41B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE GEOTHERMAL, INC.,
Petitioner,

- versus -

CTA CASE No. 5145

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 15 1997

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D E C I S I O N

This case involves a claim for refund or tax credit in the amount of P46,058,629.40 representing alleged overpaid branch profit remittance taxes for the period covering June 1992 to August 1994.

Petitioner is a resident foreign corporation, licensed to engage in the business of exploration, development, and exploitation of geothermal energy and resources under a service contract with the National Power Corporation (NAPOCOR) in the Philippines. It is a branch of Union Oil of California (UNOCAL), a foreign corporation organized and existing under the laws of the United States of America, allegedly with a Central Bank registration of its assigned capital to petitioner.

The record reveals that petitioner has accumulated branch profits amounting to P2,354,107,677.26 for the period covering June 1992 to August 1994 for remittance to its Head Office, UNOCAL, and paid the corresponding 15% branch profits remittance taxes (BPRT) totalling

P353,116,152.59, the details of which are shown hereinbelow:

Particulars	Tax Base	Remittance Tax Paid	Total Amount Remitted to Head Office	Date Paid
(In Pesos)				
1992				
June 1992 Service Fee (SF)	119,658,292.40	17,948,743.86		09-04-92
July 1992 SF	186,772,227.80	28,015,834.17		11-06-92
August 1992 SF	63,822,034.53	9,573,305.18		12-17-92
September 1992 SF	182,437,444.67	27,365,616.70		12-18-92
Total for 1992	552,689,999.40	82,903,499.91	469,786,499.49	
1993				
Compensatory Damages	6,251,570.00	937,735.50		2- 1-93
Compensatory Damages	6,258,239.00	938,735.85		2- 9-93
October 1992 SF	130,356,444.87	19,553,466.73		2-11-93
Compensatory Damages	6,241,780.87	936,267.13		3-17-93
January 1993 SF	126,740,175.73	19,011,026.13		4- 2-93
February 1993 SF	19,988,108.60	2,998,216.29		5-31-93
Nov/December 1992 SF	116,922,996.47	17,538,449.47		6-01-93
March/April 1993 SF	81,795,000.00	12,269,250.00		6-23-93
	81,774,000.00	12,266,100.00		6-25-94
	132,704,523.66	19,905,679.55		6-29-94
May 1993 SF	40,677,739.87	6,101,660.98		7-23-94
June 1993 SF	103,673,312.93	15,550,996.94		8-19-94
July 1993 SF	98,533,273.60	14,779,991.04		9- 2-93
August 1993 SF	42,690,000.00	8,403,500.00		11-05-93
August/September 1993 SF	101,172,107.09	15,175,816.06		12-03-93
October/November 1993	147,249,848.93	22,087,477.34		12-16-93
December 1993 SF	19,348,000.00	2,902,200.00		12-27-93
Total for 1993	1,262,377,121.62	189,356,569.24	1,073,020,552.38	
1994				
December 1993 SF	49,958,176.80	7,493,726.52		1- 5-94
January 1994 SF	41,670,000.00	6,250,500.00		1-24-94
	27,446,192.20	4,116,928.83		2- 4-94
February 1994 SF	46,970,275.73	7,045,541.36		3- 3-94
March 1994 SF	61,499,791.60	9,224,968.74		3-16-94
	72,267,047.67	10,840,057.15		5- 5-94
April/May 1994 SF	59,856,334.10	8,978,450.12		6- 9-94
June 1994 SF	40,230,000.00	6,034,500.00		6-27-94
	46,847,171.87	7,027,075.78		7- 4-94
July 1994 SF	66,155,566.27	9,923,334.94		7-15-94

August 1994 SF	26,140,000.00	3,921,000.00		8-19-94
Total for 1994	539,040,556.24	80,856,083.44	458,184,472.80	
Grand Total	2,354,107,677.26	353,116,152.59	2,000,991,524.67	

The foregoing BPRT payments were computed based on petitioner's reported branch profits or branch profits applied for remittance abroad.

In eight letters of different dates (Exhibits "VV-1" to "VV-8"), the Central Bank of the Philippines authorized petitioner to remit, thru an authorized agent bank, the foreign exchange equivalent of its net remittable income (service fee) collected from NAPOCOR subject to compliance with the documentary requirements attesting payment of the profit remittance tax. Starting April, 1994, the Central Bank foreign exchange liberalization took effect and the petitioner was no longer required to secure approval from the Central Bank on the remittance of its branch profits to the Head Office (TSN, p. 21, August 16, 1995).

On September 1, 1994, petitioner, through its tax adviser, SGV & Co., filed with the Bureau of Internal Revenue a claim for refund (Exhibit "RR") in the sum of ₱46,058,629.40 allegedly representing overpaid BPRT for the period covering June 1992 to August 1994, invoking the ruling of the Supreme Court in the case of **Bank of America vs. the Court of Appeals, G.R. Nos. 103092 and**

103106 dated July 21, 1994 which held that the 15% tax on branch profits remitted abroad is imposed on the profit actually remitted and not on the amount of profits applied for remittance. Hence, the refundable amount was based by the petitioner on the following computation:

Total amount applied for remittance to Head Office			P2,354,107,677.26
Total Amount of BPRT paid to the BIR			P 353,116,152.59
Less: Correct Amount of BPRT	P2,354,107,677.26 / 1.15	x 15%	307,057,523.19
Overpaid BPRT			P 46,058,629.40

The detailed schedule showing the abovestated refundable BPRT is as follows:

Particulars	Tax Base	Remittance Tax Paid	Should be tax	Difference	Date Paid
1992					
June 1992 Service Fee (SF)	119,658,292.40	17,948,743.86	15,607,603.36	2,341,140.50	09-04-92
July 1992 SF	186,772,227.80	28,015,834.17	24,361,594.93	3,654,239.24	11-06-92
August 1992 SF	63,822,034.53	9,573,305.18	8,324,613.20	1,248,691.98	12-17-92
September 1992 SF	182,437,444.67	27,365,616.70	23,796,188.44	3,569,428.26	12-18-92
Total for 1992	552,689,999.40	82,903,499.91	72,089,999.93	10,813,499.98	
1993					
Compensatory Damages	6,251,570.00	937,735.50	815,422.17	122,313.33	2- 1-93
Compensatory Damages	6,258,239.00	938,735.85	816,292.04	122,443.81	2- 9-93
October 1992 SF	130,356,444.87	19,553,466.73	17,003,014.55	2,550,452.18	2-11-93
Compensatory Damages	6,241,780.87	936,267.13	814,145.33	122,121.80	3-17-93
January 1993 SF	126,740,175.73	19,011,026.36	16,531,327.27	2,479,699.09	4- 2-93
February 1993 SF	19,988,108.60	2,998,216.29	2,607,144.60	391,071.69	5-31-93
Nov/December 1992 SF	116,922,996.47	17,538,449.47	15,250,825.63	2,287,623.84	6-01-93
March/April 1993 SF	81,795,000.00	12,269,250.00	10,668,913.04	1,600,336.96	6-23-93
	81,774,000.00	12,266,100.00	10,666,173.91	1,599,926.09	6-25-94
	132,704,523.66	19,905,879.55	17,309,285.69	2,596,393.86	6-30-94
May 1993 SF	40,677,739.87	6,101,660.98	5,305,792.16	795,868.82	7-23-94
June 1993 SF	103,673,312.93	15,550,996.94	13,522,606.13	2,028,390.81	8-19-94
July 1993 SF	98,533,273.60	14,779,991.04	12,852,166.12	1,927,824.92	9- 2-93

Particulars	Tax Base	Remittance Tax Paid	Should be tax	Difference	Date Paid
August 1993 SF	42,690,000.00	6,403,500.00	5,568,260.87	835,239.13	11-05-93
August/September 1993 SF	101,172,107.09	15,175,816.06	13,196,361.79	1,979,454.27	12-03-93
October/November 1993	147,249,848.93	22,087,477.34	19,206,502.03	2,880,975.31	12-16-93
December 1993 SF	19,348,000.00	2,902,200.00	2,523,652.17	378,547.83	12-27-93
Total for 1993	1,262,377,121.62	189,356,569.24	164,657,885.50	24,698,683.74	
1994					
December 1993 SF	49,958,176.80	7,493,726.52	6,516,283.93	977,442.59	1- 5-94
January 1994 SF	41,670,000.00	6,250,500.00	5,435,217.39	815,282.61	1-24-94
	27,446,192.20	4,116,928.83	3,579,938.11	536,990.72	2- 4-94
February 1994 SF	46,970,275.73	7,045,541.36	6,126,557.70	918,983.66	3- 3-94
March 1994 SF	61,499,791.60	9,224,968.74	8,021,711.95	1,203,256.79	3-16-94
	72,267,047.67	10,840,057.15	9,426,136.65	1,413,920.50	5- 5-94
April/May 1994 SF	59,856,334.10	8,978,450.12	7,807,347.93	1,171,102.19	6- 9-94
June 1994 SF	40,230,000.00	6,034,500.00	5,247,391.30	787,108.70	6-27-94
	46,847,171.87	7,027,075.78	6,110,500.68	916,575.10	7- 4-97
July 1994 SF	66,155,566.27	9,923,334.94	8,628,986.90	1,294,348.04	7-15-94
August 1994 SF	26,140,000.00	3,921,000.00	3,409,565.22	511,434.78	8-19-94
Total for 1994	539,040,556.24	80,856,083.44	70,309,637.76	10,546,445.68	
Grand Total	2,354,107,677.26	353,116,152.59	307,057,523.19	46,058,629.40	

In order to preserve its right to pursue a refund by judicial action in accordance with Section 230 of the Tax Code, as amended, petitioner filed the instant petition on the same date, September 1, 1994.

On November 11, 1994, respondent answered that petitioner has no cause of action against her since the administrative claim for refund and the instant petition were filed on the same day, September 1, 1994, without giving her the opportunity to act on the claim, hence, violative of the doctrine of exhaustion of administrative remedies. Respondent further averred that since the BPRT 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.

On December 5, 1994, respondent manifested that since the claim for refund of the petitioner is still being investigated, the only BIR records available are the petitioner's letter to the BIR claiming a refund of overpaid BPRT, dated August 31, 1994, and the attachment thereto which is Annex "A" of the present petition.

The issues to be resolved in this case are: (1) whether or not petitioner actually remitted branch profits to its head office to make it fall within the purview of Sec. 25(a)(5) of the Tax Code, as amended; (2) whether or not the administrative and judicial claim for refund can be filed simultaneously or on the same date and (3) whether or not the BPRT shall be computed based on the profits actually remitted abroad or on the total branch profits out of which the remittance is made.

In her Memorandum filed on September 25, 1996, respondent asserted that there is no showing that petitioner remitted branch profits to its head office, maintaining that since petitioner is a corporation organized and existing under the laws of the State of

California, U.S.A., petitioner's head office is Philippine Geothermal, Inc., U.S.A. and not **UNOCAL**.

The contention of the respondent is untenable. Inasmuch as **UNOCAL** has assigned capital to petitioner, the former can also be regarded as the head office of the latter. Even assuming arguendo that petitioner has remitted profits to a foreign company abroad, i.e. **UNOCAL**, which is not its head office and therefore there are no "branch profits" to speak of, the evidence presented are nonetheless replete proving that petitioner has paid BPRT for remittance of its branch profits abroad, ergo with more reason that it is entitled to claim a refund, and for that matter, not only to the extent of the amount sought as overpaid BPRT but the whole amount it paid as BPRT because in such a case, there was indeed an erroneous payment of the said tax.

Moreover, the eight letters of the Central Bank of the Philippines to the petitioner (Exhibits "VV-1" to "VV-8", inclusive) authorizing the latter to remit its net remittable income (service fee) collected from Napocor to **UNOCAL** in effect recognizes the right of petitioner to remit income to said foreign company abroad. In addition, the Monthly Remittance Returns of Income Taxes Withheld (BIR Forms 1743W, Exhibits "K" to "PP", inclusive) sufficiently establish payment by the petitioner of branch profits remittance taxes to the government. Notably, the respondent posed no serious objection to the admission of petitioner's documentary evidence when the same were presented before this Court and duly identified by petitioner's witnesses.

On the other hand, respondent disputed some returns of income taxes withheld abovementioned on the ground that they do not show the nature of income payment and the kind of tax paid, namely:

Exhibit	Amount of Tax
Y	P 6,403,500.00
Z	14,779,991.04
BB	6,101,660.98
DD	12,266,100.00
FF	17,538,449.47
GG	2,998,216.29
II	936,267.13
NN	9,573,305.18
TOTAL	P70,597,490.09

At this juncture, respondent's assertion is not entirely devoid of merit. However, We take exception to exhibits "FF", "GG", and "NN" because We believe that in spite of the objections made by respondent, the amounts corresponding to these exhibits should be included in the final computation as said amounts are mentioned in some of the letters of authority issued by the Central Bank to herein petitioner and presented as evidence (see exhibits "VV-3", "VV-6", and "VV-8"). The other exhibits specifically exhibits "Y", "Z", "BB", "DD", and "II" as correctly pointed out by respondent should not be included in the computation because these monthly remittance returns fail to indicate the nature of income payment to which it refers as well as the kind of tax it was being paid and therefore the same cannot be refunded as overpaid BPRT. This Court has no cogent reason to consider the same as pertaining to the payment of branch profit remittance taxes for remittance of profits abroad. This Court has no authority to base its conclusions on mere presumptions of fact.

With respect to the rest of the Monthly Remittance Returns of Income Taxes Withheld (Exhibits "K" to "PP", excluding the foregoing), the kind of tax for which the amounts indicated on the face thereof were paid appeared at the back portion of the tax returns, contrary to the declaration in the BIR Certification (Exhs. "QQ", "QQ-1", "QQ-2", and "QQ-3") that "the kind of tax paid is not indicated in the source documents." It is unmistakable that one of the sources used by the Revenue Accounting Division of the BIR is petitioner's tax returns. Besides, the respondent had the opportunity to examine the relevant exhibits offered by the petitioner and was able to compare them with the originals and found the same to be faithful reproductions thereof (TSN, March 15, 1995). In such a case, any cloud of doubt as to the authenticity of the said returns which point out at the back thereof the kind of tax (BPRT) and the corresponding amount paid thereon has been removed.

Furthermore, in her "Reply to Request for Admission" filed on August 1, 1995, respondent refused to admit payment of the following amounts since they allegedly do not appear from the records of the BIR's Revenue Accounting Division, to wit:

Amount	Alleged Date of Payment
₱ 27,365,616.70	12-18-92
6,403,500.00	11-05-93
22,087,477.34	12-16-93
7,493,726.52	1-05-94
6,250,500.00	1-24-94
8,978,450.12	6-09-94
9,923,334.94	7-15-94
3,921,000.00	8-19-94

The statement of the respondent is self-defeating. The aforesaid amounts were verified to have been remitted per CRDC and Central Bank Credit Advice as stated in the Certification issued and signed by Ms. Carmelita SJ. Pascual, Chief, Revenue Accounting Division (Exhs. "QQ-1", "QQ-2", and "QQ-3").

On the second issue, the fact that petitioner filed its claim for refund with the BIR on the same date that it filed a judicial action with this Court is of no consequence. Petitioner's witness, Mr. Reynaldo T. Ancos, testified that prior to the month of June 1992, petitioner also remitted branch profits to its head office and paid the corresponding BPRT, using the multiplication of the remittable amount by 15% but the same was not included in the present claim for the reason stated in his testimony given during the hearing of this case on July 19, 1995, thus:

Q. In that case, Mr. Witness, why did petitioner then decide to file a claim for refund for the period covering June 1992 to August 1994?

A. Sir, because of the two year prescriptive period.

Q. Mr. Witness, did petitioner file or remit branch profit remittance tax for the month of June 1992?

A. Yes, sir.

xxx xxx xxx.

Q. And what was the amount of branch profit remittance tax paid for this period?

A. Sir, the amount is P17,948,743.86.

Q. And when was this tax remitted and paid to the government?

A. Sir, it is September 4, 1992."

(TSN, pp. 10-11, July 19, 1995)

Apparently from the foregoing, the petitioner would like to seek the recovery of overpaid BPRT corresponding to the branch profits it remitted abroad as of September

4, 1992, even though it could claim the other amounts of the same tax which it paid prior to said date were it not for the two-year prescriptive period. If petitioner had to wait for the action of the respondent on its claim before it could file an action with this Court, then the amount of petitioner's refundable claim would furthermore be reduced as there would be some payments made in some or several months that might not at all be allowed or taken into account by reason of prescription.

The two-year period in Section 230 of the Tax Code, as amended is mandatory. If the Commissioner of Internal Revenue denies the claim for refund, there is no question that the taxpayer can appeal to this Court. But if the Commissioner fails to act and the two-year period is about to lapse, the taxpayer should institute the appeal to this Court, without waiting for the decision of the Commissioner. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering the decision does not extend the peremptory period fixed by the statute **(Gibbs vs. Collector, L-13453 February 29, 1960)**.

Likewise, the Court of Appeals expounded the matter in the following words:

> "x x x The law fixed the same period - two years - for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for

filing suit in court (Sec. 230), unlike in protests of assessment under Section 229 which fixed the period (thirty days from receipt of decision) for appealing to the Court, thus clearly implying that the prior decision of the Commissioner is necessary for the court to take cognizance of the case. While it may be true that the Court of Tax Appeals is essentially an appellate court, and should act only upon claims for refund that are unfavorably decided by the Commissioner, the remedy is addressed to the legislature.

"The taxpayer cannot be faulted for taking advantage of the full two-year period prescribed by law in filing his claim for refund. The Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner can be pending simultaneously with a suit for refund filed with said court:" (**Commissioner of Internal Revenue vs. Bank of the Phil. Islands, et. al., CA-G.R. SP No. 34102, Sept. 19, 1994**)

Finally on the third issue, the law on the matter is very clear and unequivocal. Section 25(a)(5) of the Tax Code, as amended, provides in part:

"Sec. 25. *Rates of tax on foreign corporations.* -

(a) Rates of tax on resident foreign corporations.

xxx xxx xxx

(5) Tax on branch profits remittances. - Any profit remitted by a branch to its head office shall be subject to a tax of 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 7½%. In both cases, the tax shall be collected and paid in the

> same manner as provided in Sections 51 and 52 of this Code; and Provided, further, That interests, dividends, rents, royalties, including remuneration 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."

The issue has been finally resolved in the decision of the High Court in the case of **Bank of America NT and SA vs. The Honorable Court of Appeals and the Commissioner of Internal Revenue, 234 SCRA 302** which is in all fours with the present case, the pertinent portion of which is quoted hereunder, to wit:

> "In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad." There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.
>
> "The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches

were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries *vis-a-vis* local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax *paripassu* ends between domestic branches and subsidiaries of foreign corporations."

In said decision, the Supreme Court reinstated the pronouncement of this Court in the case of **Bank of America NT & SA vs. Commissioner of Internal Revenue, CTA Case No. 3799, October 29, 1986**, which declares in part:

"On the other hand, there is absolutely nothing in Section 24(b)(2)(ii), supra, which indicates that the 15% tax on branch profit remittance is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 and 54 of the Tax Code. The statute employs 'Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%)' - without more. Nowhere is there said of base on the total amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, which shall be collected and paid as provided in Sections 53 and 54 of this Code.' Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer

> nor better canon of interpretation than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term 'any profit remitted abroad' can only mean such profit as is 'forwarded, sent, or transmitted abroad' as the word 'remitted' is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words."

In the light of the above considerations, it is clear that for purposes of computing the 15% branch profit remittance tax, the tax base should be "the profit remitted abroad", i.e., the net profit actually remitted abroad, net of the BPRT itself.

Accordingly, as the 15% tax is imposed only on the profit remitted, that portion of the profits corresponding to the profit remittance tax itself which is not remitted abroad (as it is paid to the government) should not form part of the tax base for purposes of computing the branch profit remittance tax **(Citibank N.A. vs. Commissioner of Internal Revenue, CTA Case No. 5023, August 3, 1995).** A careful scrutiny of the evidence presented has led this Court to conclude that the petitioner is entitled to the full amount of P46,058,629.40.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. Aooordingly, respondent is hereby **ORDERED** to **REFUND** or issue in favor of the petitioner a tax credit certificate in the amount of P46,058,629.40 representing overpaid branch profit remittance tax for the period covering June 1992 to August 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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