REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMERCIAL UNION
ASSURANCE CO. PLC,
Petitioner,

- versus - C.T.A. CASE NO. 3702

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

x/1/88

D E C I S I O N

The question presented in this case is whether the 15% branch profit remittance tax should be based on the total profits to be remitted without deducting the branch profit tax or on the profits actually remitted.

Petitioner is a corporation duly organized and existing under the laws of England with a duly authorized Philippine branch located at Atheneum Building, Salcedo Village, Makati, Metro Manila.

On January 20, 1983, petitioner applied to purchase foreign exchange for remittance of its branch profits, for the period covering the years 1971 to 1981, to its Far East Regional Head Office in Singapore, from the Central Bank through the Chartered Bank in the amount of ₱3,635,206.00 (Exh. "A", p. 12, BIR recs.).

On February 22, 1983, it paid the branch profit remittance tax of ₱641,507.00 representing 15% of the total accumulated profit after income tax amounting to ₱4,276,713.00, instead of ₱3,635,206.00, the amount actually remitted and approved by the Central Bank on May 12, 1983 (Exhibit "F", p. 11, BIR recs.), to its Far East Regional Head Office in Singapore. On this basis, petitioner now seek the refund of ₱96,226.10 computed as follows:

15% x ₱4,276,713.00	=	₱641,507.00
15% x ₱3,635,206.00	=	545,280.90
Overpaid tax	=	₱ 96,226.10

Respondent, on the other hand, rejected the claim for refund, filed by the petitioner on June 24, 1983, in its letter dated July 21, 1983 stating its reason as follows, to wit:

> "The phrase 'any profit remitted abroad' which is the tax base for the 15% imposition

> should be construed to mean the profit to be remitted, as distinguished from the total profit which is remittable.
>
> To given an example: If the total branch profit is ₱155,000.00 but for certain reasons the amount to be remitted is only ₱100,000.00 then the tax base should be ₱100,000.00.
>
> Besides, the profit remittance tax is imposed under Section 24(b)(2) of the Tax Code as an income tax hence, the tax is non-deductible from the gross income.
>
> The payment, therefore, of the branch profit remittance tax in the amount of ₱641,507.00 is proper and legal." (pp. 19-20, BIR recs.)

Hence, petitioner on November 11, 1983 filed the instant petition to review the final decision of the Deputy Commissioner of the Bureau of Internal Revenue. The facts not being controverted in the instant case, respondent submitted the case for decision on the basis of the pleading and the evidence presented by petitioner.

Section 24(b)(2)(ii) of the National Internal Revenue Code provides:

> "Sec. 24. <u>Rates of tax on corporations</u>. -
> (a) Tax on domestic corporations. x x x
> (b) Tax on foreign corporations. x x x
> (1) Non-resident corporations. x x x
> (2) Resident corporations. x x x
> (i) In general - x x x
> (ii) Tax on branch profits remittances. - Any profit <u>remitted</u> abroad by a branch to its head office shall be

> subject to a tax of fifteen per cent (15%) x x x." (Underscoring supplied.)

It is respondent's theory that the tax base in computing the 15% branch profit remittance tax should be the profit to be remitted contrary to petitioner's theory that the tax base should be the profit actually remitted, as stated in his answer (pp. 28-29, CTA recs.). This theory is without merit for this issue has already been settled in the case of Bank of America NT & SA vs. The Commissioner of Internal Revenue (C.T.A. Case No. 3799, October 29, 1986), portions of the decision is hereby reproduced as follows:

> "x x x. The controlling legal provision employs the term 'any profit remitted abroad' - NOT 'any profit to be remitted abroad'. The difference between profits remitted and profits to be remitted, is obvious; the first refers to such profits actually remitted while the second would refer to profits to be remitted. If it had been the intent to impose and collect the branch profit remittance tax on the amount applied for remittance before the remittance tax, the law-making authority could have easily done so by stating 'any profit to be remitted abroad', and the like. We cannot ignore the principle that statutes imposing taxes are not to be construed to include within the subject taxed anything which is not clearly intended by the legislature to be so included. (51 Am. Jur. 360-361;

Gould vs. Gould, 245 U.S. 151.) As stated in Manila Railroad vs. Collector of Customs, 52 Phil. 950, burdens are not to be imposed nor presumed to be imposed, beyond what the statutes expressly and clearly declare.

The statutory language clearly and specifically refers only to 'any profit remitted abroad' as being subject to the branch profit remittance tax of 15%. By 'remitted' is simply meant 'sent', 'transmitted', or 'forwarded'. (Hollowell vs. Life Insurance Company, 35 S.E. 616; Nicolleti vs. Bank of Los Banos, 214 P. 51.) Nothing there speaks of 'profit to be remitted abroad' or 'profit actually applied for by the branch with the Central Bank'. The law is clear and unequivocal. It is well-settled that a statute, free from any constitutional infirmity, should be enforced as written. To our mind, the law is plain and unambiguous. It merely calls for application as thus worded. There is no room for interpretation." (Bank of America NT & SA vs. The Commissioner of Internal Revenue, pp. 7-8, C.T.A. Case No. 3702, October 29, 1986)

However, respondent emphatically stressed in his Memorandum that what is to be applied in the instant case is Revenue Memorandum Circular No. 8-82 dated March 17, 1982, taking note of the fact that petitioner paid its branch profit remittance tax on February 22, 1983, eleven months after Revenue Memorandum Circular took effect and it should prevail instead of the BIR

Ruling dated January 21, 1980. Respondent cited the case of Commissioner of Internal Revenue vs. Burroughs Limited and the Court of Tax Appeals (G.R. No. L-66653, June 23, 1986), and stated that the Supreme Court impliedly held that if the 15% branch profit remittance tax was paid on or after March 17, 1982, then Revenue Memorandum Circular No. 8-82 should apply.

REVENUE MEMORANDUM CIRCULAR NO. 8-82

"x x x x x x x x x.

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 clarificatory ruling on October 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.
>
> '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 is 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 <u>actually applied for</u> by the branch with the Central Bank of the Philippines as profit to be remitted abroad.
>
> xxx xxx xxx."

In the case of Bank of America NT & SA vs. Commissioner of Internal Revenue (C.T.A. Case No. 3799, October 29, 1986) this Court ruled against the applicability of the Burroughs Limited case, it appearing that the branch profit remittance tax was paid on July 20, 1982 after the effectivity of Revenue Memorandum Circular No. 8-82 dated March 17, 1982, similar to the case at bar, while in the case of Commissioner of Internal Revenue vs. Burroughs Limited and The Court of Tax Appeals (G.R. No. L-66653, June 19, 1986) the 15% branch profit remittance tax was paid before Revenue Memorandum Circular No. 8-82 took effect, payment of which was made on March 14, 1979 even prior to the Revenue Ruling dated January 21, 1980.

Thus, the Supreme Court held, the contention of the Commissioner of Internal Revenue that respondent Burroughs Limited is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed BIR Ruling of January 21, 1980 is without merit for what is applicable is still the Revenue Ruling of January 21, 1980 because respondent paid the branch profit tax on March 14, 1979.

Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code since it would result to the prejudice of the taxpayer, it appearing that respondent does not fall under any of the enumerated exceptions (Commissioner of Internal Revenue vs. Burroughs Limited and The Court of Tax Appeals, 142 SCRA 328-329.)

Inasmuch as petitioner in its application to purchase foreign exchange for remittance of earnings, profits or dividends to non-residents (Exh. "A", p. 12, BIR recs.) had applied to remit, and in fact actually remitted, only the amount of ₱3,635,206.00 (Exh. "A-2", p. 12, BIR recs.), and not ₱4,276,713.00, then the basis of the 15% branch profit remittance tax should be the amount actually remitted which in this case is ₱3,635,206.00. (underlining supplied.) Therefore, the amount of branch profit remittance tax should be computed as follows:

Amount applied to be remitted and approved by the Central Bank	₱3,635,206.00
15% Branch Profit Remittance Tax	x 15%
Branch Profit Remittance Tax	₱ 545,280.90

There is no question that petitioner has overpaid its 15% branch profit remittance tax in the amount of ₱96,226.10 computed as follows:

Amount of branch profit remittance tax paid (15% x ₱4,276,713.00)	₱641,507.00
Less: Branch Profit Remittance Tax (15% x ₱3,635,206)	545,280.90
Overpaid Branch Profit Remittance Tax	₱ 96,226.10

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund in favor of petitioner, Commercial Union Assurance Co. PLC, the amount of ₱96,226.10, representing overpaid branch profit remittance tax, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 1, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
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