REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SCIENCE PARK OF THE PHILIPPINES INC. as withholding agent of FREMONT INVESTORS, INC. (formerly Bechtel),
Petitioner,

- versus -

C.T.A. CASE NO. 5644

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 20 2000

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DECISION

Petitioner seeks to enforce by way of this petition a claim for refund of alleged erroneously withheld and remitted tax on cash dividends in the amount of P2,656,674.06 for the period covering the years 1996 and 1997.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

The controversy at bar arose from Petitioner's withholding of cash dividends for one of its shareholders, Fremont Investors, Inc. a foreign corporation in the total amount of P26,567,357.61 which was alleged to have been erroneously subjected to an expanded withholding tax rate of 25% instead of 5%, as claimed by the Petitioner.

Relying heavily on the decision of the Court of Tax Appeals (not Supreme Court as erroneously stated by the Petitioner in its Petition for Review) in the case of General Electric Philippines Meter & Investment Co. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4878, March 28, 1995, where we categorically ruled that the applicable withholding tax rate shall be 15%, citing the Procter and Gamble case promulgated on December 2, 1991. Petitioner elevated its grievance to this Court on May 22, 1998 after the Respondent failed to act on its claim for refund filed on April 1, 1998 .

The claimed amount of P2,656,674.06 computed by petitioner is detailed as follows, to wit:

Date of Payment	Amount of Cash Dividend	25% EWT	15% EWT	Refundable Amount
4 - 96	P9,962,686.50	P2,490,617.17	P1,494,402.97	P 996,214.20
10 – 96	6,641,839.40	1,660,459.85	996,275.91	664,183.94
4 – 97	9,962,759.10	2,490,689.78	1,494,413.87	996,275.92
				P2,656,674.06

In his Answer, Respondent denied Petitioner's assertions and interposed the following Special and Affirmative Defenses, to wit:

> 5. Petitioner has no cause of action as the petition does not alleged (sic) the dates when the taxes sought to be refunded were actually paid;
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> 6. The judicial action for the refund of taxes paid before May 22, 1996 has already prescribed pursuant to Section 230 (now 229) of the NIRC, as amended;
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> 7. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund;
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> 8. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes. (CIR vs, Ledesma, 31 SCRA 95, Manila Electric Co. vs. CIR, 67 SCRA 35);
>
> 9. The taxes sought to be refunded were collected in accordance with law, rules and regulations.

Likewise, in an oral argument dated April 23, 1999, Respondent maintains the view that the applicable rate should be 25% and not 15% of the amount remitted pursuant to the R.P.-US Tax Treaty.

Upon the other hand, Petitioner asserts that the tax rate should be 15% pursuant to the National Internal Revenue Code.

To bolster its stance, Petitioner presented as evidence, among others, the following exhibits, to wit:

Exh. "A" to A-3-a –	to prove that, as authenticated by State Secretary of California, Fremont Investors Inc. is a resident corporation of the State of California, USA;
Exh. "B" to "B-1" –	to prove that, as authenticated by State Secretary of California, Fremont Investors, Inc. is a duly incorporated corporation in the State of Nevada, USA;
Exh. "D-1" –	to prove that, as certified by the Secretary of State of Nevada, the restated Articles of Incorporation of Fremont Group, Inc. is duly filed and registered with the office of the Secretary of State of Nevada;
Exh. "E-1" to E-2 –	to prove that in the alpha list of Expanded Taxes & Income Taxes Withheld Bechtel Investments (now Fremont Investors, Inc.) Cash Dividend of P9,962,759.11 was erroneously subjected to a 25% rate in the sum of P2,490,689.78 on withholding tax on cash dividends paid to a foreign corporation;
Exh. "F" –	to prove that on November 1996, SPPI filed its BIR Form No. 1743-W for the quarter ending on October 1996;
Exh. "F" to "F-1" –	to prove that in the alpha list of Expanded Taxes and Income Taxes Withheld Bechtel Investments (now Fremont Investors, Inc.) Cash dividend of P6,641,839.540 was erroneously subjected to a 25% rate in the sum of P1,660,459.85 on withholding tax on cash dividends paid to foreign corporation;

Exh. "G" –	to prove that on May 27, 1997, SPPI filed its BIR form No. 1743-W for the quarter ending on April 1997;
Exh. "G-1" –	to prove that the sum of P9,029,825.45 was remitted and paid to the BIR through its authorized agent, Far East Bank and Trust Company;
Exh. "G-2" to "G-3" –	to prove that in the alpha list of Expanded and Income Taxes withheld Fremont Investors' Cash Dividend of P9,962,759.10 was erroneously subjected to a 25% rate in the sum of P2,490,689.78 on withholding tax on cash dividend paid to foreign corporation;
Exh. "I" to "-1" –	to prove that, as reflected in its 1997 Financial Statements issued by SGV & Co., SPPI has paid cash dividends to its stockholders for 1996 and 1997;
Exh. "J" –	to prove that on April 1, 1998 Fremont Investors, Inc. has filed its letter claim for refund of the erroneously withheld and remitted withholding tax on its cash dividends received from SPPI; and that the filing was within the 2-year reglementary period;

On November 11, 1999, both parties having failed to file their respective memorandum within the period given by this Court, this case was considered submitted for decision.

Posed for our consideration now are the following issues:

a) Whether or not the applicable withholding tax rate for dividends paid by a Philippine Corporation to its U.S.-incorporated corporations is 15% instead of 25%;
b) Whether or not the Petitioner was able to substantiate its claim for refund.

Anent the first issue, the Supreme Court, in the case of Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377, bearing the same legal and factual milieu as the case at bar, had the occasion to rule in this wise ,thus:

"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:

(a) *Tax on foreign corporations. –*

(1) Non-resident corporation – A foreign corporation not engaged in trade and business in the Philippines,..., shall pay a tax equal to 35% of the gross income receipt during its taxable year from all sources within the Philippines, as . . dividends ......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 differences between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this Section . . ."

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 stockholders 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 corporations. In other words, in the instant case, *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.* 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) received 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." (Emphasis supplied.)

Prescinding from the above, it could be safely inferred that the intention of the law is to attract foreign investors to this country by reducing the tax rate on cash dividends to 15% percent.

Having settled the legal issue, we now proceed to Petitioner's compliance with the substantiation rule.

After a careful scrutiny of all the evidence on record, this Court finds the claim meritorious.

Contrary to Respondent's assertion in his Answer that refund of taxes paid before May 22, 1996 has already prescribed, it must be borne in mind that the reckoning period for refund of cash dividends shall be the date of remittance of tax payment to the BIR. Hence, Petitioner has seasonably filed its claim for refund of its withholding tax payments made on April 1996, the same having been duly remitted to the Bureau of Internal Revenue on May 24, 1996, (Exhibit "E"); November 24, 1996 (Exhibit "F") and May 27, 1997 (Exhibit "G"), the dates when Petitioner filed its Monthly Remittance Returns of Income Tax Withheld (BIR Form 1743-W).

Petitioner presented in evidence its Monthly Remittance Returns of Income Tax Withheld attaching thereto the lists of corporation, which includes Fremont Investors, Inc., and individuals for whom the taxes have been withheld (Exh. E, E-2, F, F-2, G, G-2). After a closer examination the Court found the same to be authentic and reflective of the fact that Petitioner, indeed, withheld and remitted to the Respondent an amount equivalent to 25% expanded withholding tax rate imposed on cash dividends declared by the Petitioner, instead of the 15% tax rate as laid down by the Supreme Court in the Procter and Gamble Case. Accordingly, for having overcome the burden of proof to show entitlement to the relief prayed for, the claim for refund is granted.

WHEREFORE, in the light of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or issue a Tax Credit Certificate in favor of the Petitioner the amount of P2,656,674.06, representing overpaid withholding taxes at source on cash dividends paid and remitted to Fremont Investors, Inc., for the taxable years 1996 and 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge