REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL FOODS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3657

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

8/25/88

D E C I S I O N

This is a claim for tax refund or credit amounting to P81,522.98, representing overpaid tax on royalty withheld at source.

Petitioner, a corporation organized and existing under the State of Delaware, U.S.A., concluded a licensing agreement (Exh. A) dated October 4, 1974, with General Foods (Philippines), Inc., (hereinafter referred to as GFC-Phils.), whereby the former granted the latter the right to use in the Philippines its processes, technical information and know-how, and the exclusive license to use the trademarks of its products. In consideration thereof, the GFC-Phils. will pay royalties to petitioner equal to the sum of 1 1/2% (Exh. A-1) of GFC-Phils. gross sales.

The foregoing agreement is valid for a period of five (5) years or until October 4, 1979.

Prior to the expiration of the subject agreement GFC-Phils. applied for the renewal and registration of the licensing agreement with the Technology Transfer Board (TTB), in accordance with Section 5 of P.D. 1520 "requiring registration of technology transfer arrangement entered into directly or indirectly with foreign companies or foreign owned companies".

Pending approval of the agreement GFC-Phils. accrued royalty payable to petitioner for the period from quarter ended March 31, 1981 to February 1982 the total amount of P630,332.27, and withheld and paid taxes therein amounting to P220,616.29 based on the 1 1/2% of GFC-Phils. gross sales.

On July 22, 1981, the Technology Transfer Board (TTB) approved (Exhs. B & D), the subject agreement reducing the royalty payment to 1% of GFC-Phils. net sales.

Consequently, petitioner through its external auditor filed on June 30, 1983 a written claim for tax refund/credit (Exh. J) for overpaid taxes on royalty withheld at source amounting to P81,522.98.

The issues presented for determination are as follows:

> WHETHER PETITIONER IS ENTITLED TO REFUND OR TAX CREDIT IN THE AMOUNT OF P81,522.98 REPRESENTING ALLEGED OVERPAID WITHHOLDING TAX AT SOURCE ON REDUCED ROYALTY OF 1% PURSUANT TO THE REQUIREMENT OF THE TECHNOLOGY TRANSFER BOARD AND NOT ON 1 1/2% ROYALTY ACTUALLY REMITTED BY GEN FOOD PHILS.
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> WHETHER THE RIGHT TO WITHHELD TAX AT SOURCE OF 35% ON 1 1/2% ROYALTY ATTACHED AT THE TIME OF ACCRUAL, OR AT THE TIME OF ACTUAL PAYMENT OR REMITTANCE THEREOF.

We will take up these issues at the same time.

Under the Tax Code, a foreign corporation not engaged in trade or business in the Philippines is subject to tax at the rate of 35% of gross income received from all sources within the Philippines such as royalties under Section 24(B)(1) of the Tax Code. The Tax Code in Section 53(b) also requires corporation in whatever capacity acting having control of royalties to deduct and withheld the tax due thereon. And finally, the Tax Code, under Section 54(b), requires a written statement of the royalties paid and the deduction of the tax due thereon.

The GFC-Phils. had withheld and deducted 35% of the 1 1/2% royalties to the General Foods Corporation.

Petitioner, however, is of the opinion that it is entitled to refund of the amount of P81,522.98, representing alleged overpaid withholding tax at source on the basis of the approval of the GFC-Phils. of the application for registration of technology transfer by TTB, which reduced the base of royalty from 1 1/2% of the gross sales to 1% of net sales.

It will be noted that at the time subject royalties were accrued, and that is from March 31, 1981 to February, 1982, the application for technology transfer was still pending before the Technology Transfer Board of the Ministry of Trade until its final approval on July 22, 1981, their agreement was amended as approved by the Technology Transfer Board stating among others "To reflect in Article 6 of the Fourth Amendment to the Licensee Agreement" that Licensee shall pay to General Foods Corporation, the petitioner, for all the benefits accorded to licensee (Gen. Foods-Phils.) a royalty equal to the sum of 1% of Licensee's net sales of the products. (Exh. D, p. 30, CTA rec.). Accordingly, the royalty that should be returned and paid as 35% withholding tax from March, 1981 to January-February, 1982 should be the sum of 1% of Gen. Foods-Phils. net sales and should be withheld at the time of payment of the tax.

Of the indicated overpayment of P81,522.98, however, the amount of P7,825.67, corresponding to the quarter ended March 31, 1981, was paid on April 27, 1981, or a lapse of over two years before the claim for refund was filed on June 30, 1983. Hence, this amount cannot be refunded. Consequently, we hold respondent should grant a claim for refund or credit of P73,697.31 as overpaid royalty for the period from June, 1981 to Jan.-Feb., 1982, computed as follows:

"Year		Tax Refund
1981	June	P21,158.07
	September	16,998.40
	December	27,275.01
1982	Jan.-Feb.	8,265.83
Tax Refundable/Credit	-	P73,697.31"

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund/credit to petitioner General Foods Corporation the sum of P73,697.21.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 25, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals