REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GRAPHICS INTERNATIONAL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4220

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

2/10/93

D E C I S I O N

This case involves a claim for a refund in the amount of P243,723.00 allegedly representing creditable taxes withheld on royalties.

Petitioner is a resident foreign corporation duly licensed and doing business in the Philippines and is engaged in the manufacturing, printing, and sale of printing equipment and merchandise. It is also the licensor in the Philippines of Hallmark and other greeting cards which are exclusively marketed by National Bookstore, Inc. ("NBS"). There are three basic types of greeting cards exlusively marketed by NBS for Petitioner, namely, Christmas, Everyday and third Party greeting cards.

Petitioner is paid royalties by NBS, net of withholding taxes.

For the fourth quarter of 1985, Petitioner earned royalties amounting to P1,624,828.00 on sales of Everyday and Christmas cards. The amount of P243,724.20 representing royalty taxes was withheld, paid and remitted to the BIR on January 10, 1986. For royalties on Christmas cards, a 20% allowance for sales returns was provided. An itemized computation of the royalties and royalty taxes for the fourth quarter of 1985 is as follows:

Item	Royalty	15% Tax
EVERYDAY CARDS:		
Ambassador Everyday	P 11,280.00	
Hallmark Everyday	488,150.00	
ST Property	46,130.00	
Peanuts	61,500.00	
Marty Links	3,550.00	
Joan Walsh Anglund	6,100.00	
Peanuts Local Design	100.00	
Sublicenses	13,610.00	
Total-Everyday Cards	630,420.00	P 94,563.00
CHRISTMAS CARD SALES:		
Ambassador Christmas	P 12,660.00	
Hallmark Christmas	365,625.00	
Ambassador Christmas	21,480.00	
Hallmark Christmas	843,245.00	
Gross total Christmas Cards	1,243,010.00	
Less: 20% sales returns allow.	248,602.00	
Total-Christmas Cards	994,408.00	149,161.20
T O T A L	P1,624,828.00	P243,724.20

(See Exh. "A", p. 52, CTA rec.; Petitioner's Memorandum, p. 99, CTA rec.)

Petitioner's fourth quarter withholding tax of P243,724.20 was included in the total amount of P1,618,842.50 which was withheld, paid and remitted to the BIR by NBS on January 10, 1986 (Exhs. D & E, p. 55, CTA rec.). The said amount of P1,618,842.50 represented withholding taxes allegedly withheld by NBS on royalties earned by its various suppliers, authors and publishers, including Petitioner, for the fourth quarter of 1985.

In 1986, Petitioner's annual corporate income tax return showed an income of P34,465.00 and deductions of P154,011.00 or a net loss of P119,546.00. Petitioner claimed the amount of P243,724.00 as tax credit in its 1986 annual income tax return (Exhs. G & G-1, p. 57, CTA rec.). And because of this net loss, the amount of P243,724.00 representing taxes on royalties earned by Petitioner in 1985 but withheld, remitted and paid by NBS on January 10, 1986 is therefore, according to Petitioner, refundable pursuant to then Section 53(c) of the National Internal Revenue Code as amended by P.D. 1800 which provides:

> 'Section 53(c) of the National Internal Revenue Code as amended by Presidential Decree No. 1800 provides:
>
> "(c) Withholding tax on royalties - Royalties (except payments of any kind to mining claim-owners of lessees of mining

> rights pursuant to any kind of agreement) received by individuals residing in the Philippines and domestic and/or resident corporations from any person whether natural or juridical shall be subject to withholding tax at source at the rate of fifteen (15%) per cent thereof. The tax shall be withheld by the payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 54 of the National Internal Revenue Code: Provided, however, That the tax withheld under this sub-paragraph shall be credited against the income tax liability of the recipient taxpayer for the taxable year." (Underlining supplied)

'As amended, the above tax shall be withheld by the payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 54 of the National Internal Revenue Code, which states:

> "SEC. 54. - Returns and payment of taxes withheld at source. - (a) Quarterly returns and payment of taxes withheld. - Taxes deducted and withhled under Section fifty-three shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval; of the Minister of Finance, require these witholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each

> calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made." (Underlining supplied)

Hence, this claim for refund.

This claim was objected to by the Respondent on the following grounds: (1) that the allegation does not appear to be in accord with the letter of the Petitioner to the Respondent dated January 8, 1988 which categorically stated that the royalties in the total amount of P1,624,828.67 were received from the NBS in 1985 and not 1986 as it is later on claimed; (2) failing to prove that the royalties were received in 1986 and not in 1985, the royalty tax withheld in the amount of P243,724.00 is not creditable but a final tax was correctly applied pursuant to P.D. 1994 which took effect on January 1, 1986 which provides:

> "xxx xxx xxx
>
> (e) Tax on royalties - Royalties shall be subject to 15% final tax, the return and payment of which shall be in accordance with Section 51 and 52 of this Code."

The issue on whether or not Petitioner is entitled to a refund of P243,724.090 is only a corollary and in fact dependent upon the resolution of the main issue on whether or not the royalties were received in 1985 or were they received in 1986. If the royalties were received in 1985, then the law applicable is then Section 53(c) of the Tax Code as amended by P.D. 1800 and is therefore a creditable withholding tax. Hence, refundable. Otherwise, the law applicable is P.D. 1994 which took effect on January 1, 1986 and which changed the nature of the 15% withholding tax on royalties from a creditable to a final one. And thus, not refundable.

The first ground for objection raised by the Respondent in this claim for refund, i.e., "this allegation does not appear to be in accord with the aforesaid letter dated January 8, 1988 wherein petitioner categorically states that the royalties in the total amount of P1,624,828.67 were received from the National Bookstore, Inc. in 1986 and not 1985 as it now claimed" has already been sufficiently clarified by Petitioner in his Reply and more so in his Reply Memorandum. For indeed, how can a royalty tax withheld and paid on January 10, 1986 pertain to royalties earned in any quarters of 1986? Indubitably, it pertained to royalties earned in 1985, more specifically to the fourth quarter of 1985. Such was duly supported and proven not only by testimonial but also by various evidences presented by Petitioner.

Having proven that the royalties were realized and earned in 1985 although actually received in 1986, the royalties in question were thus subject to the 15% creditable withholding tax and were not covered by P.D. 1994 which took effect on January 1, 1986 which changed the nature of the 15% withholding tax on royalties from a creditable to a final one. And since the corresponding withholding tax was withheld and paid in 1986, correctly so, a claim for refund was being made for taxable year 1986 when Petitioner incurred a loss. Suffice it to say, that it put to rest the second ground for objection raised by the Respondent.

IN VIEW OF THE FOREGOING, the petitioner should have been granted the refund sought if only it declared the refundable amount as part of its gross income. Unfortunately, the petitioner did not. Such requirement of law if not satisfied is fatal to the petitioner's case. The applicable provision of law is Section 54(f) (now Section 51) of the Tax Code particularly subsection (f) as quoted:

> "xxx xxx xxx
>
> "(f) Income of recipient. - <u>Income upon which any creditable tax is required to be withheld at the source under Section 53 shall be included in the return of its recipient but any excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 295</u>; if the income tax collected at source is less than tax due on his return, the difference shall be paid in accordance with the provisions of Section 51." (As amended by Batas Pambansa Blg. 41)

Revenue Regulation No. 13-78 (as amended by Revenue Regulation No. 6-85) Section 10 likewise has the same requirement, thus:

> "Sec. 10. Claim for tax credit or refund. - Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course <u>only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee</u> (BIR Form No. 1743) <u>showing the amount paid and the amount of tax withheld therefrom</u>." (Underscoring supplied).

Regulations issued by the implementing agency pursuant to the provisions of the law has likewise the force and effect of law.

This Court has, ***motu propio***, occassioned to interpret said provision of law in similar cases already brought before Us namely the **Citytrust Finance Corporation vs. Commissioner of Internal**

Revenue, CTA Case No. 4134, November 11, 1991 and the more recent case of BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4412 decided on August 17, 1992. Note that this issue has not been raised by either party during the trial and this Court has on its own take cognizance of the same as it constitutes a statutory requirement which if overlooked will prove detrimental to the interest of the government. This Court is certainly ready to protect a taxpayer's right if violated but will also be vigilant to do same for the government.

WHEREFORE, petitioner's claim for refund is hereby **denied** and accordingly this petition for review is dismissed.

SO ORDERED.

Quezon City, Metro Manila, February 10, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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
Presiding Judge
Court of Tax Appeals