REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK.
Petitioner,

- versus -

C.T.A. CASE NO. 5184

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 21 1996

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DECISION

This petition is a claim for refund or tax credit in the total amount of P692,900.72 representing overpaid branch profit remittance taxes.

Petitioner is a foreign corporation duly licensed to engage in banking business in the Philippines. The record reveals that on December 3, 1993 and July 26, 1994, petitioner paid the amounts of P4,981,590.73 and P330,648.15, respectively, or a total of P5,312,238.88 branch remittance tax for its remittance of profits to its Head Office in the United Kingdom. The branch profits remittance tax (BPRT) payments were computed based on petitioner's reported branch profits.

In two letters, dated July 1, 1993 and July 18, 1994, the Central Bank of the Philippines authorized petitioner to remit the foreign exchange equivalent of its remittable profits net of the 15% branch profits remittance tax. The amounts of profits actually remitted were computed as follows:

YEAR	BRANCH PROFIT	15% BPRT	DATE PAID	BRANCH PROFIT ACTUALLY REMITTED
1992	P33,210,604.87	P4,981,590.73	12-3-93	P28,878,786.84
1993	2,204,320.98	330,648.15	7-26-94	1,873,672.83
	P35,414,925.85	P5,312,238.88		P30,752,459.67

On October 14, 1994, petitioner through its accounting firm, filed with the Bureau of Internal Revenue a claim for refund in the sum of P692,900.72, representing alleged overpaid branch profits remittance tax for 1992 and 1993 as shown below:

Actual branch tax remittance tax paid:			
	1992	4,981,590.73	
	1993	330,648.15	P5,312,238.88
Less: BPRT on profits actually remitted:			
	1992	33,210,604.87/1.15 X 15%	
	1993	2,204,320.98/1.15 X 15%	4,619,338.16
Alleged overpaid BPRT			692,900.72

Petitioner alleged that by virtue of the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Burroughs Limited, 142 SCRA 324, the 15% tax on branch profits remitted abroad applies to the profit actually remitted, not the amount applied for remittance, pursuant to BIR ruling, dated January 21, 1980.

On December 24, 1994, without waiting for respondent's decision, petitioner filed the instant petition in accordance with Sec.230 of the Revenue Code in order to toll the running of the prescriptive period for filing a suit for the recovery of an erroneously paid tax.

On February 27, 1995, respondent answered that considering the 15% branch profit remittance tax was imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, citing Revenue Memorandum Circular No.8-82, dated March 17, 1982, and Compania General de Tabacos de Filipinas (Phil. branch) vs. CIR CTA Case No.3827.

The question to be resolved in this case is the interpretation of Sec.25 (a) (5) of the National Internal Revenue Code which provides thus:

> "Sec.25. Rates of tax on foreign corporation. -
> (a) Tax on resident foreign corporation x x x
>
> (5) Tax on branch profits remittances.-Any profit remitted by a branch to its head office shall be subject to a tax of 15% (except those registered with the Export Processing Zone Authority). Provided, that any profit remitted by a branch to its head office authorized to engage in petroleum operations in the Philippines shall be subject to a tax at 71/2%. In both cases, the tax shall be collected and paid in the same manner as

provided in Sec.51 and 52 of this code x x x."

This issue has been finally put to rest in the decision of the Supreme Court in the case of Bank of America N.T. and S.A. vs. The Honorable Court of Appeals and the Commissioner of Internal Revenue (234 SCRA 302), which is in all fours with the present case and henceforth, the ruling case on this point which determines the result.

We can only but quote the pertinent portion of the ratio decidendi of this precedent-setting decision of the Supreme Court (Vitug, J., ponente) which has affirmatively ruled on the issue at hand:

> "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 (then in force) calls for nothing further. The taxpayer is 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.
>
> The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual

corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries *vis-a-vis* local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax *paripassu* ends between domestic branches and subsidiaries of foreign corporations.

The Solicitor General suggests that the analogy should extend to the ordinary application of the withholding tax system and so with the rule on constructive remittance concept as well. It is difficult to accept the proposition. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest. It is hardly the case, however, in the imposition of the 15% remittance tax where there is but one taxpayer using its own domestic funds in the payment of the tax. To say that there is constructive remittance even of such funds would be stretching far too much that imaginary rule. Sound logic does not defy but must concede to facts." (Underscoring ours)

The Supreme Court, therefore, in this ruling case law reversed and set aside the decision of the Court of Appeals, which has been alluded by the respondent and of which it expected to rely upon and reinstated the decision of this Court in CTA Case No.3799, which states in part as follows:

> " there is absolutely nothing in Section 24 (b) (2) (ii) supra, which indicates that the 15% tax on branch profit remittance tax is on the total amount of profit remittance 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 percent (15%)-without more. Nowhere is there said of "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 Section 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 or 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, set 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 at source 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." [emphasis supplied]

thus, with the above pronouncements, the ambiguous provision has now been clearly resolved and fully disposed of.

WHEREFORE, respondent is hereby ordered to grant petitioner a tax credit or refund in the amount of P692,900.72 representing overpaid branch profit remittance tax. No costs.

SO ORDERED.

RAMON O DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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