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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITH KLINE & FRENCH OVERSEAS CO., & SMITH KLINE & FRENCH INTERNATIONAL CO.,
Petitioner,

- versus - C.T.A. CASE NO. 3720

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

6/30/89

D E C I S I O N

The case simply addresses the question of whether petitioners have established a valid claim to the refund of alleged erroneously paid withholding tax at source on royalties due a non-resident foreign corporation not engaged in trade or business in the Philippines.

The petitioners are Smith Kline & French Overseas Company (SKFO), a foreign corporation duly licensed to engaged in business in the Philippines and Smith Kline & French International Company (SKFI), a non-resident foreign corporation not engaged in trade or business in the Philippines.

As it appears, for a three month period, i.e., October to December, 1981, petitioner SKFO accrued royalties due petitioner SKFI, USA; Rhone & Poulench, France and Janssen & Janssen Pharmaceuticals N.V., in the total amount of P471,599.58. Petitioner SKFO withheld the total amount of P165,059.85 (Exhs. A and A-1) representing 35% tax on said royalties and remitted the same to the government under the following official receipts:

CBC Receipt No.	Revenue Tax Receipt No.	Date	Amount	Exhibits
8010671	7721931	1-13-82	P74,294.58	B, B-1 B-2, B-3
8735224	8002017	1-25-82	74,338.64	C, C-1 C-2, C-3
8735222	8002019	1-25-82	14,622.00	D, D-1 D-2, D-3
8735223	8002018	1-25-82	3,804.63	E, E-1 E-2, E-3
		Total Payments	P165,059.85	

Said accrued royalties in the amount of P471,599.58 were based on the following percentages of net sales for the period in question, pursuant to agreements entered into by petitioner SKFO, and the non-resident foreign corporations named below:

Payee Corporations	Net Sales	Rate	Royalty Accrued	Tax Withheld
Smith Kline & French International				
Pharmaceutical Products	P8,364,981.15	5%	P418,249.07	P146,387.17
Consumer Products	23,433.64	3%	703.01	246.05

Rhone Poulenc-France				
Vials and others	68,320.88	6%	4,099.25	1,434.74
Tablets	753,557.87	5%	37,677.89	13,187.26
Janssen Pharma-ceuticals	543,518.12	2%	10,870.36	3,804.63
	TOTALS		P471,599.58	P165,059.85

Based on the above computation, petitioner SKFO accrued the amount of P418,952.08 as royalties due to the petitioner SKFI and paid the corresponding withholding tax of P146,633.22 (first two items above). The latter amount formed part of the total tax paid of P165,059.85. Per letter dated August 2, 1983 (Exh. H) the Technology Transfer Board (TTB) approved the licensing agreement between petitioners SKFO and SKFI (Exh. G), effective from December 8, 1978 (exh. G-3) and up to December 7, 1983 (Exh. G-4). Said approval was subject to certain amendments as follows:

> "x x x subject to the attached general terms and conditions of registration and the following:
>
> Pre-Registration Condition:
>
> Amendment of the Contract as follows:
>
> 1. To reflect in Art. III, Secs. 3.0 and 3.02 royalty rates of

> 3% of net sales on pharmaceutical products and 2% of net sales on consumer health products:"

(Exhs. H and H-1)

Accordingly, SKFO adjusted its intercompany account with SKFI in order to correct the overaccrued royalty due to the decrease in the approved royalty rates above-mentioned. (Exhs. J, J-1, J-2, K and K-1).

As a result of the qualified approval by the Technology Transfer Board, SKFO should have only accrued as royalties the total amount of P251,418.10 and withheld the amount of P87,996.33 as 35% tax thereon. Hence, there was an overaccrual of royalty of P167,533.98 (Exh. I) and a resulting overpayment of withholding tax by P58,636.89, broken down as follows:

Non-resident Foreign Corporation	Net Sales	TTB Approved Rates	Royalty Payment that should have been accrued	35% Withholding Tax
SKFI				
Pharmaceutical Products	P8,364,981.15	3%	P250,949.43	P87,832.30
Consumer Products	23,433.64	2%	468.67	164.03
		TOTALS	P251,418.10	P87,996.33

Consequently, the amount of P58,636.89 or the difference between the tax paid (P146,633.22) and the correct amount of tax that should have been paid (P87,996.33) (Exhs. I, I-1, I-2 and I-3) was erroneously withheld and paid to the government.

On January 13, 1984 petitioners filed their claim for refund (Exh. F) with the respondent's Bureau, likewise, the instant petition for review.

The case before Us presents no dispute as to the relatively simple material facts. After petitioners formally offered their evidence the respondent expediently submitted the case for decision on the basis of the pleadings sans the requisite BIR records probably "lost in the oblivion of forgotten lore." And, since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have submitted the truth of all the material and relevant allegations for the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted *(**Bauermann v. Cases**, 10 Phil. 386; **Evangelista v. De la Rosa, et al.**, 76*

Phil. 115), respondent, as pointed out by petitioner may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidence presented, which was not disputed by respondent sufficiently establishes petitioner's right to the refund." ***(Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue,*** *CTA Case No. 3232, June 26, 1985).*

Going by such pronouncement and insofar as the same is brought to bear upon the petitioner's case at bar, there can be no occasion to speculate upon what rule should apply.

All told, the basis of the claim is not short of specific support in terms of tractable data openly laid and fully disclosed, as such deserves the credence that should normally be accorded in the absence of contrary evidence of relevance and competence required to bash that patina of validity over the claim. And the records make it clear that the requisite statements or certifications of the tax withheld, paid and remitted upon which tacked the refundable amount claimed could readily furnish the legal basis for a definite resolve but appropriate action thereon appears dawdled in a limbo of lingering verification, which comes as an aggravated chutzpah, so to speak. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expeditious and competently responsive action.

Suffice it therefore, both the circumstances obtaining and the relevant legal standards compel the conclusion that petitioners have proved entitlement to a favorable determination for the desired relief.

WHEREFORE, the refund of the amount sought is hereby ordered the respondent. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
CONSTANTE C. ROAQUIN
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