REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS (Philippine Offices),
Petitioner,

- versus - **C.T.A. CASE NO. 4451**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/23/93

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D E C I S I O N

Petitioner is a foreign corporation duly licensed by Philippine laws to engage in business through its Branch Office.

On May 3, 1988, petitioner paid the 15% branch profit remittance tax for the years 1985 (partial) and 1986 in the amount of P3,148,267.96 (Exhs. P and R-1), computed as follows:

Net Income after tax per audited Financial Statements for the Year 1985	P11,051,098.00
Less: Amount approved for remittance CB-Letter authority dated 7/24/86	9,680,184.96

Balance of remittance branch profits 1985	P 1,370,913.04
Add: Net Income after tax per audited Financial Statements for the year, 1986	19,617,540.00
Gross amount remittable	P20,988,453.04
15% remittance tax	P 3,148,267.96

On July 6, 1988, petitioner filed a claim for refund (Exhs. A and A-1) with respondent in the amount of P593,948.61, representing alleged overpaid branch profit remittance taxes, computed as follows: (p. 6, Petition for Review)

Branch profit actually remitted		P17,840,185.08
Less: Income subject to final tax:		
Dividends - 1985	P590,008.64	
1986	10,122.01	
Interest on Savings Account - 1985	125,268.94	
1986	56,285.37	
Interest on Money Market Placement - 1985	24,244.14	
Interest on Land Bank Bonds - 1985	2,730.00	
1986	2,730.00	811,389.43
Tax Base of Branch Profit Remittance Tax		P17,028,795.65
15% branch profit remittance tax due thereon		P2,554,319.35
Less: branch profit remittance tax previously paid		(3,148,267.96)
Overpaid Branch Profit Remittance Tax		P 593,948.61

Up to the filing of the petition for review on May 3, 1990, respondent has not acted on petitioner's claim.

The issues posed to this Court are:

(1) Whether or not the branch profits tax are computed based on the profits actually remitted abroad or on the total branch profits out of which the remittance is made; and

(2) Whether or not passive income which are already subjected to the final tax are still included for purposes of computing the branch profits remittance tax.

First. Petitioner contends that the 15% Branch Profit Remittance Tax should be based on the profits actually remitted abroad. Petitioner cited as authority Section 24(b)(2)(ii) of the National Internal Revenue Code (NIRC for short); BIR Ruling dated January 21, 1980; and the case of Commissioner of Internal Revenue v. Burroughs Limited and the Court of Tax Appeals, G.R. No. L-66653, June 19, 1986, 142 SCRA 324, where the Supreme Court held that "the tax base upon which the 15% branch profit remittance tax shall be imposed on the profit *actually remitted* abroad and not on the total branch profits out of which the remittance is to be made."

Respondent for his part answered 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 pursuant to Revenue Memorandum No. 8-82, dated March 17, 1982.

Section 24(b)(2) of the 1977 NIRC and Section 24(b)(2)(ii) of the 1986 NIRC both provides for a 15% branch profit remittance tax on any profit remitted by a branch to its mother company or head office.

Petitioner relies on **BIR Ruling dated January 21, 1980**, issued by then Acting Commissioner Efren I. Plana, which provides:

> "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."

While respondent stressed that what is applicable in this case is **Revenue Memorandum Circular No. 8-82** (dated March 17, 1982), which reads:

> "SUBJECT: Classification as to the proper tax base in the computation of the 15% branch profit remittance tax.
>
> To: All Internal Revenue Officers and Others Concerned.
>
> In BIR Ruling No. 016-79 dated April 18, 1979 anent the 15% branch profit remittance tax as an income tax imposed under Section 24(b)(2), National Internal Revenue Code of 1977, as amended, this Office ruled that 'x x x the 15% branch profit remittance tax should be based on the amount of P1,504,330.43 representing profit derived from the disposition of the shares, 15% of which is P225,649.57.'
>
> It will be noted that the basis of computation in accordance with the ruling is profit without deduction for the 15% tax.

On January 21, 1980, this Office, in another ruling issued in answer to a query as to the tax base upon which the 15% branch profit remittance tax should be imposed held that 'the 15% branch profit remittance tax shall be imposed on the profit actually remited abroad and not on the total branch profit out of which the remittance is to be made.'

As the latter ruling seems to have given rise to some misconception that it modified BIR Ruling No. 016-79 with respect to the manner of computation of the 15% branch profit remittance tax, this Office issued a clarificatory ruling on October 23, 1981 explaining -

> The above ruling (of January 21, 1980) merely emphasized the distinction between the total branch profit which is remittable and that portion of the branch profit actually remitted without deduction on account of the tax to be paid.
>
> The phrase 'any profit remitted abroad' should be construed to mean the profit to be remitted. Hence, there must be an actual remittance, as distinguished from profit which is remittable.
>
> To give an example: If the total branch profit is P115,000.00 but the amount to be remitted is P100,000.00, then the tax base should be P100,000.00.
>
> Moreover, the 15% profit remittance tax imposed by Section 24(b)(2) of the Tax Code is an income tax, it is therefore clear that the same is non-deductible from the gross (profit) income. Inasmuch as the tax is an exaction on profit realized for remittance abroad, the deduction thereof as an expense is not sustained by law nowhere in Section 30 of the Tax Code is it provided that the same is deductible. Besides deductions from gross income are matters of legislative grace, what is not

expressly granted by the law is deemed withheld.'

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.

It is desired that this Circular be given as wide publicity as possible.

(Sgd.) RUBEN B. ANCHETA
Acting Commissioner"

The case in question is readily distinguishable from the Burroughs Limited case (supra.), where the Supreme Court upheld the application of BIR Ruling of January 21, 1980 because the branch profit remittance tax was paid on March 14, 1979. The High Court added that Memorandum Circular No. 8-82, dated March 17, 1982, cannot be given retroactive effect in the light of Section 327 of the NIRC. Section 327 provides for the non-retroactive application of rules and regulations revoking, modifying or reversing prior ones if the revocation, modification or reversal is prejudicial to the taxpayers.

In an earlier case, involving the same parties and issue regarding the taxable base for the imposition of the 15% branch profit remittance tax, this Court, in a decision which has already become final and executory, has this to say:

"A fortiori, the holding in the Burroughs Limited case lends settling cognizance to the validity of the Memorandum Circular No. 8-82, where as ruled by the Supreme Court -

> What was applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because the private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1982. 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 x x x."

Stated otherwise, the circular must be prospective in application. Established at bar is a payment effected on August 16, 1982 subsequent to the issuance thereof. Hence petitioner's case falls within the compelling import and force of the Revenue Memorandum Circular No. 8-82 dated March 17, 1982." **[Compania General De Tabacos De Filipinas (Philippine Branch), v. The Commissioner of Internal Revenue, CTA Case No. 3827, October 14, 1988.]**

In the recent case of **Commissioner of Internal Revenue v. Bank of America NT & SA and the Court of Tax Appeals, CA-G.R. SP No. 22529, September 19, 1990**, the Court of Appeals upheld the validity of Revenue Memorandum Circular No. 8-82. This Court adopts the reasoning of the Court of Appeals when it ruled:

"x x x. The use of the word remitted may well be understood as referring to that part of the said total branch profits which would be sent to the head office as distinguished from the total profits of the branch (not all of which need be sent or would be ordered remitted abroad). If the legislature indeed had wanted to mitigate the harshness of successive taxation, it would have been simpler to just lower the rates without in effect requiring the relatively novel and complicated way of computing the tax, as envisioned by the herein private respondent. The same result would have been achieved.

The attempt to deduce legislative intent with regard to Section 24(b)(2)(ii) of the Tax Code would only serve to allow a captious and strained intendment of the law. NIMIA SUBTILITAS IN JURE REPROBATUR, ET TALIS CERTITUDO CERTITUDIMEM CONFUNDIT (The law does not allow of a captious and strained intendment, for such nice pretence of certainty confounds true and legal certainty). As held in the case of United States vs. Wurzbach, 280 U.S. 396, 398:

> There is no warrant for seeking refined arguments to show that the statute does not mean what it says.

In view of the foregoing, this Court finds that the clear import of Section 24(b)(2)(ii) of the Tax Code mandates the imposition of the fifteen per cent (15%) tax on the branch profits remittance, which in tax parlance is alluded to as the "tax handle", with the total amount remitted (not the total amount of the branch profits) as base for the tax." **[cited in Commercial Union Assurance Company v. The Commissioner of Internal Revenue, CTA Case No. 4189, September 8, 1992.]**

Thus, in view of the fact that petitioner's branch profit remittance tax for 1985 (partial) and 1986 were paid on May 3, 1988, after the effectivity of Revenue Memorandum Circular No. 8-82 (March 17, 1982), then what should apply as taxable base in computing the 15% branch profit remittance tax is the amount applied for with the Central Bank as profit to be remitted abroad and not the total amount of branch profits.

Second. Petitioner argues that passive income already subjected to the final tax should not be included in the tax base for computing the 15% branch profits remittance tax. Emphasis was made on Section 24(b)(2)(ii) of the NIRC of 1986, which provides:

> "(ii) **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 tax at 7-1/2%. In both cases, the tax shall be collected and paid in the same manner as provided in Sections 51 and 52 of this Code and **Provided, further**, That <u>interest, dividends</u> rents, royalties, including remunerations for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines <u>shall not be considered as branch profits unless the same are effectively connected with the conduct of trade or business in the Philippines</u>. (as amended by P.D. 1705, P.D. 1773 and P.D. 1994.)"

Petitioner likewise invoked BIR Ruling No. 032-79, dated June 6, 1979, and BIR Ruling 157-81, dated July 13, 1981, pertinent portions of said rulings are quoted hereunder:

> **BIR Ruling No. 032-79**
> **Dated June 6, 1979**
>
> " x x x, I have the honor to confirm your opinion that the 15% remittance tax imposed by Section 24(b)(2) of the Tax Code of 1977 on

profits remitted abroad by a branch office to its mother company is an income tax.

The above conclusion can be drawn from the fact that the 15% remittance tax is imposed under 'Title II - Income Tax' of the Tax Code and that it is based on profits derived by the branch.

Moreover, while dividends remitted by Philippine subsidiaries to their head offices abroad are subject to the withholding income tax at the rate of 15% under certain conditions, P.D. No. 778 which took effect on August 24, 1975, subjected profits remitted by a branch to its mother company abroad to remittance tax at a higher rate of 20%. Pursuant to P.D. No. 1158-A, said remittance tax was reduced to 15% so as to place the taxation of the profits of a branch at par with the dividend remittances of foreign subsidiary. Such reduction also supports the conclusion that the 15% remittance tax is income tax."

Bureau of Internal Revenue Ruling

024(b)(2) 000-00 157-81 July 13, 1981

"In reply thereto, please be informed that pursuant to Section 24(b)(2) of the Tax Code, as amended, only profits remitted abroad by a branch office to its head office which are effectively connected with its trade or business in the Philippines are subject to the 15% profit remittance tax. To be 'effectively connected' it is not necessary that the income be derived from the actual operation of taxpayer-corporation's trade of business; it is sufficient that the income arises from the business activity in which the corporation is engaged. For example, if a resident foreign corporation is engaged in the buying and selling of machineries in the Philippines and invests in some shares of stock on which dividends are subsequently received, the dividend thus earned are not considered 'effectively connected' with its trade or business in this country." (Revenue Memorandum Circular No. 55-80.)"

Respondent rejected the arguments of petitioner and pointed that "under Section 24(b)(2)(ii) of the Tax Code, interest and dividends, as a rule, are considered branch profits except when the same are not effectively connected with the trade or business of the foreign corporation in the Philippines". It is incumbent upon petitioner to prove that interest and dividends are not effectively connected with the trade or business of the foreign corporation.

More credible is the stand of petitioner. As worded in Section 24(b)(2)(ii), the **rule** is interest and dividends received by a foreign corporation during each taxable year from all sources within the Philippines shall **not** be considered as branch profits **unless** the same are **effectively connected** with the conduct of its trade or business. The phrase "effectively connected" was interpreted to mean income derived from the business activity in which the corporation is engaged.

In all the corporate quarterly income tax returns filed by petitioner with respondent's office, it was indicated as it was shown that the petitioner is engaged in the business as leaf tobacco dealer, exporter, importer and general merchants. Petitioner claims that interests received from savings deposit with PhilTrust, interests received from money market placements and interest on Land Bank Bonds and cash dividends received from Philippine Long Distance Telephone Company (PLDT) and Tabacalera Industrial Development Corporation of the Phils. are not

Industrial Development Corporation of the Phils. are not effectively connected with its trade or business.

Furthermore, pursuant to Section 24(c) and (d) of the NIRC, dividends and interest are subject to final tax. To include them again as subject to branch profit remittance tax under the same Section 24(b)(2)(ii) would be contrary to law. Rightfully so petitioner has sufficiently established a right to be refunded the amount of branch profit remittance tax paid on these interests and dividends which were included as part of the branch profits for 1985 (partial) and 1986.

Consequently, following Revenue Memorandum Circular No. 8-82 and the jurisprudence cited, the tax base should be the amount applied for with the Central Bank for remittance without prior deduction of the 15% branch profit remittance tax. Hence, the tax refund should be computed as follows:

Gross Amount Remittable		P20,988,453.04
Less: Income subjected to final tax:		
Dividends		
1985 (Exhs. S-1 to S-17)	P590,008.64	
1986 (Exhs. W-1 to W-16)	10,041.51	
Interest on Savings Account-Philtrust		
1985 (Exhs. T-1 to T-12)	125,268.97	
1986 (Exhs. X-1 to X-12)	56,285.37	
Interest on Money Market Placements		
1985 (Exhs. U-1 and U-2)	24,244.44	
Interest on Land Bank Bonds		
1985 (Exhs. V-1 and V-2)	2,730.00	
1986 (Exh. Y-1)	2,730.00	811,308.93

Amount subject to 15% branch profit remittance tax	P20,177,144.11
15% branch profit remittance tax	P 3,026,571.62
Less: Amount of branch profit tax paid	3,148,267.96
Amount refundable to petitioner representing overpaid 15% branch profit remittance tax on interest and dividends	P 121,696.34

WHEREFORE, respondent, Commissioner of Internal Revenue, is ordered to refund in favor of petitioner, Compañia General De Tabacos De Filipinas, the amount of P121,696.34, representing overpaid 15% branch profit remittance tax on interest and dividends received. No costs.

SO ORDERED.

Quezon City, Metro Manila, August 23, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the above 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
Presiding Judge
Court of Tax Appeals