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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROHM AND HAAS PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3216

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal by petitioner from the decision of the Commissioner of Internal Revenue dated February 16, 1981 assessing against and demanding from petitioner the amount of P314,685.99 as withholding tax at source inclusive of surcharges and interests.

Petitioner for the year 1971-1974, accrued as liability the total amount of P1,639,162.48 representing royalties due Rohm and Haas Company, with address at Independence Mall West, Philadelphia, Pennsylvania, U.S.A., which amount is broken down as follows:

1971	....	P 201,004.30
1972	....	247,067.87
1973	....	485,055.46
1974	....	706,034.85
	Total	P1,639,162.48

Upon remittance of the aforementioned royalties, petitioner withheld and paid the total amount of P573,706.84 representing 35% withholding tax.

Due to Central Bank restrictions, petitioner was unable to remit royalties when the liability to the licensor, Rohm and Haas Co., accrued.

As a result of respondent Commissioner's position that the duty to withhold and pay the withholding tax on royalties arises upon accrual thereof, respondent in his letter of demand dated April 30, 1979, assessed petitioner for alleged deficiency withholding tax at source for the 3rd and 4th quarters of 1971 to 1974 in the amount of P312,698.25 which resulted from the imposition of surcharges, interests and compromise penalties for alleged late payment of withholding tax.

Petitioner, through its auditors, contested the said assessment, through a letter filed with respondent's office on June 11, 1979.

In a letter dated February 16, 1981, which was received by petitioner on March 11, 1981, respondent revised his previous assessment and demanded payment for deficiency withholding tax at source during the 3rd and 4th quarters of the years

1971 to 1974 with amount of P314,685.99. This assessment was premised on BIR Ruling No. 71-003, the relevant portion of which states:

> "In your letter, you contended that the 35% withholding tax should be based on actually remittable amounts under Central Bank regulations and not on the entire amount due and payable to the non-resident foreign corporation. This contention has no legal basis. <u>Withholding tax is not dependent on remittance of the income payable to the non-resident foreign corporation but on accrual thereof.</u> x x x"

The only issue in this case is whether or not the liability to withhold and pay the income tax-at-source on royalties arises upon the actual remittance or payment of the royalties and not upon their accrual.

We hold that the liability to withhold and pay the income tax on royalties arises upon the actual remittance or payment of the royalties and not upon the accrual thereof.

We have so held on the case of Bayer Pharmaceuticals, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2846, promulgated on March 16, 1979, wherein we stated as follows:

> The lone question tendered for resolution is whether or not the obligation to withhold and pay income tax-at-source on the royalties is upon the accrual of the royalties or upon the actual remittance or payment thereof.

Petitioner maintains that there was no obligation to deduct, withhold, and pay the withholding tax in 1972 since the royalties could not be remitted due to Central Bank restrictions. In submitting, however, that the liability to withhold and pay the income tax withheld at source from royalty payments to a non-resident foreign corporation, like Bayer Aktiengesellschaft, Leverkusen Bayermerk, is at the time of the accrual of said royalties and not at the time of the actual remittance or payment thereof, respondent relies mainly on Bureau of Internal Revenue Ruling No. 71-003, dated February 26, 1971, the pertinent portions of which are quoted as follows:

> "This refers to your letter dated February 16, 1971 requesting a ruling as to the basis of the withholding tax due on film rentals or royalties payable by you to non-resident foreign film corporations.
>
> " x x x
>
> "In your letter, you contended that the 35% withholding tax should be based only on actually remittable amount under Central Bank regulations and not on the entire amount due and payable to the non-resident foreign corporation. This contention has no legal basis. Withholding tax is not dependent on remittance of the income payable to the non-resident foreign corporation but on accrual thereof. Such being the case, although a portion of the amount due to the non-resident foreign corporation cannot be remitted on account of Central Bank restriction, the tax due on said

portion should be deducted and withheld as if there is no restriction.

> 'Restricted funds. - In connection with the restriction on the transfer of funds from U.S. to persons in Norway, Denmark, the Netherlands, Belgium, Luxembourg and France, the tax should be withheld in the same manner as if no restriction existed. In custodian accounts, the name of the foreign bank or other foreign person should be entered on the ownership certificate, and an amended ownership certificate filed as soon as the actual owner is disclosed.' (CCH, 1969, Vol. 5, par. 4875.405)

In view thereof, this Office believes and so holds that the 35% withholding tax should be deducted and withheld on the entire amount of film rentals or royalties payable to the non-resident foreign film corporations including that portion which, on account of Central Bank restrictions, cannot as yet be remitted abroad."

As expressly stated therein, the Bureau of Internal Revenue ruled that withholding tax is not dependent on remittance of the income payable to the non-resident foreign corporation but on accrual thereof. And as such, although the income cannot be remitted on account of Central Bank restrictions, the tax due thereon should be deducted and withheld as if there is no restriction.

The statute involved is Section 53(b)(2) of the National Internal Revenue Code, the controlling provisions of which read as follows:

> "Sec. 53(b)(2) Non-resident foreign corporations. - In the case of foreign corporations subject to tax under this Title, not engaged in trade or business within the Philippines, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in Subsection (b) (1) of this section, x x x , a tax equal to 35 per cent thereof. This shall be returned and paid the same manner and subject to the same conditions as provided in Section 54. x x x "

And Section 53(b)(1) of the same Code pertinently provides:

> (b) Non-resident aliens and foreign corporations - (1) Non-resident aliens. - Every individual, corporation, partnership, or association, in whatever capacity acting, including a lessee or mortgagor of real or personal property, trustee acting in any trust capacity, executor, administrator, receiver, conservator, fiduciary, employer, and every officer or employee of the Government of the Republic of the Philippines having the control, receipt, custody, disposal, or payment of interest dividends, rents, royalties,

> salaries, wages, premiums, annuities, compensation, remunerations, emoluments, or other fixed or determinable annual, periodical, or casual gains, profits, and income, and capital gains, of any non-resident alien not engaged in trade or business within the Philippines, shall (except in the cases provided in sub-section (a)(1) of this Section) deduct and withhold from the annual, periodical, or casual gains, profits, and income, and capital gains, a tax equal to 30% thereof.
>
> xxx xxx xxx

These provisions, by the way, were merely imported and copied almost verbatim from similar withholding tax provisions of the United States Revenue Code [Section 143(b)]. Accordingly, in consonance with settled rules of statutory construction, the interpretation they have received in the United States have authoritative effect in the proper construction and interpretation of our law.

Thus, as correctly noted by petitioner and which is not disputed by respondent:

1. In arriving at BIR Ruling No. 71-003, dated February 26, 1971, our Bureau of Internal Revenue quoted as authority the excerpt of a United States Internal Revenue Service ruling which is found at par. 4875.405 of CCH, 1969, Volume 5. It appears that the said U.S. ruling is actually Mimeograph Ruling No. 5075, which was issued by the Office of the Commissioner of Internal Revenue, Washington D.C., on July 8, 1940 and can be found at the Cumulative Bulletin 1940-2, at page 141.

2. The said Mimeograph Ruling No. 5075 has been declared obsolete by the United States Internal Revenue Service itself in its Revenue Ruling No. 70-293. (U.S. Internal Revenue Bulletin No. 1970-23, dated June 8, 1970) It is thus evident that in issuing its BIR Ruling No. 71-003 on February 26, 1971, our own Bureau of Internal Revenue has relied on a United States Internal Revenue Service ruling that has already been overruled, the same having been declared obsolete as of June, 1970.

3. Following the decision of the United States District Court in L.D. Caulk Co. vs. United States, 116 F. Sup p . 835, rendered on November 19, 1953, to the effect that corporation which held licenses under patents owned by non-resident aliens who as a result of blocking proclamation were forbidden right to receive or dispose of royalties was not bound to withhold tax before payment of royalties, the rule that is now observed in the United States is that the obligation to withhold and pay the tax is upon payment or remittance of the income to a non-resident alien.

In the L.D. Caulk Co. case, where the factual setting, law involved and issue litigated are practically on all fours with the case at bar, plaintiff, a Delaware corporation, held licenses under patents owned by two non-resident aliens, Robert Doge and Emmanuel de Trey. Both patentees were Swiss. Under the licensing agreements, plaintiff obligated itself to pay royalties to Doge and de Trey. In its treatment of the impact of royalties on its operations, plaintiff, adhering to the accrual method of accounting, entered net royalties and withheld taxes as accrued liabilities of 1941 and 1942, the periods involved in the case. Thus, 1941 and 1942 royalties and taxes were set up as accounts payable on plaintiff's books and as part of its cost of doing business for those years. No withholding returns for non-resident aliens Doge and de Trey were prepared for 1941 or 1942. While the critical issue is when the returns were due for royalties attributable to sales made by plaintiff during the years 1941 and 1942, the inquiry shifted from "when was the return due" to "when, if at all, was plaintiff required to withhold on the royalties. The "when" of the matter, not the "who" or the "what" was the point of dispute and inquiry because, as result of blocking proclamation, non-resident aliens were forbidden right to receive or dispose of royalties due them under contract with corporation which held licenses under aliens' patents. (L.D. Caulk Co. vs. United States, 116F. 835, 840.) Stated otherwise, the question as to when to withhold the tax from the 1941 and 1942 royalties arose because, although the royalties were accrued in the plaintiff's books in 1941 and 1942 as liability to the non-resident licensors, the same could not be paid or remitted to the latter as a result of a blocking proclamation.

The United States Federal Court ruled that where, as result of blocking proclamation, non-resident aliens were forbidden right to receive or dispose of royalties due them under contract with corporation which held licenses under aliens' patents, such aliens had no "gains, profits and income" within internal revenue statute requiring all persons having control, receipt, custody, disposal or payment of fixed or determinable annual or periodical gains, profits, and income of any non-resident alien to withhold tax and, therefore, no necessity of filing withholding tax return devolved on corporation while corporation retained blocked royalties. The net result is that the obligation to withhold and pay the tax is upon payment or remittance of the United States derived income to the non-resident recipient. Because of its strong persuasive force, if not controlling effects, on the present case, we will quote at length from the decision.

> "The onus of the withholding requirement on plaintiff is imposed by S 143(b), I.R.C.: "All persons, in whatever capacity acting, * * * having the control, receipt, custody, disposal, or payment of * * * fixed or determinable annual or periodical gains, profits, and income * * * of any non-resident alien * * * shall deduct and withhold from such annual or periodical gains, profits, and income a tax * * *." On the whole, this provision does not concern itself with "when" the withholding should take place. Rather, it simply specifies "who" shall do "what". However, this much light it does shed. The duty to withhold presupposes the existence of "annual or periodical gains, profits, and income". The section directs the withholding from such sums as are identifiable as "gains, profits, and income" of the nonresident alien. Obviously, if there are no such "gains, profits, and income", the duty to withhold is nonexistent. On the other hand, if there are such sums available, the statutory language is inconclusive in deciding "when" the withholding duty arose.
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> I do not ground my decision on any subtlety of construction, but I do advert, in fact, to it. Were the royalties "gains, profits, and income" to the aliens Doge and de Trey while plaintiff retained them under these circumstances? I think

not upon a realistic view of the matter. The blocking proclamation plucked every element of control over the funds from the alien's theoretical bundle of ownership rights. This loss of essence of private ownership occurred while the royalties were still in plaintiff's possession, since the blocking freeze applied to individual debtors of Swiss nationals. As soon as royalties accrued to the aliens under the contract, this crazy predicament faced them: they had theoretical right to collect the royalties but were forbidden right to receive them or dispose of them. No economic advantage was theirs. Such a hollow "right" does not have the core of benefit sufficient to constitute "gains, profits, and income". Even the ubiquitous doctrine of constructive receipt of income has no tentacle long enough to reach these royalties. Cf. Reg. 103, S 19-42-2. As said with reference to S 22-(b)(2), I.R.C., in Industrial Trust Co. v. Broderick, 1 Cir., 94 F.2d 927, at page 930, "Throughout the Revenue Laws the words gain, profit, or income mean an actual, not fictitious gain or profit * * *." Certainly, these were not "income" and, if "gains, or profit", were unrealized and highly artificial. Further, the aliens here had no power to command payment to themselves or others, unlike the donor of the interest coupons in Helvering v. Horst, 311 U.S. 112, at page 118, 61 S.Ct. 144, 147, 85 L.Ed. 75, where it is said: "The power to dispose of income is the equivalent of ownership of

> it." It would seem, then, there being no "gains, profits, or income" of the aliens at least during the time plaintiff retained their blocked royalties, no withholding duty devolved on plaintiff and no penalties are proper."

Against this backdrop, the situation here presented, while the royalty in the amount of ₱69,529.00 (although was set up in the books of petitioner as a liability to Bayer) could not be remitted to Bayer due to Central Bank restrictions at that time, would not create "gains, profits or income" to non-resident foreign corporation Bayer. No economic benefits were derived by Bayer; hence, there was no income subject to withholding of tax-at-source. Accordingly, petitioner had no duty to withhold and pay the tax.

Even more, adopted basis for the decision of the United States Court is the legislative history of Section 143(b) of United States Tax Code, from which Section 53(b) of our National Internal Revenue Code was practically copied, and hints derived from the published pronouncements of the United States Bureau of Internal Revenue and Courts, which disclose that duty of withholding arises at <u>time of payment</u>. We quote from <u>L.D. Caulk</u>:

> "Present S 143(b), I.R.C., is traced back to the Act of October 3, 1913. Paragraphs D and E of that Act are pertinent. Paragraph D provided: "* * * all persons * * * having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal

income tax * * *." Paragraph E of the same Act in part specified: "All persons * * * having the control, receipt, custody, disposal, or payment of * * * other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year * * * who are required to make and render a return in behalf of another, as provided herein, * * * are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax * * * and they are each hereby made personally liable for such tax." Paragraph D is explicit in directing withholding from the "payment" while its companion section authorizes the deduction and imposes personal liability on the withholding agent. In its Report to the House of Representatives on the Bill, the Committee on Ways and Means said, "Probably two-thirds of the income tax proposed as to individuals would be deducted and withheld at the source of the income and paid in full to the Government. * * * By this method the amount of tax due or to become due upon every fixed or determinable annual income is withheld and paid to the Government before the income reaches the taxpayer". Nonresident aliens as well as citizens were subject to this withholding system.

In the 1916 Act, quoted paragraph D was repeated as section 8(d) under the significant heading "Returns".

Paragraph E, as quoted, was repeated as section 9(b) under the heading "Assessment and Administration".

By the Revenue Act of 1917, paragraph 8(d) of the 1916 Act (par. D of the 1913 Act) was repealed so as to render unnecessary any "withholding at the source of the tax due on profits or incomes of resident taxable persons". Information at the source was substituted. According to the House Report, this change was made for "a more effective administration of the law" and the saving of annoyance and expense to the taxpayers and withholding agents". By the same Act, paragraph 9(b) of the 1916 Act (par. E of the 1913 Act) was amended to limit withholding at the source to nonresident aliens. The Act further included interest from tax-free covenant bonds as a subject of withholding.

The Revenue Act of 1918 made no change in the pertinent language of the amended S 9(b) but did increase the withholding rate and renumbered the sections as 221. However, the Report of the Ways and Means Committee of the House aids search in its comments on "Collection at the Source": "The proposed bill, as under existing law, requires only the withholding of income in the case of payments by individuals, corporations, and partnerships of fixed and determinable annual or periodical gains, profits, and income to nonresident alien individuals or nonresident corporations". This comment is an indication the intent of Congress was as expressed in paragraph D of the 1913 Act and was continued in S 9(b) of the 1917 Act when the former provision was repealed. No change was intended when the withholding provisions were delimited to apply only to nonresident aliens. The time of payment was the time when the withholding duty arose.

The Revenue Act of 1921 made no amendments to the Section pertinent to inquiry, nor did the Act of 1924. However, both the House Report and the Senate Report on the 1924 Act have this comment: Section 221: Subdi-vision (a) of this section of the present law provides for the withholding of a tax, on fixed or determinable income paid to a nonresident alien individual, or a partnership composed in whole or in part of nonresident aliens." Both also refer to "requiring the withholding of tax from payments" to a partnership.

Rates of withholding were increased by the Revenue Act of 1926, and the Conference Report of the Committees of the House and Senate refers to the effect of the hike in rates: "This amendment requires the withholding of a tax of 12 1/2 per cent in respect of all payment of income made before the enactment of this Act to foreign corporations specified below. * * * Because the persons making payments * * * had no notice that the corporation income tax would be increased, the withholding rate is not increased with respect to payments made before the enactment of this Act; * * *". Although reference is to foreign corporations, the withholding on payments to them is but as part of the same system embracing individuals.

In the Revenue Act of 1928 a wholesale departure was made from the arrangement of prior Acts. S 221 became S 144. In commenting on part (a) of the Section, both the House Report and the Senate Report stated: "The present law provides for the withholding at source, in the case of bonds, of a tax of 5 per cent of the interest when paid to nonresident aliens. * * *."

Under the Revenue Act of 1932, the section was renumbered 143 and the rates were increased without affecting the aspect of the provision under consideration.

The Revenue Act of 1934 made no changes bearing upon our inquiry, but again in the House Report and in Senate Report references to withholding of tax on interest obligations were couched in terms of payment.

The 1936 Act did not change the terms of S 143 as they affect the problem under investigation. However, a comment in the Senate Report confirms the prior statements: "Section 32 of the existing law provides that the tax withheld at the source under section 143 from payments to an individual taxpayer shall be a credit against such taxpayer's tax".

Reference is also made a "withholding in the case of payments to foreign corporations".

The House Report, which the Senate adopted, on the Revenue Act of 1937 is equivocal in stating with reference to a change in S 211(a): "There will be withheld from the amounts receivable by a nonresident alien taxed under the new provisions the amounts required to be withheld under section 143 of the present law". "Receivable", of course, is descriptive of minute divisions of time from the first moment of accrual to the last second before receipt of payment.

The House Report on the Revenue Act of 1938 appears to reaffirm the earlier interpretations even if the 1937 Report be viewed as a deviation. In referring to consent dividends, the Committee on Ways and Means reported: "In case any shareholder making a consent is a person subject to the provisions of section 143(b) and section 144, relating to the deduction and withholding of tax at the source, section 28(d)5 requires that such consent filed by the corporation with its return shall be accompanied by cash * * * equal to the amount which the corporation would have been required to deduct and withhold by such section 143(b) or 144 if the amount specified in such consent had been paid to such shareholder, on the last day of the taxable year of the corporation, in cash as a taxable dividend." The Senate Report used same language in referring to S 143(b).

No pertinent comment was found in the Committee Reports on the other Revenue Acts down to 1941 and 1942, the tax years in question. However, one further reference is made to a later committee report reflecting current thinking. The House Report on the Revenue Act of 1950 in referring to a proposed S 1311(a) states: "This subsection also provides that any person required to deduct and withhold a tax under section 143 or 144 * * * on the payment of a dividend shall not be required to deduct and withhold a tax under this section upon such payment".

Regulations promulgated by the Commissioner contain abundant references to payment as indicating the crystallization of the withholding duty. Treasury Regulations 111, S 29.143-1(a) states: "Withholding of a tax of 30 per cent * * * is required in the case of fixed or determinable annual or periodical income paid to a nonresident alien individual * * *". The subsections of S 29.143 are replete with references to withholding upon payment, such as "The tax must be withheld at the source from the gross amount of any distribution made by a corporation" (29.143-1); "* * * an annual return * * * showing the amount of tax required to be withheld from each nonresident alien * * * to which income other than interest was paid during the previous taxable year" (29.143-7); "Tax withheld at the source upon * * * income paid to nonresident alien fiduciaries * * *" (29.143-9).

And even on the question of whether withholding should be at the rate in effect at the time payments were <u>due</u> or at the rate in effect at the time payments were actually <u>made</u>, the United States Court ruled that the time payment is <u>made</u> governs the rate. We again quote from the <u>Caulk</u> decision:

> "On the issue of whether withholding should be at the rate in effect at the time payments were due or at the rate when payments were actually made, the Bureau has ruled the time of payment governs the rate. O.D. 167, 1 C.B. 192; I.T. 1521, I-2 C.B. 197; I.T. 3020, XV-2, C.B. 106; I.T. 3291, 1939-1, C.B. 140, Cf. I.T. 3535, 1942-1, C.B. 129; I.T. 3342, 1940-1, C.B. 58. In fact, language sufficiently broad to encompass the problem was employed in G.C.M. 2467, 7-2 C.B. 188 (modified on other grounds in G.C.M. 8594, 9-1 C.B. 354): "* * * withholding is only required when * * * income is paid to a nonresident alien and at the rate in force at the time of payment."

As in the above, so Southern Pacific Railroad Co. v. C.I.R., 21 B.T.A. 990, held rate of withholding was that which was effective on the date of actual payment. In that case, the petitioning company contended unsuccessfully for a result similar to the one here sought by the Government. Bond interest due and payable during 1914-1917 could not then be paid to nonresident aliens because of war restrictions. It was, in fact, paid in 1921 and 1923,

> after the withholding rates had been increased. The company argued the former, lower rates should apply because the interest was then due; sufficient funds were available at all times for its payment; and the date of constructive receipt by the bondholders gave rise to the duty of withholding. The Board of Tax Appeals rejected these arguments, saying, 21 B.T.A. at pages 995 and 996: "The petitioners did not and were not called upon to pay the interest until 1923, and the nonresident aliens did not and for all that appears could not receive the interest until then * * *. When the interest was actually paid to and received by the bondholders they received income taxable at the rate then effective, and the petitioners were under the duty of paying so much thereof as by the statute then in effect they were required to withhold and pay." Oblique support is thus given to adoption of the time of payment as the maturation point of the withholding duty, payment being both an easily recognizable act of objective significance and a standard safeguarding the collection of the proper amount of tax."

What possible ground can there be for us not to apply to petitioner the ruling of the United States Federal Court in L.D. Caulk, supra, for which Bayer Pharmaceuticals, Inc., is similarly situated? A decision buttressed by the law, which is closely if not exactly similar to our law, reason and logic is not to be simply brushed aside to accommodate a ruling of our own Bureau of Internal Revenue which merely quoted as authority the excerpt of a United States Internal Revenue ruling but which excerpt has been declared obsolete by the same United States Internal Revenue Service as a result of the L.D. Caulk decision. As we view this legal problem, we find no cogent and valid reason to modify, much less depart from he conclusion reached in L.D. Caulk, as expressed in the abovequoted opinion of the United States Court there, and the same should resolve the identical issue now brought before us in this proceeding. We cannot ignore the well-settled principle of construction that since our income tax law was practically copied from that of the United States, the interpretations it has received in the United States have authoritative effect in the proper construction and application of our law. More so in the case of our withholding tax-at-source provision embodied in Section 53(b) of our National Internal Revenue Code which, as shown above, was merely imported and copied almost verbatim from Section 143(b) of the United States Tax Code during the year involved in the L.D. Caulk decision. Accordingly, the conclusion reached in L.D. Caulk, which is followed by the United States Internal Revenue Service - that the time of payment of the royalties is the maturation point of the withholding duty - should govern this proceeding.

Not much need be said on respondent's assertion that, based on the report of the investigating examiner, nothing is stated that petitioner attempted to remit the royalties to Bayer. By respondent's own decision, it is explicitly declared "that the royalties in the amount of P69,529.00 were not remitted by BPI (petitioner herein) to Bayer due to Central Bank restrictions." (Exh. "5," Exh. "E-1"," p. 30, BIR records) Since the royalties could not be remitted to Bayer due to Central Bank restrictions, as stated by respondent himself in his decision appealed from, surely, respondent's

> counsel should not expect petitioner to make efforts, albeit unlawful, to remit the same. And on respondent's point that since the royalties had been accrued in petitioner's books the income thereon became subject to withholding even if remittance was effected later, suffice it to say that the accrual of the royalties in petitioner's books, as held in the L.D. Caulk, did not amount to "gains, profits and income" on the part of non-resident Bayer and, therefore, no necessity to withhold tax devolved on petitioner.
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> We, accordingly, rule that since the royalties in question could not be paid or remitted in 1972 by petitioner Bayer Pharmaceuticals, Inc., to non-resident foreign corporation Bayer Aktiengesell-schalft, Leverkusen Bayermerk due to Central Bank restrictions, petitioner was under no obligation to withhold and pay income tax-at-source on said royalties and, therefore, it is not liable for the deficiency withholding tax-at-source assessment of respondent Commissioner of Internal Revenue x x x."

WHEREFORE, the decision of respondent Commissioner of Internal Revenue assessing against petitioner, Rohm and Haas Philippines, Inc. the sum of P314,685.99, inclusive of surcharges and interests, as withholding tax at source is hereby reversed.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 11, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding 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