article 11(2)(b) of the RP-US Tax Treaty, which provides:

> **"Article 11**
> **Dividends**
>
> 1. x x x x x x x x x.
>
> 2. The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed
>
> (a) x x x x x x x x x.
>
> (b) When the recipient is a corporation, 20 percent of the gross amount of the dividend if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation."

and on an earlier decision of the Supreme Court in the case of **Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation & The Court of Tax Appeals, G. R. No. L-66838, April 15, 1988, 160 SCRA 560.** One of the issues raised in that case was: Whether or not the U.S. allows as tax credit the "deemed paid" 20% Philippine Tax on such dividends? The High Court initially ruled as follows:

> "To Our mind there is nothing in the aforecited provision that would justify tax return of the disputed 15% to the private respondent. Furthermore, as ably argued by the petitioner, the private respondent failed to meet certain conditions necessary in order that the dividends received by the non-resident parent company in the United States may be subject to the preferential 15% tax instead of 35%. Among other things, the private respondent failed: (1) to show the actual amount credited by the U.S. government against the income tax due from PMC-U.S.A. on the dividends received from private respondent; (2) to present the income tax return of its mother company for 1975 when the dividends were received; and (3) to submit any duly authenticated document showing that the U.S. government credited the 20% tax deemed paid in the Philippines."

However, in a Motion For Reconsideration filed by private respondent Procter and Gamble Philippine Manufacturing Corporation, the Supreme Court on December 2, 1991, (204 SCRA 337), reversed its ruling and held that:

> "1. We turn to the principal substantive question before us: the applicability to the dividend remittances by P&G-Phil. to P&G-USA of the fifteen

percent (15%) tax rate provided for in the following portion of Section 24(b)(1) of the NIRC:

> '(b) *Tax on foreign corporations.* -
>
> (1) *Non-resident corporation.* - A foreign corporation not engaged in trade and business in the Philippines, x x x, shall pay a tax equal to 35% of the gross income receipt during its taxable year from all sources within the Philippines, as x x x dividends x x x. *Provided* still further, that on dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of dividends, which shall be collected and paid as provided in Section 53(d) of this Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident 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 Section x x x.'

The ordinary thirty-five percent (35%) tax rate applicable to dividend remittances to non-resident corporate stockholders of a Philippine corporation, goes down to fifteen percent (15%) if the country of domicile of the foreign stockholder corporation 'shall allow' such foreign corporation a tax credit for 'taxes deemed paid in the Philippines,' applicable against the tax payable to the domiciliary country by the foreign stockholder corporation. In other words, in the instant case, <u>the reduced fifteen percent (15%) dividend tax rate is applicable if the USA 'shall allow' to P&G-USA a tax credit for 'taxes deemed paid in the Philippines' applicable against the US taxes of P&G-USA</u>. The NIRC specifies that such tax credit for 'taxes deemed paid in the Philippines' must, as a minimum, reach an amount equivalent to twenty (20) percentage points which represents the difference between the regular thirty-five percent (35%) dividend tax rate and the preferred fifteen percent (15%) dividend tax rate.

It is important to note that Section 24(b)(1), NIRC, does *not* require that the US must give a '*deemed paid tax credit for the dividend tax* (20 *percentage points*) *waived by the Philippines* in

> making applicable the preferred dividend tax rate of fifteen percent (15%). In other words, our NIRC does *not* require that the US tax law *deem the parent-corporation to have paid the twenty* (20) *percentage points of dividend tax waived* by the Philippines. The NIRC *only* requires that the US 'shall allow' P&G-USA a 'deemed paid' tax credit in *an amount equivalent to the twenty* (20) *percentage points* waived by the Philippines." (Underlining supplied.)

In view of this recent ruling of the Supreme Court, petitioner filed a claim for refund or tax credit with the respondent on November 25, 1992 regarding the 5% overpaid withholding tax at source on dividends paid and remitted to General Electric Co. (USA), in the sum of P558,675.00, itemized as follows: (Exh. D)

			Withholding Tax		
Date	Confirmation Receipt No.	Amount of Dividends	Withheld (20%)	Should Be (15%)	Tax Over-payment.
11-28-90	21239699	P 3,724,500.00	P 558,675.00	P 558,675.00	P186,225.00
2-26-91	21661379		196,225.00		
6-01-92	BNK COMM	3,724,500.00	744,900.00	558,675.00	186,225.00
9-17-92	BNK COMM	3,724,500.00	744,900.00	558,675.00	186,225.00
Total		P11,173,500.00	P2,234,700.00	P1,676,025.00	P558,675.00

On November 26, 1992, petitioner filed a petition for review with this Court claiming for the refund or issuance of a tax credit of P558,675.00. Respondent answered the petition alleging that it is premature since the claim is still being processed administratively. In claims for refund or tax credit the burden of proof lies on the petitioner-taxpayer because the claim for tax refund is in the nature of a tax exemption and thus must strictly be construed against the taxpayer.

The issue is whether or not petitioner is entitled to the refund or issuance of a Tax Credit Certificate in the amount of P558,675.00, representing allegedly overpaid paid withholding tax at source on cash dividends paid to General Electric Co., (U.S.A.) for the years 1990 and 1992.

We answer in the affirmative.

During the presentation of evidence, respondent's witness, Ceasar Charlie Lim, Legal Officer II of the International Tax Affairs Division (ITAD) of the BIR, testified that petitioner's claim cannot be acted upon for failure on its part to present to the examiner the necessary documents in order to process its claim for refund or tax credit. However, a careful scrutiny of the BIR records will reveal that in a memorandum report, dated February 11, 1992, prepared and submitted by the Revenue Officer to the Revenue District Officer of Revenue District No. 35, Pasig, Metro Manila, the examiner recommended the refund claimed by petitioner. (BIR Memorandum, dated February 11, 1992, p. 18, BIR records.)

Based on the documentary evidence submitted by petitioner consisting of the Monthly Remittance Return of Income Taxes Withheld (Exhs. C, C-1, C-2 and C-5), Confirmation Receipts (C-3 and C-6) and BIR Payment Order (C-4 and C-7), petitioner has substantiated payments and remittances of the withholding taxes on dividends at the rate of 20% instead of the 15% preferrential rate. The applicable rate is 15% as provided for under Section 25(b)(5)(B) [previously Section 24(b)(2)(iii)] of the National Internal Revenue Code and by the modified decision of the Supreme Court in the Procter and Gamble case promulgated on December 2, 1991. Accordingly, petitioner has overcome the burden of proof to show entitlement to the relief prayed for.

WHEREFORE, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to refund or issue a Tax Credit Certificate in favor of petitioner the amount of P558,675.00, representing erroneously and overpaid withholding taxes at source on cash dividends paid and remitted to General Electric Co., (USA) for the taxable years 1990 to 1992.

No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate 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