REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WRIGLEY PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4781

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

7/8/94

DECISION

This is a claim for judicial refund of the alleged overpaid withholding tax on dividend payments of petitioner in the sum of P1,204,410.00 for the year 1991.

Petitioner Wriglay Philippines, Inc., is a domestic corporation with business address at Pioneer St., Pasig, Metro Manila. It is a wholly-owned subsidiary of William Wrigley, Jr., Co., Chicago, U.S.A. (Wrigley-U.S. for short) a non-resident foreign corporation domiciled in the United States.

For the year 1991, it appears that petitioner remitted on two (2) separate occasions to Wrigley-U.S. dividends amounting to P13,288,200.00[1] and P10,800.000.00[2] respectively.

[1]Declared on June 20, 1991 (Exh. "E").

[2]Declared on October 8, 1991 (Exh. "F").

On said dividend remittances, petitioner alleged that it paid to the Bureau of Internal Revenue a 20% withholding taxes due thereon as follows:

(1) On P13,288,200.00	
a. 15% withholding taxes	P1,993,230.00[3]
b. additional 5%	664,410.00[4]
(2) On P10,800,000.00	
a. 20% withholding taxes	2,160,000.00[5]
T O T A L	P4,817,640.00

Pursuant to Section 25(b)(5)(B) of the Tax Code (providing that the rate of tax of such dividends is only 15%) and the decision of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp. and the Court of Tax Appeals**, December 2, 1991, 204 SCRA 377, petitioner invoked entitlement to the 15% tax rate on dividend remittances to Wrigley-U.S..

On March 4, 1992, petitioner filed with the BIR Appellate Division a written claim for refund of the amount of P1,204,410.00 representing the excess 5%

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[3]Evidenced by Payment Order No. C10246051 (Exh. "L") and Central Bank Confirmation Receipt No. B20955765 (Exh. "M") both dated July 3, 1991.

[4]Evidenced by Payment Order No. C10778976 (Exh. "N") and Central Bank Confirmation Receipt No. B23122121 (Exh. "O") both dated August 28, 1991.

[5]Evidenced by Payment Order No. C11655926 (Exh. "S") and Central Bank Confirmation Receipt No. B20958194 (Exh. "T") both dated November 28, 1991.

withholding tax payments on dividend remittances, computed as follows:

(1) Dividends on June 1991	P13,288,200.00[6]
(2) Dividends on October 1991	10,800,000.00[7]
Total	P24,088,200.00
20% withholding tax paid and remitted to BIR	P 4,817,640.00
Should be - 15% withholding tax (24,088,200 x 15%)	3,613,230.00
Refundable amount	P 1,204,410.00

Petitioner without waiting for the respondent to act on the claim for refund filed the instant petition for review on April 8, 1992 to toll the running of the prescriptive period set forth in Section 243 of the Tax Code.

Respondent on his part did not submit any evidence to controvert the correctness of the tax return as well as other relevant facts, nor refute petitioner's claim, but opted to submit this case for decision on the basis of the records and pleadings of the case.

The issues posed on this appeal are the following: a) whether or not petitioner is entitled to the preferential 15% tax rate on dividends remitted to its parent Corporation pursuant to Section 25 (b)(5)(B) of the Tax Code; b) whether or not petitioner has the

[6]Approved by a letter of CB-International Sector dated July 24, 1991 (Exh. "G") for remittance.

[7]Approved by a letter of CB-International Sector dated December 12, 1991 (Exh. "P") for remittance.

personality in bringing the present suit for being a withholding tax agent of Wrigley-U.S. and claim the alleged refund.

As regards the first issue it is important to consider the pertinent provisions of the National Internal Revenue Code, as amended, particularly Section 25 (b)(5)(B) which states, and We quote:

> "(5) Tax on certain incomes received by nonresident foreign corporations x x x
>
> (B) On dividends received from a domestic corporation liable to tax under this Chapter, the <u>tax shall be 15%</u> of the dividend received, xxx subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow the credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines <u>equivalent to 20%</u> which represent the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this subparagraph." (Underscoring supplied)

By virtue of the above-cited provision of the Tax Code, petitioner claimed that it is required to withhold and remit only 15% of the dividends due to Wrigley-U.S.

The aforementioned is not of first impression.

In the recent case of **Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals** G.R. No. L-66838, December 2, 1991, 204 SCRA 377, wherein the

Supreme Court reconsidered *en banc* the decision of the Second Division, the Court said:

> "The ordinary thirty-five percent (35%) tax rate applicable to dividend remittances to non-resident foreign corporate stockholders of a Philippine corporation, goes down to fifteen percent (15%) if the country of domicile of the foreign stockholder corporation 'shall allow' such foreign corporation a tax credit for 'taxes deemed paid in the Philippines', application against the tax payable to the domiciliary country by the foreign stockholder corporation. In other words, in the instant case, <u>the reduced fifteen percent</u> (15%) <u>dividend tax rate is applicable if the USA 'shall allow' to P&G-USA a tax credit for 'taxes deemed paid in the Philippines' applicable against the US taxes of P&G-USA.</u> The NIRC specifies that such tax credit for 'taxes deemed paid in the Philippines' must, as a minimum, reach an amount equivalent to twenty (20) percentage points which represents the difference between the regular thirty-five percent (35%) dividend tax rate and the preferred fifteen percent (15%) dividend tax rate.
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> It is important to note that Section 24 (B)(1), NIRC, does <u>not</u> require that the US must give a '<u>deemed paid' tax credit for the dividend tax (20 percentage points) waived by the Philippines</u> in making applicable the preferred dividend tax rate of fifteen percent (15%). In other words, our NIRC does <u>not</u> require that the US tax law <u>deem the parent-corporation to have paid the twenty percentage points of dividend tax</u> waived by the Philippines. The NIRC <u>only</u> requires that the US 'shall allow' P&G-USA a 'Deemed paid' tax credit in <u>an amount equivalent to the twenty (20) percentage points</u> waived by the Philippines." (Underscoring supplied)

Pertinent hereto, is the question of whether the U.S. law complied with the requirement for the applicability of the reduced or preferential 15% dividend tax rate under Section 24 (b)(1) of the Tax Code wherein the high court concluded that indeed Section 902 of the U.S. Tax Code complied with the requirements of Section 24 (b)(1) now Section 25 (b)(5)(B) of the National Internal Revenue Code, to wit:

> "Thus, for every P55.^{25} of dividends actually remitted (after withholding at the rate of 15%) by P&G-Phil. to its U.S. P&G USA, a tax credit of P29.^{75} is allowed by Section 902 US Tax Code for Philippine Corporate income tax "deemed paid" by the parent but actually by the wholly owned subsidiary."

Petitioner asserts that since P29.^{75} is much higher than P13.^{00} (the amount of dividend tax waived by the Philippine Government), under Section 902, of the U.S. Tax Code, it has therefore specifically and clearly complied with the requirements of Section 24 (b)(1) of the NIRC. Thus, it has been ruled:

> "It remains only to note that under the Philippines-United States Convention 'With Respect to Taxes on Income', the Philippines, <u>by a treaty commitment,</u> reduced the regular rate of dividend tax to a maximum of twenty percent (20%) of the gross amount of dividends paid to US parent corporations:
>
> Article 11. - <u>Dividends</u>
>
> xxx xxx xxx
>
> (2) The tax rate imposed by one of the Contracting State on dividends derived from sources within that Contracting State by a

resident of the other Contracting State shall not exceed -

a) 25 percent of the gross amount of the dividend; or

b) When the recipient is a corporation, 20 percent of the gross amount of the dividend if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation." (Underscoring Supplied)

xxx xxx xxx

"With Respect to Taxes on Income." the Philippines, *by a treaty commitment*, reduce the regular rate of dividend tax to a maximum of twenty percent(20%) of the gross amount of dividends paid to US parent corporations. x x x The Tax Convention, at the same time, established a treaty obligation on the part of the United States that it "shall allow" to a US parent corporation receiving dividends from its Philippines subsidiary" a [tax] credit for the appropriate amount of taxes paid or accrued to the Philippines by the Philippine [subsidiary]-." This is, of course, precisely the "deemed paid" tax credit provided for in Section 902, US Tax Code, discussed above. Clearly, there is here on the part of the Philippines a deliberate undertaking to reduce the regular dividend tax rate of thirty-five percent(35%). Since, however, the treaty rate of twenty percent(20%) is a *maximum* rate, there is still a differential of additional reduction of five(5) percentage points which compliance of US law (Section 902) with the requirements of Section 24(b)(1), NIRC, makes available in respect of dividends from a Philippine subsidiary."

Thus the petitioner is required to withhold and remit as tax only 15% of the dividends due Wrigley U.S..

The question of the capacity of Wrigley Philippines, Inc. to bring the claim for refund, being a mere withholding agent, was also answered four square in the above mentioned case of **Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation**, (supra). Pertinent portion of said decision is quoted below:

xxx xxx xxx

> "2. The question of the capacity of P&G-Phil. to bring the claim for refund has substantive dimensions as well which, as will be seen below, also ultimately relate to fairness.
>
> Under Section 306 of the NIRC, a claim for refund or tax credit filed with the Commissioner of Internal Revenue is essential for maintenance of a suit for recovery of taxes allegedly erroneously or illegally assessed or collected:
>
> "Sec. 306. *Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court* for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue;* but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening

cause that may arise after payment: xxx." (Italics supplied)

Section 309(3) of the NIRC, in turn, provides:

"Section 309. Authority of Commissioner to Take Compromises and to Refund Taxes. - The Commissioner may:

xxx xxx xxx

(3) credit or refund taxes erroneously or illegally received, xxx. *No credit or refund* of taxes or penalties *shall be allowed unless the taxpayer files in writing* with the Commissioner *a claim for credit or refund* within two (2) years after the payment of the tax or penalty." (As amended by P.D. No. 69) (Emphasis supplied)

Since the claim for refund was filed by P&G-Phil., the question which arises is: is P&G-Phil. a "*taxpayer*" under Section 309(3) of the NIRC? The term "*taxpayer*" is defined in our NIRC as referring to "*any person subject to tax* imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is *directly and independently liable* for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.

A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> "*The law sets no condition for the personal liability of the withholding agent to attach.* The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, *the withholding agent is constituted the agent of both the Government and the taxpayer.* With respect to the collection and/or withholding of the tax, he is the Government's agent. *In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.*" (Italics supplied)

If, as pointed out in *Philippine Guaranty*, <u>the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim</u>. This implied

> authority is especially warranted where, as in the instant case, the withholding agent is the *wholly owned subsidiary of the parent-stockholder* and therefore, *at all times, under the effective control of such parent-stockholder.* In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.
>
> We believe that, even now, there is nothing to preclude the BIR from requiring P&G-Phil. to show some written or telexed confirmation by P&G-USA of the subsidiary's authority to claim the refund or tax credit and to remit the proceeds of the refund, or to apply the tax credit to some Philippine tax obligation of, P&G-USA, *before actual payment of the refund or issuance of a tax credit certificate.* <u>What appears to be vitiated by basic unfairness is petitioner's position that, although P&G-Phil. is directly and personally liable to the Government for the taxes and any deficiency assessments to be collected, the Government is not legally liable for a refund simply because it did not demand a written confirmation of P&G-Phil.'s implied authority from the very beginning. A sovereign government should act honorably and fairly at all times, even *vis-a-vis* taxpayers.</u>
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a "taxpayer" within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Underscoring supplied)

We find it very ironic for respondent to rely on the decision of the <u>Second Division</u> of the Supreme Court and assert that it constitutes the <u>law of the case</u> between the parties when in fact the Supreme Court sitting *en banc* has reconsidered its Second Division decision on

December 2, 1991, the dispositive portion of which read as follows:

> "**WHEREFORE**, for all the foregoing, the Court resolved to **GRANT** private respondent Motion for Reconsideration dated 11 May 1988, to **SET ASIDE** the decision of the Second Division of the Supreme Court promulgated on April 15, 1988 and in lieu thereof, **REINSTATE** and affirm the decision of the Court of Tax Appeals in CTA Case No. 2883 dated January 1984 and to **DENY** the Petition for Review for lack of merit."

Needless to say, the decision of the Supreme Court sitting en banc, setting aside the decision of the Second Division, now constitutes the ruling case law in this particular case. The Supreme Court is the final arbiter of all legal questions properly brought before it and its decision in any given case constitutes the law of that particular case. (**Sesbreño vs. Court of Appeals,** G.R. NO. 1105346, September 4, 1992, 213 SCRA 681)

As earlier mentioned, respondent has not presented any evidence to controvert the correctness of petitioner's claim for refund. Instead she submitted her case on the basis of the records and pleadings. Respondent, therefore, may be considered to have no serious objection or opposition to petitioner's entitlement to the refund (**Dataprep vs. Commissioner of Internal Revenue**, CTA Case No. 3600, March 20, 1984);

Ateneo de Manila University vs. Commissioner of Internal Revenue, CTA No. 3231, July 28, 1989).

IN VIEW OF THE FOREGOING, respondent Commissioner of Internal Revenue is hereby ordered to **REFUND** to petitioner Wrigley Philippines, Inc. the sum of P1,204,410.[00], representing overpaid withholding tax on dividends for the year 1991.

SO ORDERED.

Quezon City, Metro Manila, July 8, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals