Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

STANDARD CHARTERED BANK
(Phil. Branch),
Petitioner,

- versus - **C.T.A. CASE NO. 4242**

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x ---------------------- x

5/19/94

D E C I S I O N

Before this Court is a Petition for Review filed by the petitioner seeking a refund of the total amount of ₱713,870.95, representing alleged overpaid branch profit remittance taxes during the year 1985.

Petitioner is a resident foreign corporation duly licensed by Philippine laws to engage in business with principal office at Petrophil Building, Makati Avenue, Makati, Metro Manila.

In a letter dated May 30, 1986, petitioner's application for profit remittance to its head office abroad was approved by the Central Bank in the amount of ₱31,727,598.00.

On June 4, 1986, petitioner paid the 15% branch profit remittance tax in the amount of ₱4,759,139.70. [CB Confirmation Receipt No. B-9241779]

On January 21, 1980, the BIR 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 <u>imposed on the profit actually remitted abroad</u> and not on the total branch profit out of which the remittance is to be made."

Relying on the above-mentioned Ruling of January 21, 1980 petitioner filed on March 1, 1988 a request for refund or tax credit, dated February 29, 1988, in the amount of ₱713,870.95, for allegedly overpaid branch profit remittance tax for 1985, computed as follows:

Profit for remittance after income tax earned before profit remittance tax	₱ 31,727,598.00
Less: 15% profit remittance tax paid	4,759,139.70
Branch profit actually remitted abroad	26,968,458.30
Multiplied by rate of profit remittance tax	x 15%
Remittance tax that should have been paid	4,045,268.75
Less: Profit remittance tax paid	4,759,139.70
Overpayment	(₱ 713,870.95)

To date, respondent has not acted on the foregoing claim. Hence, petitioner filed this petition for review on March 14, 1988 as a way of tolling the prescriptive period set forth in Section 230 of the 1988 Tax Code.

In his answer to the petition for review, respondent alleged as special and affirmative defenses, among others, that:

1. Petitioner failed to fully substantiate its entitlement to a tax refund or tax credit on branch profit remittances; it did not submit its Financial Statement needed to determine and compute petitioner's tax base and tax liability, Petitioner did not make sufficient averments as to the dates when the remittances were made; how much remittance was actually allowed as per its board resolution; and when the alleged profits were realized, in order for respondent to have basis to determine whether said taxes paid by petitioner were correctly computed and paid on time;

2. Revenue Memorandum Circular No. 8-82 states that "the 15% branch profit remittance tax is imposed & collected at source, necessarily the tax base should be the amount applied for by the branch with the CB of the Phils. as profit to be remitted abroad."

3. The burden is on petitioner to show that the taxes paid were erroneously collected.

The sole issue to be resolved in this case is whether or not the 15% branch profit remittance tax should be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made.

REVENUE MEMORANDUM CIRCULAR NO. 8-82
(March 17, 1982)

SUBJECT: Clarification as to 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 15, 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 x the 15% branch profit remittance tax should be based on the amount of ₱1,540,330.43 representing profit derived from the disposition of the shares, 15% of which is ₱225,649.57."

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 remitted 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 *clarification ruling on Oct. 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 ₱115,000.00 but the amount to be remitted is only ₱100,000.00, then the tax base should be ₱100,000.00.
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> "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 since nowhere in Section 30 of the Tax Code is it provided that the same be deductible. Besides deductions from gross income are matters of legislative grace, what is

not expressly granted by 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.

(Sgd.) RUBEN B. ANCHETA
Acting Commissioner

Section 24(b)(2)(ii) (now Sec.25(5)) of the Tax Code, provides:

(ii) **Tax on branch profits remittances.** Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (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 seven and one-half per cent (7.5%): ***And Provided***, further, That interests, dividends, 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 shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

In another ruling issued by the Bureau of Internal Revenue, dated October 23, 1981 as to the manner of computation of the 15% branch profit remittance tax, it 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 remitted. Hence, there must be an actual remittance, as distinguished from profit which is remittable.

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 follows the reasoning of the Court of Appeals when it ruled:

> xxx. 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 captious and strained intendment of the law. Nima Subtilitas In Jure Reprobatur, Et Talis Certitudo Certitudimen 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:

Inasmuch as the 15% branch profit remittance tax is imposed and collected at source, it follows that 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.

In view of the fact that petitioner's branch profit remittance tax for 1985 were paid on June 4, 1986, 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 <u>amount applied</u> for with the Central Bank as profit <u>to be remitted abroad</u> and <u>not the total amount of branch profits.</u>

WHEREFORE, judgment is hereby rendered dismissing the instant petition for lack of merit. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, 19 May 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(on leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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