REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 334
(C.T.A. Case No. 7138)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

-versus-

WRIGLEY PHILIPPINES, INC.,
Respondent.

Promulgated:
APR 3 0 2008 [illegible]
1:40 p.m.

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D E C I S I O N

BAUTISTA, J.:

Before Us is a Petition for Review[1] filed by herein petitioner on December 10, 2007, praying for the reversal of:

(1) the Decision dated July 26, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7138,

[1] *Rollo*, pp. 7 - 87, with Annexes.

granting herein respondent's claim for refund or issuance of tax credit certificate in the amount of Four Million Eight Hundred Fifty Two Thousand Four Hundred Sixty Nine and 10/100 Pesos (P4,852,469.10), representing its overpayment of final taxes on royalties withheld for the period covering the taxable year 2003; and

(2) the Resolution dated November 14, 2007 denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The factual antecedents of the case are narrated by the Court in Division in this wise:

> "Petitioner[2] is a corporation duly organized and existing under and by virtue of the laws of the Philippines, engaged in the business of manufacturing, purchasing, exporting, importing, selling, and in general, trading and dealing in and handling chewing gum, confectionary, gum chicle, food products, and by-products of any of the foregoing, with principal office at Marcos Highway, Sitio Pulang Bato, Barangay Inarawan, Antipolo City. It is registered as a value added tax (VAT) entity with TIN/VAT No. 000-280-753-000 in accordance with the National Internal Revenue Code (NIRC), as amended, and was issued by the Bureau of Internal Revenue (BIR) National Office, BIR Certificate of Registration No. 8RC0000016763 dated January 1, 1996.
>
> On the other hand, respondent[3] is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credit erroneously or illegally collected internal revenue taxes, as provided for by law, holding office at the BIR National Office Building, Diliman, Quezon City.

[2] Herein Respondent.
[3] Herein Petitioner.

On July 1, 1993, petitioner entered into a License Agreement with Wm. Wrigley Jr. Company (Wrigley-US), a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware, U.S.A. with business address at 410 North Michigan Avenue, Chicago, Illinois, USA for a period of ten (10) years from execution thereof. The License Agreement was renewed on July 1, 2003 for another ten (10) years or until June 30, 2013. Under the aforementioned Agreement, Wrigley-US granted to petitioner the following rights:

'1. RIGHTS GRANTED

a. WRIGLEY hereby grants to WRIGLEY PHILIPPINES the License to manufacture and sell chewing gum under the TECHNICAL DATA owned by WRIGLEY.

b. WRIGLEY agrees to keep WRIGLEY PHILIPPINES informed of all developments or improvements relating to the manufacture of chewing gum. For the term of this agreement WRIGLEY PHILIPPINES shall be entitled to use the developments and improvements made by WRIGLEY whether or not such developments or improvements are patented.

c. WRIGLEY shall continue to operate the aforesaid departments and laboratories at its expense and shall render technical assistance to WRIGLEY PHILIPPINES by communicating and interpreting to WRIGLEY PHILIPPINES techniques that may be developed by Wrigley with respect to the marketing, selling, advertising, manufacturing and packaging of chewing gum.

d. WRIGLEY grants WRIGLEY PHILIPPINES the exclusive right to manufacture, use and sell in the Philippines under the trademarks listed in Appendix "A" which is attached hereto (which trademarks are hereinafter referred to as "the said trademarks").'

In consideration of the above rights and for the benefits received by petitioner under the License Agreement, petitioner agreed to pay Wrigley-US, in respect of all chewing gum manufactured and sold, a fee of five percent (5%) based on Net Sales plus two percent (2%) based on Net Foreign Exchange Earnings. It was likewise agreed that all Philippine withholding taxes on all payments under the Agreement shall be withheld by petitioner and deducted from the payments due to Wrigley-US.

In accordance with the foregoing provisions of the License Agreement dated July 1, 1993, petitioner paid Wrigley-US the royalty fees due thereon for the calendar year 2003 and subjected the same to fifteen percent (15%) withholding tax rate, applying the 'most favored nation' clause as embodied in the said treaty, taking into consideration the pertinent provisions of the RP-Russia, RP-Denmark or RP-Sweden tax treaties.

As appearing on petitioner's Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) for the period covering January 2003 to December 2003, the following were the remitted final taxes on royalties, computed at fifteen percent (15%) pursuant to the 'most favored nation' clause of Article 13 (2) (b) (iii) of the RP-US Tax Treaty, to wit:

Calendar Year 2003	Date of Filing	Amount of Royalty Payments	Amount of Withholding Taxes Remitted at 15%
January	7-Feb-03	7,697,741.00	1,154,661.00
February	10-Mar-03	7,276,853.00	1,091,528.00
March	9-Apr-03	6,853,573.00	1,028,036.00
April	8-May-03	7,445,467.00	1,116,820.00
May	10-Jun-03	7,158,073.00	1,073,711.00
June	10-Jul-03	7,133,721.00	1,070,058.00
July	8-Aug-03	8,593,374.00	1,289,006.00
August	9-Sep-03	7,882,697.00	1,182,405.00
September	10-Oct-03	10,336,429.00	1,550,464.00
October	10-Nov-03	7,718,193.00	1,157,729.00
November	9-Dec-03	8,260,688.00	1,239,103.00
December	12-Jan-04	10,692,570.00	1,603,886.00
Total		97,049,379.00	14,557,407.00

On November 18, 1999, the Agreement between the Government of the Republic of the Philippines and the Government of the People's Republic of China for the Avoidance of

Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, or the RP-China Tax Treaty, was signed and took effect on January 1, 2002. The said Treaty imposed only ten percent (10%) withholding tax rate on royalty payments arising from the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or from the use of, or the right to use industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.

Consequently, on February 27, 2003, petitioner filed with the Bureau of Internal Revenue-International Tax Affairs Division (BIR-ITAD), a request for confirmation of whether petitioner's royalty payments to Wrigley-US are subject to ten percent (10%) withholding tax rate pursuant to the provisions of Article 13 (2) (b) (iii) or the 'most favored nation' clause of the RP-US Tax Treaty in relation to Article 12 (2) (b) of the RP-China Tax Treaty with a Claim for Refund or Issuance of a Tax Credit Certificate.

In response to petitioner's request, the BIR-ITAD, through its Assistant Commissioner, Milagros V. Regalado, issued on September 23, 2003, BIR Ruling No. DA-ITAD-142-03 which ruled, among others, that:

> 'Such being the case, this Office is of the opinion and so holds that the royalty payments of WPI to Wrigley-US under the License Agreement are subject to final withholding tax at the rate of 10% pursuant to the "most favored nation" provision of the RP-US tax treaty in relation to the RP-China tax treaty effective January 1, 2002 [Revenue Memorandum Circular (RMC) No. 46-2002 dated September 2, 2002; BIR Ruling No. DA-ITAD 101-03 dated July 24, 2003]. WPI shall deduct and withhold the tax at the time the royalty income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, and whichever comes first. The term "payable" refers to the date the obligation become due, demandable, or legally enforceable [Section 4 – Time of Withholding, Revenue Regulations No. 12-2001].'

However, in the same ruling, petitioner's claim for refund or issuance of a tax credit certificate was resolved in this manner:

> 'This ruling is issued on the basis of the facts as presented and is rendered only for the purpose of determining whether Wrigley is entitled to the benefits of the RP-US Tax Treaty. The determination on whether your

request for tax refund should be given due course is upon the Office which will be conducting the investigation for that purpose. Thus, the docket pertaining thereto (including copy of this ruling) shall be endorsed to the proper office for processing and investigation.'

On the basis of the above ruling, petitioner filed on November 9, 2004 a formal claim for refund or issuance of a tax credit certificate with the Large Taxpayers Audit and Investigation Division I of the Bureau of Internal Revenue for its alleged overpaid withholding taxes paid for the calendar year 2003 in the amount of P4,852,469.10. Having received no response from respondent, and before it could be barred by prescription, petitioner then filed the instant Petition for Review on February 4, 2005.

On April 5, 2005, respondent filed his Answer, raising the following as his Special and Affirmative Defenses:

'4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P4,852,469.10 being claimed by petitioner as alleged overpaid withholding taxes for calendar year 2003 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit,

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'*

The issues having been joined, pre-trial ensued and both parties entered into a Joint Stipulation of Facts and Issues which they submitted on May 26, 2005 and correspondingly approved on June 9, 2005. During trial, only petitioner presented its evidence while respondent's counsel manifested during the hearing held on

> November 6, 2006 that she would not be presenting evidence. Thus, the parties were directed to file their respective memoranda. Only petitioner filed its Memorandum on November 24, 2006 and this case was considered submitted for decision on February 2, 2007. "[4] *(Citations omitted)*

The Ruling of the Court in Division

On July 26, 2007, the Court in Division rendered a Decision in favor of herein respondent.

At the outset, the Court in Division resolved the issue pertaining to prescription. It ruled that the administrative and judicial claims for refund were filed by respondent well within the two-year prescriptive period.

The Court in Division then proceeded to determine the proper interpretation of the provisions of RP-US, RP-Russia, RP-Denmark or RP-Sweden, and RP-China Tax Treaties, particularly, the provisions on the rate of final taxes on royalties to be imposed by the Philippines upon royalties received by a non-resident foreign corporation. After studying the Treaties, the Court in Division declared that the provisions of the RP-China Tax Treaty, more particularly, the reduced rate on royalties at ten percent (10%) should apply to respondent.

Based on the documents submitted by respondent, the Court in Division also found that respondent complied with all the requirements provided for in Revenue Memorandum Circular (RMC) No. 46-02, for the availment of the reduced withholding tax rate of 10%.

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[4] *Rollo*, pp. 28 – 63, Assailed Decision dated July 26, 2007, pp. 2 – 7.

The Court in Division's disquisition on this matter is as follows:

"Under Revenue Memorandum Circular (RMC) No. 46-02, the following conditions must be complied with before the reduced withholding tax rate of ten percent (10%) on royalties may be availed of by the taxpayer invoking the same, thus:

1. It is necessary that there be an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and

2. For as long as the contract or agreement is subject to the approval under Philippine law, the same must be duly approved by the Philippine competent authorities.

To prove compliance with the foregoing requisites, petitioner presented the following documentary evidence, to wit:

1. Certificate of Registration No. 1466 issued by the Bureau of Patents, Trademarks and Technology Transfer dated July 23, 1993;

2. License Agreement entered into by and between the petitioner and Wrigley-US, duly authenticated by the Consulate General of the Philippines at Chicago, Illinois on July 6, 1993;

3. Renewal Agreement between petitioner and Wrigley-US for the renewal of the original License Agreement for a period of ten (10) years, duly authenticated by the Consulate General of the Philippines at Chicago, Illinois on September 5, 2003; and

3. Certificate of Compliance No. 5-2003-00062 issued by the Intellectual Property Office on September 23, 2003.

Based on the foregoing documents, this Court is convinced that petitioner is entitled to the reduced withholding tax rate of ten percent (10%) on its royalty payments. Clearly, petitioner entered

> into a License Agreement with Wm. Wrigley Jr. Company (or Wrigley-US), a corporation organized and existing under the laws of the State of Delaware wherein the former agreed to pay the latter, royalty or license fees, for its use of the 'formulae, written descriptions, blue prints, manufacturing processes, inventions and methods with respect to the manufacture of chewing gum' (referred to as Technical Data in the agreement). The Court also notes that this License Agreement was duly registered and approved by Philippine competent authorities as shown by the Certificate of Registration No. 1466 issued by the Bureau of Patents, Trademarks and Technology Transfer of the Department of Trade and Industry, as well as the Certificates of Compliance issued by the Intellectual Property Office which duly confirmed the compliance of the subject Royalty Agreement with the provisions of R.A. No. 8293 (Intellectual Property Code) on Voluntary Licensing."[5]

Accordingly, the Court in Division granted respondent's claim for refund, disposing the case in this manner:

> "**WHEREFORE**, premises considered, the subject Petition for Review is hereby **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **FOUR MILLION EIGHT HUNDRED FIFTY TWO THOUSAND FOUR HUNDRED SIXTY NINE AND 10/100 PESOS (P4,852,469.10)** representing petitioner's overpayment of final taxes on royalties withheld for the period covering the taxable year 2003.
>
> **SO ORDERED.**"[6]

On August 16, 2007, herein petitioner filed a Motion for Reconsideration[7] of the Decision dated July 26, 2007.

On October 3, 2007, herein respondent filed its Comment on the Motion for Reconsideration.[8]

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[5] *Rollo*, pp. 69 – 71, Assailed Decision dated July 26, 2007, pp. 13 – 15.
[6] *Id.*, pp. 80 – 81, Assailed Decision dated July 26, 2007, pp. 24 -25.
[7] *Records*, C.T.A. Case No. 7138, pp. 448 - 457.
[8] *Id.*, pp. 460 – 466.

On November 14, 2007, the Court in Division issued a Resolution denying herein petitioner's Motion for Reconsideration.[9]

The Issue

Hence, the instant recourse where petitioner raises the sole issue of whether or not respondent is entitled to a refund in the amount of P4,852,469.10 representing its alleged overpayment of final taxes on royalties withheld for the period covering the taxable year 2003.

Petitioner's Arguments

Petitioner's main contention is that respondent miserably failed to discharge its burden of proving its entitlement to a refund as it failed to prove that the alleged withheld taxes were indeed remitted to the BIR. Petitioner claims that respondent failed to present competent witnesses to testify on the validity of the contents of the alleged Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F). Moreover, assuming that the alleged Monthly Remittance Returns were duly identified by competent witnesses, petitioner argues that respondent's claim for refund must still fail because it did not submit copies of the said Monthly Remittance Returns to the BIR when it filed its administrative claim for refund.

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[9] *Rollo*, pp. 83 – 84, Assailed Resolution dated November 14, 2007, pp. 1 – 2.

Respondent's Counter-Arguments

For its part, respondent insists that it has proven actual remittance to the BIR of its overpayment of final taxes on royalties withheld for the period covering the taxable year 2003. According to respondent, it presented in Court its General Accounting Supervisor, Ms. Carol M. Africano, to testify that it indeed filed its Monthly Remittance Returns of Final Income Taxes Withheld for the taxable year 2003. In addition, respondent avers that, contrary to the claim of petitioner, it submitted copies of its Monthly Remittance Returns to the BIR's Taxpayers Audit & Investigation Division I, when it filed a written claim for refund on November 9, 2004.

The Ruling of the Court En Banc

The Petition for Review must fail.

To begin with, it must be pointed out that petitioner does not dispute the findings of the Court in Division that the provisions of the RP-China Tax Treaty, more particularly, the reduced tax rate on royalties at ten percent (10%) applies to respondent. This finding in fact coincides with BIR ITAD Ruling No. DA-ITAD-142-03 dated September 23, 2003,[10] declaring that the royalty payments of respondent to Wm. Wrigley Jr. Company (WWJC) under the License Agreement are subject to the final

[10] "*Formal Offer of Evidence for the Petitioner,*" in C.T.A. Case No. 7138, Folder 1, Exhibit "F."

withholding tax at the rate of 10% pursuant to the "most favored nation" provision of the RP-US Tax Treaty, in relation to the RP-China Tax Treaty effective January 1, 2002.

Therefore, the only issue in this case is whether or not respondent actually withheld and remitted the total amount of P14,557,407.00 for the taxable year 2003 as withholding taxes on its royalty payments to Wrigley-US, which amount is based on the concessional rate of fifteen percent (15%).

After a careful review of the records of the case, We are convinced that respondent has proven and established through its testimonial and documentary evidence that it is entitled to a refund in the amount of P4,852,496.10.

Records show that respondent submitted, among others, the following documentary evidence: (1) Monthly Remittance Return of Final Income Taxes Withheld for the months of January to December 2003, together with the Machine Validated Land Bank of Philippines BIR Tax Payment Deposit Slips also for those months;[11] (2) Annual Income Tax Return for the taxable year 2003;[12] and (3) Journal Vouchers and Schedules showing Intercompany Fee Details.[13] These documents were duly identified by Ms. Carol M. Africano, the General Accounting Supervisor of

[11] *"Formal Offer of Evidence for the Petitioner,"* in C.T.A. Case No. 7138, Folder 1, Exhibits "H" – "S-4."
[12] *Id.*, Exhibit "T."
[13] *Id.*, Exhibits "W" – "II-3."

respondent, in her Judicial Affidavits dated September 1, 2005, November 2, 2005, January 17, 2006, and March 30, 2006.[14]

It is also well to note that petitioner never made any objection to the admission of all the exhibits formally offered in evidence by respondent.[15] What is more, respondent's filing of Monthly Remittance Returns for the taxable year 2003 is among the facts admitted in the "Joint Stipulation of Facts and Issues"[16] signed by both parties.

In view of the foregoing, We find the Machine Validated Land Bank of Philippines BIR Tax Payment Deposit Slips for the taxable year 2003 submitted as evidence by respondent sufficient to prove actual remittance by respondent to the BIR.

Considering that respondent withheld and remitted the total amount of P14,557,407 (P97,049,379.00 x 15%) for the taxable year 2003 as withholding taxes on its royalty payments to Wrigley-US, which amount is based on the concessional rate of fifteen percent (15%), respondent is entitled to a refund in the amount of P4,852,496.10 (P14,557,407 – [P97,049,379.00 x 10%]).

Anent the contention of petitioner that respondent failed to submit these Monthly Remittance Returns to the BIR when it filed its administrative claim, We find the same totally unavailing. A perusal of

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[14] "*Formal Offer of Evidence for the Petitioner,*" in C.T.A. Case No. 7138, Folders 2 and 3, Exhibits "RR", "EEEE", "UUUU", and "VVVV."
[15] *Records*, C.T.A. Case No. 7138, pp. 375 – 377.
[16] *Id.*, C.T.A. Case No. 7138, pp. 169 – 178.

respondent's administrative claim for refund[17] reveals that copies of the Monthly Remittance Returns of Final Income Taxes Withheld for the months of January to December 2003 were actually attached to the administrative claim.

As we see it then, respondent is indeed entitled to a refund as it was able to present sufficient evidence to support its claim. Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[18]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the Decision dated July 26, 2007 and Resolution dated November 14, 2007 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[17] *"Formal Offer of Evidence for the Petitioner,"* in C.T.A. Case No. 7138, Folder 1, Exhibit "G."
[18] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice