REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILTREAD TIRE AND RUBBER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5117

Promulgated:
SEP 12 1996

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DECISION

This is a claim for refund of alleged overpaid withholding tax on royalties amounting to P8,071,496.00.

Petitioner, a domestic corporation organized and operating under Philippine laws, entered into a Trademark License Agreement and Technical Service Agreement with Firestone Tire and Rubber Company (Firestone), a non-resident foreign corporation, based, organized and existing under the laws of the United States of America pursuant to which the petitioner was granted the right to use and exploit various Firestone trademarks and the right to take advantage of Firestone's technology in the manufacture of tires and rubber products utilizing Firestone's patents and technical know-how. Said Trademark License Agreement and Technical Service Agreement and their amendments were registered with the Bureau of Patents, Trademarks and Technology Transfer of the Department of Trade and Industry. (Exhibits C and F).

Prior to July 1992, Petitioner withheld and remitted to the Bureau of Internal Revenue ten percent (10%) of the royalty payments it had remitted to Firestone in accordance with Article 13, paragraph 2(b)(iii) of the RP-US Treaty in relation to Article 12, paragraph 2(b) of the RP-West Germany Treaty.

However, on July 1, 1992, the BIR issued Revenue Memorandum Circular No. 39-92 (RMC No. 39-92) where it held that the applicable withholding tax rate on royalty payments under the RP-US Tax Treaty should be twenty-five percent (25%).

To forestall assessment of deficiency taxes by the BIR, the petitioner, for the period July 1992 to December 1993, applied the twenty-five percent (25%) tax rate on its royalty payments to Firestone, amounting to P13,452,495 [Exhibits "G" to "W"]. Petitioner, however, maintains that the correct and applicable withholding tax rate is 10% in accordance with the RP-US Tax Treaty.

Thus, Petitioner, in a letter dated, April 11, 1994, filed with the Bureau of Internal Revenue a claim for tax refund or tax credit in the amount of P8,071,496 [Exhibit "Y"] representing the difference between the total withholding taxes actually remitted to the BIR for the months of July 1992 to December 1993 (P13,452,495) and the tax that should have been withheld and remitted which is P5,380,999 using the correct tax rate of ten percent (10%) [Exhibit "X"].

Respondent did not act on said claim for refund. Hence, this appeal.

During the trial of the case, Petitioner's claim for refund did not encounter any opposition from the Respondent probably because the issue involved has already been settled with finality, not only with this Court, but also in the higher courts. Thus, to oppose it would only be an exercise in futility on the part of the Respondent.

The sole issue raised is: Whether or not Petitioner is entitled to the claim for refund in accordance to the "most favored nation clause" as provided in the R.P.-U.S. Tax Treaty, Article 13 (2)(iii) in relation to Article 12 (2)(b) of the R.P.-West Germany Tax Treaty.

We answer in the affirmative.

In the case of **General Electric Philippines Meter and Instrument Co., Inc., vs. Commissioner of Internal Revenue**, CTA Case No. 4158, December 5, 1991 this Court ruled, thus:

> On the basis of the most favored nation clause of the RP - U.S. Tax Treaty, Art. 13 (2) (b) (ii), taken in relation to Article 12 (2)

> (b) of the RP - West German Tax Treaty and BIR Ruling No. 263-86, petitioner should have withheld and paid only 10% tax instead of 25% on the royalties paid by petitioner to General Electric Company in the U.S..
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> Of the accrued royalties in 1984 in the amount of P15,570,208.22 paid in 1985 - 25% tax was actually paid by petitioner on May 10, 1985 by way of withholding tax in the amount of P81,743.59 (Exhs. I, K & J, pp. 53-54, CTA rec.). Since the tax due thereon is only 10%, according to the above provision of law, the sum of P54,495.73 was due and paid resulting to an overpayment of P27,247.86.
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> Of the technical service fee of P168,474.91, petitioner paid on June 10, 1985 the 15% withholding tax in the sum of P25,271.23. (Exhs. E, G, & F, pp. 50-51 CTA rec.). Since the tax due is only 10%, according to the above provision of law, the sum of P14,440.71 was due and paid resulting to an overpayment of P10,830.52.

Said decision became final after the Court of Appeals denied petitioner's (herein, respondent) Petition for Review. (**Commissioner of Internal Revenue vs. General Electric Philippines Meter and Instrument Co., Inc.** C.A. G.R.-No. 30674) The Entry of Judgment was issued on January 26, 1994.

In a later case, this Court reiterated the above ruling, thus:

> On the second issue, whether or not petitioner should be taxed at the reduced rate of 10% withholding tax on royalties in accordance with Article 12 (2) (b) of the R.P.- West Germany Tax Treaty and not 25% withholding tax on royalties under Articles 13 (2) (b) (iii) of the R.P.- U.S. Tax Treaty.

This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by then Commissioner of Internal Revenue, Bienvenido Tan, (BIR Ruling No. 456-88, supra., that under the most favored nation provision of the R.P.- U.S. Tax Treaty (Article 13 paragraph 2 (b) (iii), the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state. Article 12, paragraph 2 (b) of the R.P.- West Germany Tax Treaty, provides that royalties arising in the Philippines and paid to a resident of West Germany may also be taxed in the Philippines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitation of the tax rate in case of royalties arising in the Philippines, apply if the contract giving rise to such royalties has been approved by Philippine competent authorities.

Thus, inasmuch as the Agreement between World Trade and IBM Phils. as well as the Agreement between IBM and IBM Phils. had been approved by the Central Bank of the Philippines, royalties arising in the Philippines and payable to World Trade as well as to IBM by IBM Phils. should be taxed at the rate of 10% because said rate is indicated in the R.P.- West Germany Tax Treaty and pursuant to Article 13, paragraph 2 (b) (iii), of the RP - US Tax Treaty.

(IBM Philippines Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4308, March 31, 1993 pp. 10-12)

The Entry of Judgment on said case was issued on December 15, 1993 after the Court of Appeals granted petitioner's (herein respondent) withdrawal of the case. (**Commissioner of Internal Revenue vs. IBM Philippines, Inc.**, C.A. G.R.-

SP No. 31791) In several other cases decided by this Court, We have remained steadfast to the ruling embodied in the General Electric and IBM cases aforecited, and these cases are enumerated hereunder, thus:

1) Gillete (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4248, February 8, 1995;

2) Smithkline and French Overseas Company vs. Commissioner of Internal Revenue, CTA Case No. 5048, September 22, 1995;

3) Kimberly-Clark Corporation (U.S.A.) and Kimberly-Clark (Philippines) Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4288, January 30, 1992.

We do not intend to depart from the wisdom of the said rulings and thus, the same should be applied to the case at bar.

WHEREFORE, in view of all the foregoing, Respondent is hereby ordered to issue a tax credit certificate in the amount of P8,071,496.00 representing overpaid withholding taxes for the period July 1992 to December 1993.

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 members 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