REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT
& SA, MANILA BRANCH,
Petitioner,

- **versus** -

C.T.A. CASE NO. 4182

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

1/4/94

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

D E C I S I O N

This case involves petitioner's claim for refund of alleged overpaid branch profits remittance tax amounting to ₱8,653,141.67 for the years 1985 and 1986.

Petitioner is a resident foreign bank, duly organized and existing under the laws of the State of California, U.S.A., and is authorized to engage in business as a branch in the Philippines.

The record reveals that on October 25, 1985 and October 20, 1986, petitioner paid the amounts of P56,502,780.00 and ₱1,184,831.10, respectively, or a total of ₱57,687,611.10 branch profits remittance tax for its remittance of profits to its Head

Office in California, U.S.A.. The branch profits remittance tax payments were computed based on petitioner's net profits after deducting the income tax but without deducting the branch profits remittance tax.

In three letters dated July 8, 1985, July 19, 1985 and July 16, 1986, the Central Bank of the Philippines authorized petitioner to remit the foreign exchange equivalent of its remittable profits net of the 15% branch profits remittance tax. The amounts of profits actually remitted are computed as follows:

Net Profit After Income Tax	Date Paid	15% BPRT	Branch Profits Actually Remitted
₱ 78,476,083.33	10-25-85	₱11,771,412.50	₱ 66,704,670.83
298,209,116.67	10-25-85	44,731,367.50	253,477,749.17
7,898,874.00	10-20-86	1,184,831.10	6,714,042.90
			₱326,896,462.90

On February 12, 1987, petitioner filed with the Bureau of Internal Revenue through its accounting firm a claim for refund in the sum of ₱8,653,141.67, representing alleged overpaid branch profits remittance tax for 1985 and 1986, computed as follows:

Actual Branch Profits Remittance Tax Paid for 1985 and 1986	₱57,687,611.10
Less: Branch Profits Remittance Tax on profits actually remitted 15% of P326,896,462.90	49,034,469.43
Alleged Overpaid BPRT	₱ 8,653,141.67

Petitioner alleged that by virtue of the ruling of the Supreme Court in the case of **Commissioner of Internal Revenue v. Burroughs Limited and the Court of Tax Appeals, G.R. No. 66653, June 19, 1986,** the basis for computing the branch profits remittance tax should be the profits actually remitted abroad pursuant to BIR Ruling dated January 21, 1980. Since the profits actually remitted abroad amounted only to ₱326,896,462.90, the 15% branch profits remittance tax should be based on ₱326,896,462.90 and not ₱384,584,074.00, the amount actually applied for with the Central Bank as branch profits to be remitted.

On July 24, 1987, petitioner without waiting for respondent's decision filed the instant petition for review in order to toll the running of the prescriptive period for filing a suit for the recovery of an erroneously paid tax.

Respondent answered that the Burroughs case is not applicable to the case at bar because the issue raised was not the taxable base for computing the 15% branch profits remittance tax but the prospective application of Revenue Memorandum Circular No. 8-82 dated March 17, 1982. The branch profits remittance tax is a tax imposed and collected at source and therefore, the taxable base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profits to be remitted abroad.

The issue is whether or not the branch profits remittance tax is computed based on the profits actually remitted abroad or on the total branch profits out of which the remittance is made.

Revenue Memorandum Circular No. 8-82, dated March 17, 1982, provides:

> "SUBJECT: Classification as to the 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 18, 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 the 15% branch profit remittance tax should be based on the amount of ₱1,504,330.43 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 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 P100,000.00, then the tax base should be P100,000.00.
>
> 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 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 the law is deemed withheld.'

<u>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.</u>

It is desired that this Circular be given as wide publicity as possible." (Emphasis Ours.)

This court in the case of **Compañia General De Tabacos De Filipinas (Philippine Branch), v. the Commissioner of Internal Revenue, CTA Case No. 3827, October 14, 1988,** upheld that the Burroughs case recognizes the validity of Memorandum Circular No. 8-82, dated March 17, 1982, to wit:

> "A fortiori, the holding in the Burroughs Limited case lends settling cognizance to the validity of the Memorandum Circular No. 8-82, where as ruled by the Supreme Court -
>
> > 'What was applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because the private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1982. 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 x x x.'
>
> Stated otherwise, the circular must be prospective in application. Established at bar is a payment effected on August 16, 1982 subsequent to the issuance thereof. Hence petitioner's case falls within the compelling import and force of the Revenue Memorandum Circular No. 8-82 dated March 17, 1982."

Likewise the Court of Appeals in the case of **Commissioner of Internal Revenue v. Bank of America NT & SA and the Court of Tax Appeals, CA-G.R. SP No. 22569, September 19, 1990,** upheld the validity and prospective application of Revenue Memorandum Circular when it ruled:

"x x x. 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 a captious and strained intendment of the law. NIMIA SUBTILITAS IN JURE REPROBATUR ET TALIS CERTITUDO CERTITUDIMEM 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:

> There is no warrant for seeking refined arguments to show that the statute does not mean what it says.

In view of the foregoing, this Court finds that the clear import of Section 24(b)(2)(ii) of the Tax Code mandates the imposition of the fifteen per cent (15%) tax on the branch profits remittance, which in tax parlance is alluded to as the "tax handle", with the total amount remitted (not the total amount of the branch profits) as base for the tax." **[Cited in the cases of Commercial Union Assurance Company v. The Commissioner of Internal Revenue, CTA Case No. 4189, September 8, 1992; Compañia General De Tabacos De Filipinas (Philippine Offices), v. The Commissioner of Internal Revenue, CTA Case No. 4451, August 23, 1993; and Warner Bros. (F.E.) Inc. v. Commissioner of**

Internal Revenue, CTA Case No. 4207, December 21, 1993].

Considering that petitioner's branch profits remittance tax were paid on October 25, 1985 and October 20, 1986 or during the effectivity of Revenue Memorandum Circular No. 8-82 (March 17, 1982), the taxable base for computing the 15% branch profits remittance tax should be the amount applied for with the Central Bank of the Philippines as profits to be remitted abroad by the branch without deducting the 15% branch profit remittance tax from the taxable base and not the profits actually remitted as embodied in BIR Ruling dated January 21, 1980. Revenue Memorandum Circular 8-82 should be applied prospectively. Therefore, the same should govern payments of branch profits remittance tax in 1985 and 1986 as in the case on hand.

WHEREFORE, in view of the foregoing, We find the petition for review unmeritorious and the same is hereby dismissed. Petitioner's claim for refund is therefore **DENIED**. Costs of suits against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 4, 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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 19, Article VIII of the **Constitution**.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals