Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WANDER PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2884

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

1/19/84

D E C I S I O N

This refers to petitioner's claim for a refund and/or tax credit of the total sum of ₱115,440.00 representing overpayment of withholding tax on dividends remitted to petitioner's Swiss parent company, the Glaro S.A. Ltd. of Tribourg, Switzerland, covering the 2nd quarters of the years 1975 and 1976.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws. It is wholly-owned subsidiary of the Glaro S.A. Ltd., a Swiss corporation, which is not engaged in trade or business in the Philippines. (Par. 1 and 2, Petition; admitted in par. 1, Answer, pp. 1 and 18, respectively, CTA rec.)

On July 18, 1975, petitioner filed its withholding tax return (BIR Form 17.43-B) for the second quarter ended June 30, 1975 and remitted to its parent company, the said Glaro S.A. Ltd., dividends in the amount of

9

₱222,000.00, on which 35% withholding tax thereof in the amount of ₱77,700.00 was withheld and paid to the Bureau of Internal Revenue under Official Receipt No. 4746194 dated July 18, 1975. (Par. 3, Petition; admitted in par. 2, Answer; Exhs. "C", "C-1", "D", "E", "E-1" and "E-2", pp. 1 and 18, 43-45, CTA rec.; see also pp. 6-11, t.s.n., Hearing of August 5, 1981.)

Again, on July 14, 1976, petitioner filed a withholding tax return for the second quarter ended June 30, 1976 on the dividends it remitted to its parent company, said Glaro S.A. Ltd., in the amount of ₱355,200.00, on which 35% tax in the amount of ₱124,320.00 was withheld and paid to the Bureau of Internal Revenue, under Official Receipt No. 3010839, dated July 14, 1976. (Par. 4, Petition; admitted in par. 2, Answer; Exhs. "F", "F-1", "G", "H", "I" and "I-1", pp. 1 and 18, 46-48, CTA rec.; see also t.s.n. pp. 12-16, op. cit.)

For the aforesaid second quarter of the years 1975 and 1976 in question, petitioner had paid the withholding tax in the total amount of ₱202,020.00 to the government on the basis of 35% on the dividends remitted to the mother company, Glaro S.A. Ltd. of Tribourg, Switzerland, in the total amount of ₱577,200.00.

It is petitioner's claim that the withholding tax payable to the government should be equivalent only to

15% of the amount remitted, pursuant to the provisions of Section 24(b)(1) of the Tax Code, as amended by P.D. Nos. 369 and 778, which took effect on January 1, 1974 and August 24, 1975, respectively.

On the basis of the aforesaid provisions of law, petitioner therefore contends that it should be held liable for withholding tax but only in the amount of ₱86,580.00, which amount represents 15% of the total sum of ₱577,200.00 dividends which it had remitted to Glaro S.A. Ltd. for the second quarter of the year 1975 and 1976, and not on the basis of 35% withholding tax that was actually withheld and paid to the government in the total sum of ₱202,020.00 aforesaid, therefore resulting in an overpayment of ₱115,440.00 withholding tax. (Par. 7, Petition, p. 2, CTA rec.)

Consequently, petitioner, on July 5, 1977, filed with the Appellate Division of the Bureau of Internal Revenue a claim for the refund and/or tax credit in the amount of ₱115,400.00 contending that it is liable only to 15% withholding tax in accordance with Section 24(b)(1) of the Tax Code, as amended by P.D. Nos. 369 and 778, and not on the basis of 35% which was withheld and paid to and collected by the Government, since under the law of Switzerland, the Swiss Government never imposed a tax on dividends received by corporation organized under its laws from a domestic Philippine corporation. Hence, petitioner concludes that it has complied with the requirements of the aforesaid provisions of Section 24(b)(1) of the Tax Code, as amended by P.D. 369 and 778, for the purpose of paying the preferred rate of only 15% withholding tax.

Respondent having failed to act on petitioner's claim for refund and/or tax credit, petitioner, on July 15, 1977, appealed to this Court. (p. 1, CTA rec.)

In answer to the petitioner's petition for review, respondent raised the following special and affirmative defenses:

> "4. That taxes are presumed to have been paid and collected in accordance with law;
>
> "5. That in an action for refund, the burden of proof is upon the taxpayer and failure to sustain the burden is fatal to the action;
>
> "6. That it is incumbent upon the petitioner to show that he has complied with the provisions of Section 306 and 309 all of the Tax Code."

The sole issue raised before this Court for determination is whether or not petitioner is entitled to the tax refund or credit of the amount of ₱115,440.00 as overpaid withholding tax for the second quarters of the years 1975 and 1976.

There is no dispute as to the correct computation of the amount claimed for purposes of tax refund or tax credit in this case. However, respondent insists that petitioner is not entitled to the refund and/or tax credit of the said amount of ₱115,440.00 because petitioner has not complied with the requirements provided in Section 24(b)(1) of the Tax Code, as amended by P.D. No. 369 and 778, namely: (1) that the country of the recipient non-resident foreign corporation allows a tax credit of the withheld tax against that tax due from it, and which tax is deemed to have been paid in the Philippines, equivalent to 20%; and (2) that this 20% represents the difference between the 35% regular corporate tax imposed upon the remittance of dividends to non-resident foreign corporations and the 15% tax withheld from the dividends that were received from a domestic corporation. Section 24(b)(1) as amended by P.D. 369 and 778, the law involved in this case provides as follows:

> SECTION 1. The first paragraph of sub-section (b) of Section 24 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "(b) Tax on foreign corporations.- (1) Non-resident corporation.- A foreign corporation not engage in trade or business in the Philippines, including a foreign life insurance company not engaged in the life insurance business in the Philippines, shall pay a tax equal to 35% of the gross income received during its taxable year from all sources within the Philippines, as interest

> (except interest on foreign loans which shall be subject to 15% tax), dividends, rents, royalties, salaries, wages, premiums, annuities, compensations, remunerations for technical services or otherwise, emoluments or other fixed or determindable, annual, periodical or casual gains, profits, and income, and capital gains: Provided, however, that premiums shall not include reinsurance premiums: Provided, further, cinematographic film owners, lessors, or distributors, shall pay a tax of 15% on their gross income from sources within the Philippines: Provided, still further That on dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, 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%) dividends as provided in this section: Provided, finally, That regional or area headquarters established in the Philippines by multi-national corporations and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communication and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Regions shall not be subject to tax." (Underlining supplied.)

P.D. 369, amending Section 24(b)(1) of the Tax Code, had set the requirements for entitlement to the reduced 15% withholding tax payment imposable against the dividends received from petitioner. Definitely, if the recipient country of the non-resident foreign corporation grants a tax credit equivalent to at least twenty per cent (20%) of the tax due, which is considered as sufficient basis to avail of the preferential

15% rate of withholding tax shall apply favorably to petitioner. This is so because the recipient of the dividends is a non-resident foreign corporation, the Glaro S.A. Ltd., Tribourg, a Swiss corporation, and is not engaged in trade or business in the Philippines, and that Switzerland did not impose any taxes (Exh. "B", p. 42, CTA rec.; see also t.s.n., pp. 4-5, Hearing of August 5, 1981) on the dividends received by the said Glaro S.A. Ltd., from the Philippines, or particularly, from petitioner domestic corporation. The conditions, therefore, imposed under the said provision of law in order that petitioner can be entitled to withhold only 15% of the dividends remitted to said non-resident foreign corporation was fully satisfied.

It is worthwhile to take note that the spirit and intent of said P.D. 369 in amending Section 24(b)(1) of the Tax Code, which reduced the withholding tax to only 15% on the dividends remitted by the domestic corporation to its parent company (foreign corporation) abroad was, and still is, to encourage foreign capital investments in our own country. This very intention is clear and explicit from the very explanatory note which states thus -

xxx xxx xxx

> "WHEREAS, in order to encourage more capital investment for large projects, an appropriate tax need be imposed on dividends

received by non-resident foreign corporations in the same manner as the tax imposed on interest in foreign loans;"

To deny petitioner of the privilege to withhold only 15% tax provided for under the said Presidential Decree 369, amending Section 24(b)(1) of the Tax Code, would be to run against the very spirit and intent of said law and definitely will adversely affect foreign corporations interest here and discourage them to invest capital in our country.

Our opinion that petitioner is only liable for 15% withholding tax instead of 35% withholding tax imposed on the dividends remitted to the non-resident foreign corporation Glaro S.A. Ltd. of Switzerland finds affirmance in a letter dated May 19, 1977 (Annex "A", Petition, p. 4, CTA rec.) of the Acting Commissioner of Internal Revenue, Efren I. Plana, now Associate Justice of the Supreme Court, who ruled that petitioner is subject to only 15% withholding tax on the dividends received by the Glaro S.A. Ltd. of Tribourg, Switzerland. Said ruling reads as follows:

"This has reference to your letter dated February 22, 1977 requesting confirmation that the dividends payable by your client, WANDER (PHIL.) INC., a domestic corporation, to its Swiss parent company, Glaro Ltd., Tribourg, a non-resident foreign corporation not engaged in trade or business in the Philippines, are subject only to the 15% withholding tax in accordance with Section 24(b)(1) of the Tax Code, as amended by Presidential Decree

No. 369 and 778.

<u>In reply, please be informed that since the Swiss Government does not impose any tax on the dividends to be received by the said parent corporation in the Philippines, the condition imposed under the above-mentioned section is satisfied. Accordingly, the withholding tax rate of 15% is hereby affirmed."</u> (Underlining supplied)

Finally, we have observed that even after the rendering of the above ruling by the Acting Commissioner of Internal Revenue Efren I. Plana in connection with this instant case, respondent had subsequently, and in numerous occasions involving similar factual situations and issues as in the case at bar, upheld the ruling and opinion that the rate of 15% is imposed as withholding tax against the dividends received from a domestic corporation, and applicable in this case, by the non-resident foreign corporation, whose country of domicile does not impose taxes on dividends received by said non-resident foreign corporation from said remitting domestic corporation.

There are at least five (5) subsequent rulings to that of Acting Commissioner of Internal Revenue Efren I. Plana's ruling quoted above, which confirmed the letter, and which we quote hereunder:

(1) <u>BIR Ruling dated June 29, 1977</u>

"Under Section 24(b) of the Tax Code, as amended by Presidential Decree No. 369, the domestic corporation is liable for the payment of the 15% withholding tax 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

"From the foregoing provisions of Article VI (4) of the Tax Treaty between the Philippines and Sweden as well as the certification of the Taxing Director of Sweden, it is clear that the cash dividends received by Sandvik AB Sweden from Sandvik Philippines, Inc. is exempt from Swedish income tax.

"In view thereof, the dividends which your client, Sandvik Philippines Inc. will remit to Sandvik AB Sweden is subject only to the 15% withholding tax pursuant to Section 24(b) of the Tax Code." (Emphasis ours.)

(2) BIR Ruling dated September 7, 1977

"Under Section 24(c) of the Tax Code, as amended by Presidential Decree No. 369, the domestic corporation is liable for the payment of the 15% withholding tax 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 (15%) on dividends as provided in this section. x x x Thus if the country of domicile of the recipient corporation allows a credit against the tax imposable by it an amount equivalent to 20% of the dividends, or if said foreign country does not impose any tax on the dividends remitted to corporations domiciled therein, the dividends so remitted are subject to withholding tax at the rate of 15% only." (Underlining supplied.)

(3) BIR Ruling dated October 5, 1977

"It appearing that dividends derived by a Panamanian corporation not doing business in the Philippines from sources outside of Panama are not subject to income tax under the laws of Panama, 'such dividends' are subject to withholding tax at the rate of 15% only, in accordance with Section 24 (b)(1) of the Tax Code, as amended." (Underlining ours.)

(4) BIR Ruling 136-81, July 30, 1981

"In reply to your letter dated July 8, 1981, I have the honor to inform you that having been established that Panama does not impose any tax on dividends received from foreign sources, the dividends to be remitted by your client, Bristol Laboratories (Phils.), Inc., a Philippine corporation, to its parent company, Bristol Laboratory International, S.A., a non-resident foreign corporation organized under the laws of, and domiciled, in Panama, are subject to the withholding tax at the rate of 15% only, in accordance with Section 24(b)(1)(iii) of the Tax Code." (Italics ours.)

(5) BIR Ruling 37-81

"In reply to your letter dated July 29, 1980, I have the honor to inform you that it having been established that Hongkong does not impose any tax on dividends received by corporations domiciled therein from foreign sources, the dividends to be remitted to HSB Hongkong Trustee Limited, a non-resident foreign corporation domiciled in Hongkong are subject to only 15% withholding tax, prescribed by Section 24(b)(1)(iii) of the Tax Code, as amended." (Underscoring ours.)

There exist no doubt in our minds that, considering all the foregoing rulings, it is very clear, and without doubt that petitioner is entitled to the preferential rate of 15% withholding tax on the dividends remittal made by it to the non-resident foreign corporation, the Glaro S.A. Ltd. of Switzerland, and more because it had met the requirements set forth in Presidential Decree No. 369, amending Section 24(b)(1) of the Tax Code. Consequently, the overpayment of ₱115,440.00 paid to respondent is subject to refund and/or tax credit.

WHEREFORE, respondent is hereby ordered to grant a refund and/or tax credit to petitioner in the amount of ₱115,440.00 representing overpaid withholding tax on dividends remitted by it to the Glaro S.A. Ltd. of Switzerland during the second quarter of the years 1975 and 1976.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, January 19, 1984.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge