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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HYATT HONG KONG LIMITED
(PHILIPPINE BRANCH) and
HYATT REGENCY MANILA,
Petitioners,

- versus -

C.T.A. CASE NO. 3076

THE ACTING COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

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

9/14/88

D E C I S I O N

After no action was taken seasonably by respondent Commissioner of Internal Revenue on their request for the refund of alleged overpaid branch profit remittance taxes which were paid in the years 1978 and 1979 amounting to P16,355.67 and P46,749.86 respectively, or a total of P63,105.53, petitioners Hyatt Hong Kong Limited (Philippine Branch) and Hyatt Regency Manila filed the instant petition for review asking that respondent be ordered to grant their claim.

The background facts are not disputed, respondent having submitted this case for decision on the basis of the pleadings, after petitioners have presented their evidence. As alleged in the amended petition for review and admitted by respondent:

1. Petitioner Hyatt Regency Manila is a domestic corporation duly organized and existing under and by virtue of Philippine laws, doing business and with principal office at 2702 Roxas Boulevard, Pasay City, while petitioner Hyatt Hong Kong Limited is a resident foreign corporation with office in the Philippines at Hyatt Regency Manila.

2. Respondent is the duly designated, qualified and incumbent Acting Commissioner of Internal Revenue of the Philippines vested with authority to act as such, and with office at the BIR National Office Building, East Avenue, Diliman, Quezon City, where he may be served with summons.

3. For the years 1978 and 1979, the petitioners paid branch profit remittance taxes in the amounts of P98,134.02 and P179,207.80 or a

total of P277,341.82 for profits realized in the years 1976, 1977 and 1978.

4. The above payments were made by the petitioners in the belief that the tax base of the branch profit remittance tax is the "total branch profit out of which the remittance is to be made."

5. Section 24(b)(2) of the applicable National Internal Revenue Code, in relevant provision, provides:

> "x x x. .Provided further, that any profit remitted abroad by a branch office to its mother company shall be subject to tax of fifteen per cent (except those registered with the Export Processing Zone Authority). x x x" [Underscoring supplied]

6. In a ruling dated January 21, 1980, respondent Commissioner held that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made".

7. Based on the aforestated manner of computing the branch profit remittance tax, the petitioners should have only paid the total amount of P214,236.29, instead of P277,341.82, on the above-mentioned branch profit remittances. As a

result, petitioners herein have made an overpayment of the said tax in the total amount of P63,105.53.

8. On April 1, 1980 and April 2, 1980, respectively, petitioners filed with the respondent a claim for refund and a supplemental letter thereto in the total amount of P63,105.53 representing overpaid branch profit remittance taxes of petitioner Hyatt Hong Kong Limited.

Since respondent, within the prescriptive period, has not acted favorably on their claim for refund of the amount of P63,105.53, petitioners filed with this Court the present petition for review.

The only issue in this case is the proper and correct tax base in computing the profit remittance taxes involved in this amended petition for review at the time of payments on April 13, 1978 and April 23, 1979.

This issue is not one of first impression. In **Commissioner of Internal Revenue vs. Burroughs Limited and the Court of Tax Appeals**, G.R. No. 66653, June 19, 1986, where the factual setting is similar to that in the case at bar, the Supreme

Court unequivocally ruled that under Section 24(b)(2) of the Tax Code the branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made in accordance with Bureau of Internal Revenue ruling dated January 21, 1980 if paid before its revocation and/or repeal by Bureau of Internal Revenue Memorandum Circular No. 8-82 dated March 17, 1982. Since the branch profit remittance taxes involved in this case were paid on April 3, 1978 and April 23, 1979 before the revocation and/or repeal of Bureau of Internal Revenue ruling dated January 21, 1980 on March 17, 1982, petitioners Hyatt Hong Kong Limited (Philippine Branch) and Hyatt Regency Manila are legally entitled to a refund of the aforementioned amount of P63,105.53. As stated by the Supreme Court in **Burroughs Limited:**

> We rule in the affirmative. The pertinent provision of the National Internal Revenue Code is Sec. 24(b) (2) (ii) which states:
>
> "Sec. 24. Rates of tax on corporations. x x x

> (b) Tax on foreign corporations. x x x
>
> (2) (ii) Tax on branch profits remittances. - Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) x x x ."

In a Bureau of Internal Revenue ruling dated January 21, 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana the aforequoted provision had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax x x x shall be imposed x x x (is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made." The said ruling is hereinbelow quoted as follows:

> "In reply to your letter of November 3, 1978, relative to your query as to the tax base upon which the 15% branch profits remittance tax provided for under Section 24(b) (2) of the 1977 Tax Code shall be imposed, please be advised that the 15% branch profit tax shall be imposed on the branch profits actually remitted abroad and not on the total branch profits out of which the remittance is to be made.
>
> Please be guided accordingly."

Applying, therefore, the aforequoted ruling, the claim of private respondent (Burroughs Limited) that it made an overpayment in the amount of P172,058.90 which is the difference between the remittance tax actually paid of

P1,147,058.70 and the remittance tax that should have been paid of P974,999.89,

xxx xxx xxx

is well-taken. As correctly held by respondent Court in its assailed decision -

> "Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24 (b) (2) of the Tax Code the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made. Based on such ruling petitioner should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remited to its head office in the United States, instead of P1,147,058.70, on its net profits of P7,647,058.00. Undoubtedly,petitioner had overpaid its branch profit remittance tax in the amount of P172,058.90."

Petitioner (Commissioner of Internal Revenue) contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states -

> "Considering that the 15% branch profit remittance tax is 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."

Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1979. Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code which provides -

> "Sec. 327. Non-retroactivity of rulings. Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer except in the following cases (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith." (**ABS CBN Broadcasting Corp. v. CTA** 108 SCRA 151-152)

The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum

> Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

We see no significance in respondent's special and affirmative defense that the "refund of the tax under O.R. No. 28538996 dated April 3, 1978 (in the amount of P16,355.67) has already prescribed", apparently because the petition for review was amended on April 17, 1980. The original petition for review was filed on April 1, 1980. The rule has been established that where an appeal is filed with the Court of Tax Appeals in connection with a claim for refund of an internal revenue tax and the petition for review is later amended, the two-year period is suspended from the date of filing of the original petition for review, not from the date of filing of the amended petition for review. (**Cebu Portland Cement Co. vs. Collector of Internal Revenue**, L-20563, Oct. 29, 1968, 25 SCRA 789.)

ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioners Hyatt Hong Kong Limited (Philippine Branch) and Hyatt Regency Manila the amount of

P63,105.53 representing overpaid branch profit remittance taxes paid in 1978 and 1979.

SO ORDERED.

Quezon City, Metro Manila, September 14, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate 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 after 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