REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

BJ SERVICE INTERNATIONAL, INC.,
Petitioner,

- versus -

C.T.A. Case No. 5069

COMMISSIONER OF INTERNAL, REVENUE,
Respondent.

Promulgated:
AUG 29 1995

x - x

D E C I S I O N

This is a petition for review initiated by petitioner seeking a refund or the issuance of a tax credit certificate in the amount of P255,938.76 representing overpaid profit remittance tax for the years ended December 31, 1988 and 1989 from respondent, Commmissioner of Internal Revenue.

Petitioner is a resident foreign corporation, licensed to do business in the Philippines. It is a branch of BJ Service International, Inc. (BJ Service - U. S. A.), a foreign corporation based in the United States of America.

Petitioner alleged that it had accumulated P11,500,000.00 representing branch profits for the years 1985-1989 for remittance to its head office. On

November 14, 1992, petitioner filed with the Central Bank of the Philippines an application for authority to remit to BJ Service International, Inc., U. S. A., the amount of P11,500,000.00 representing branch profits on investments under Registration Number CB-FEOID (FI) 91-00375. In response thereto, the Central Bank issued the corresponding authority to remit the foreign exchange equivalent of P9,668,797.66, less bank charges and other expenses, to BJ Service - U.S., representing remittance of branch profits earned from January 01, 1995 to September 30, 1989, due on CB registered assigned capital, detailed in this manner:

NET INCOME PER AUDITED FINANCIAL STATEMENTS FOR THE PERIOD ENDING:

December 31, 1985	P	4,455,481.00		
December 31, 1986		3,936,121.00		
September 30, 1987	(	1,530,430.00)		
September 30, 1988		3,472,461.00		
September 30, 1989		6,306,895.00	P	16,640,528.00
Less: Portion to be retained at Philippine Branch				5,265,471.93
Net Amount for Remittance to Head Office	P			11,375,056.07
Less: 15% Profit Remittance Tax				1,706,258.41
Net Amount Remittable	**P**			**9,668,797.66**

On March 3, 1992, petitioner paid to respondent the 15% remittance tax in the amount of P1,706,258.41, as computed by the Central Bank, under its Monthly Remittance Return of Income Tax Withheld (Form 1743W) and evidenced by the machine validation/receipt of said amount.

Citing the Supreme Court decision in the case of Commissioner of Internal Revenue vs Burroughs Limited and the Court of Tax Appeals, 142 SCRA, that the 15% tax on branch profits remitted abroad applies to profits actually remitted and not on the amount of profits applied for remittance, petitioner is of the contention that it overpaid said tax and therefore has a refundable tax in the amount of P255,938.76 which it computed as follows:

Profits actually remitted	P 9,668,797.66
Remittance Tax rate	x 15%
Branch Profit remittance tax due thereon	P 1,450,319.65
Branch profit remittance tax paid	(1,706,258.41)
Total amount refundable	**P 255,938.76**

On August 13, 1992, that is, within the two-year reglementary period provided for by the Tax Code to claim a refund, petitioner filed with respondent an administrative claim for refund, but, until February 28, 1994, the date this petition for review was filed, respondent has not acted on said administrative claim. Hence, the present judicial action which is within the reglementary period as provided in Section 230 of the Tax Code.

Respondent denied all the material allegations in the Petition for Review. The only matter she categorically admitted was the corporate and legal existence of both the petitioner and the respondent as the case may be. However, respondent came up with special and affirmative defenses, principally alleging that "petitioner is not entitled to the refund of the alleged excess branch profit remittance taxes (BPRT) paid. Revenue Memorandum Circular No. 8-82, dated March 17, 1982 implementing the provisions of Section 25(a) (5) of the Internal Revenue Code provides that <u>the basis for the 15% BRPT should be the amount actually applied for by the branch with the Central Bank of the Philippines</u> as profits to be remitted abroad". (emphasis theirs). Respondent further stated that in a claim for refund, it is incumbent upon petitioner to contest the collection of taxes due and to show that it is entitled thereto and that claims for refund are strictly construed against the claimant for the same partakes the nature of exemption from taxation.

Petitioner presented and offered in evidence in support of its claim the letter of the Central Bank (Foreign Exchange Operations and Investments Department) addressed to the petitioner evidencing approval and registration, with Registration No. CB-FEOID (F1) 91-00375 of its initial assigned capital of BJ Service

International Inc., U. S. A., in the amount of P150,000,000 (US $ 20,350.00) funded from the inward remittance of US $27,000.00 (Exh. A); the letter-request, dated November 14, 1991, for Central Bank authority to remit branch profits in the total amount of P11,500,000 representing the branch profits on investments (Exh. B); letter of the Central Bank (International Operations Sector), dated January 24, 1992, granting petitioner authority to remit branch profits to BJ Service - U.S.A, in the amount of P9,668,797.65 which is net of the 15% profit remittance tax amounting to P1,706,258.41 (Exh. C).

The other evidences submitted by petitioner, duly testified to and identified by petitioner's witness, Bernard Dy, Station Superintendent, were the Financial Statement and Auditor's Report for the periods ending December 31, 1985 and 1986 (Exh. D), Financial Statement and Auditor's Report for the years ending December 31, 1987 and 1988 (Exh. E); and Financial Statement and Auditor's Report for the years ending December 1988 and 1989 (Exh. F), as well as the Statement of Income and Expenses for the years ending December 31, 1986 and 1985 (Exh. D-1), also for the years ending December 31, 1987 and 1988 (Exh. E-1), and for the years ending December 31, 1988 and 1989 (Exh. F-1).

To prove that the petitioner paid and remitted to respondent the amount of profit remittance as computed by the Central Bank was the machine validation of Form 1743 which is the Monthly Remittance Return of Income Taxes Withheld (Exh. G), stamped received on March 3, 1992 by the Metrobank and Trust Co. Head Office (Exh. G-1), and machine validated for the amount of P1,706,258.41 (Exh G-2). Exh. G-3 (Schedule 2-Final Tax ATC = WC280), was presented to prove that the amount of profit remittance tax paid was based on the total branch profit for remittance in the amount of P11,375,256.07 as approved by the Central Bank. Finally, to meet jurisdictional requirement, petitioner filed with the respondent an administrative claim for refund of overpaid profit remittance tax in the amount of P255,938.76 (Exh. H).

It is noted that respondent did not ask a single question during the cross-examination of petitioner's lone witness, Bernard Dy.

As stated earlier, respondent denied all the material allegations of the petitioner in its Petition. With petitioner's formal offer of evidence, respondent offered no objection to all exhibits/documents advanced, that is, Exhibits A, B, C, D, D-1, E, E-1, F, F-1, G, G-1, G-2, G-3, except Exh. H. The only matter objected to in the latter exhibit was the purpose for which the same was being offered which respondent's counsel averred was self-serving. Acting therefore on the formal offer of evidence filed by petitioner and the "comment" filed by the respondent, the court resolved to admit all exhibits submitted for its consideration.

Respondent did not offer any evidence to support its "affirmative and special defenses" in her answer. Respondent's counsel merely manifested that she does not intend to present any witness as the "issue involved is legal." Both parties filed their respective memorandum.

The only issue to be resolved then is whether the 15% branch profit remittance tax should be computed on the amount of profits applied for remittance or on the amount of profits actually remitted.

Based on the evidence on record and current jurisprudence on the matter, **we find for the petitioner.**

In the very recent cases of Bank of America NT and SA vs Commissioner of Internal Revenue and the Court of Appeals, G. R. Nos. 103092 and 103106 (consolidated), promulgated on July 21, 1994, which are in all fours with the present case, the Supreme Court finally laid to rest this issue and definitively ruled that the 15% profit remittance tax should be based on the amount of profits actually remitted abroad. It was stated unequivocally, leaving no room for interpretation, that:

> "In the 15% remittance tax, the law specifies its own tax base to be on the 'profit remitted abroad.' There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (that is in force) calls for nothing further. The taxpayer in a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation using its own local funds, which remits the tax to the Philippine Government."

In its *ratio decidendi* the high court quoted with approval a portion of the decision of the Court of Tax Appeals on the case of Bank of America NT & SA vs. the Commissioner of Internal Revenue, CTA Case No. 3799, from which the aforesaid appealed case originated:

> "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 '<u>based 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</u> 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 <u>at source</u> 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."

Without question, petitioner has proven its claim that it is duly entitled to the refund of overpaid profit remittance tax based on this recent decision of the Supreme Court which is now the ruling case law on this particular issue.

WHEREFORE, judgement is hereby rendered in favor of petitioner and respondent is ordered to refund the former the sum of P255,938.76 or in the alternative, issue a tax credit certificate for the same amount.

No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

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