REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILS., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5000

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 10 1995

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D E C I S I O N

This case involves a claim for the refund of the total amount of P6,800,000.00 representing the alleged five (5%) per centum excess payment of withholding tax on dividends paid to its US parent company in 1991 and 1992.

Petitioner is a corporation organized and existing under Philippine laws and is a wholly owned subsidiary of Procter and Gamble. Co., a non-resident foreign corporation domiciled in Ohio, U.S.A..

On June 6, 1991, October 30, 1991 and April 21, 1992, petitioner's Board of Directors declared cash dividends in the amounts of P10,000,000.00, P46,000,000.00 and P80,000,000.00, respectively. Petitioner withheld twenty (20%) per centum withholding tax on said cash dividends, paid the 20% tax to the BIR and with Central Bank approval remitted the net dividends to its parent company, Procter & Gamble Co, U.S.A. as follows:

CASH DIVIDENDS DECLARED	20% WITHHOLDING TAX	DATE OF WITHHOLDING TAX PAYMENT	NET DIVIDENDS REMITTED	DATE OF DIVIDEND REMITTANCE
P 10,000,000	P 2,000,000	06/19/91	P 8,000,000	06/30/91
46,000,000	9,200,000	11/07/91	36,800,000	11/27/91
80,000,000	16,000,000	04/28/92	64,000,000	05/19/92
P136,000,000	P27,200,000		P108,800,000	

On July 8, 1992, petitioner filed with the respondent, through the Appellate Division of the BIR, a claim for tax refund or tax credit of overpaid or erroneously paid withholding tax in the aggregate amount of six million eight hundred thousand pesos (P6,800,000.00) on the aforecited dividends. It was the contention of the petitioner that the correct rate of withholding tax on dividends remitted by a Philippine subsidiary to a U.S. parent company is fifteen percent (15%) only pursuant to Section 25(b)(5)(B) of the Tax Code and this was sustained by the Supreme Court in the case entitled Commissioner of Internal Revenue vs. Procter & Gamble Manufacturing Corporation and the Court of Tax Appeals, GR No. 66838, December 2, 1991. The amount of six million eight hundred thousand pesos (P6,800,000.00) overpayment or erroneously paid tax was computed as follows:

DIVIDENDS DECLARED	20% WITHHOLDING TAX PAID TO BIR	CORRECT RATE OF W/TAX: 15%	OVERPAYMENT (5%)
P 10,000,000	P 2,000,000	P 1,500,000	P 500,000
46,000,000	9,200,000	6,900,000	2,300,000
80,000,000	16,000,000	12,000,000	4,000,000
P136,000,000	P27,200,000	P20,400,000	P6,800,000

Considering that the two-year prescriptive period as provided by Section 230 (formerly Section 292) of the Tax Code for the purpose of appealing this case to this court was about to expire without any action yet on the part of the respondent, petitioner filed the instant petition for review on June 17, 1993.

Petitioner in support of its claim for excess withholding tax payments cited the decision of the Supreme Court in the case aforecited which allows the imposition of the 15% tax rate on dividends remitted to the US parent company pursuant to Section 25(b)(5)(B) of the National Internal Revenue Code.

Respondent for her part admits and denies certain facts as alleged in the petition for review but when it was her turn to present her evidence, she failed to submit any evidence against said claim. On the contrary, her counsel alleged that there was a favorable recommendation by the Examiner for the grant of the refund. She decided not to file a memorandum inasmuch as she believes that the only issue here is legal and has already been decided by the Supreme Court.

Therefore, the only issue in this case is whether or not the dividends remitted by petitioner to its parent company is subject to the preferential rate of 15% withholding tax pursuant to Section 25 (b)(5)(B) (previously Section 24(b)(1)) of the National Internal Revenue Code, as amended. The said provision is quoted hereunder for easy reference:

> (B) On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 50(a) of the National Internal Revenue

> Code, as amended, subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporation and the tax (15%) on dividends as provided in this subparagraph.

We agree with the petitioner that the case is not a case of first impression. In a similar case involving the same parties and the same issues, the Supreme Court affirming the decision of this court in CTA Case No. 2883, interpreted the above provision, as follows:

> The ordinary thirty-five percent (35%) tax rate applicable to dividend remittances to non-resident corporate stockholders of the 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," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation. In other words, in the instant case, the reduced fifteen percent (15%) 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. 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. It is important to note that Section 24(b)(1), NIRC, does not require that the US must give a "deemed paid" tax credit for the dividend tax (20 percentage points) waived by the Philippines in making applicable the preferred dividend tax rate of fifteen percent (15%). In other words, our NIRC does not require that the US tax law deem the parent-corporation to have paid the twenty (20) percentage points of dividend tax waived by the Philippines. The NIRC only requires that the US "shall allow" P&G-USA as "deemed paid" tax credit in an amount equivalent to the twenty (20) percentage points waived by the Philippines.

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With respect to taxes on income, the Philippines, by a treaty commitment, reduced the regular rate of dividend tax to a maximum of twenty percent (20%) of the gross amount of dividends paid to US parent corporation. xxx 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 Philippine 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. 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 or 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.

The applicability of the above jurisprudence is without doubt and entitles the petitioner to the refund of the five (5%) per centum excess payments of withholding tax on dividends it remitted to its parent company.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or issue a tax credit certificate in the amount of six million eight hundred thousand (P6,800,000.00) pesos to the petitioner representing the overpaid withholding tax on dividends remitted to its parent company, Procter & Gamble Co., USA.

No pronouncement as to cost.

SO ORDERED.

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