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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMERCIAL UNION ASSURANCE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 4189

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/8/92

D E C I S I O N

This suit involves a claim for refund or tax credit of petitioner in the total amount of P168,190.40 representing alleged overpaid branch profit remittance tax for 1985.

The factual antecedents do not appear disputed.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws, with principal office at Third Floor, Athenaeum Bldg., 169 Alfaro Street, Salcedo Village, Makati, Metro Manila.

It appears that on September 6, 1985, petitioner paid 15% branch profit remittance tax in the amount of P1,121,270.00, based on net profits after income tax but before deducting the branch profit remittance tax itself, pursuant to Section 24(b)(2)(ii) of the Tax Code of 1977 covering resident foreign corporations (now Section 25(a)(5) which requires that "any profit remitted abroad by a branch to its head office shall be subjected to a tax of fifteen per cent (15%) (except those registered with the Export Processing Zone Authority)" xxx.

In a ruling of the Bureau of Internal Revenue dated January 21, 1980 issued by then Acting Commissioner of Internal Revenue Efren Plana in response to a query of Sycip, Gorres, Velayo & Co. dated November 3, 1978, Section 24(b)(e)(ii) aforequoted, had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax x x x shall be imposed x x x (is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made". The said ruling is hereinbelow quoted as follows:

> "In reply to your letter of November 3, 1978, relative to your query as to the tax base upon which the 15% branch profit remittance tax provided for under Section 24(b)(2) of the 1977 Tax Code shall be imposed, please be advised 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.
>
> Please be guided accordingly." (Emphasis supplied)

Invoking the aforequoted ruling, which was sustained by this Court in **Burroughs Limited vs. Commissioner of Internal Revenue**, CTA Case No. 3204, June 27, 1983, affirmed by the Supreme Court in **Commissioner of Internal Revenue vs. Burroughs Limited**, 142 SCRA 324 [1986], petitioner, on February 19, 1987, through its auditors, filed with respondent a request for refund or issuance of a tax credit in the amount of P168,190.40 representing overpaid branch profit remittance tax for 1985, broken down as follows:

Branch net profit after income tax earned but before profit remittance tax	₱7,475,134.00
Less: 15% profit remittance tax paid	1,121,270.00
Branch profit actually remitted abroad	₱6,353,864.00
Multiplied by rate profit remittance tax	15%
Remittance tax that should have been paid	P 953,079.60
Less: Profit remittance tax paid	1,121,270.00
OVERPAYMENT	(P 168,190.40)

No action having been taken on the claim, and to forestall the running of the two-year prescriptive period within which to file a suit for refund of erroneously paid tax, petitioner instituted the instant petition for review on September 4, 1987.

Respondent in his answer and in the memorandum filed with in this Court, maintains that the branch profit tax to be computed should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad and submits that the Burroughs case is not applicable because it involves profit remitted abroad in 1985, citing Revenue Memorandum Circular No. 8-82 issued on March 17, 1982, which reads:

> "SUBJECT: Classification as to the proper tax base in the computation of the 15% branch profit remittance tax.
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> "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 x the 15% branch profit remittance tax should be based on the amount of P1,504,330.43 representing profit derived from the disposition of the shares, 15% of which is P225,649.57.'
>
> "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 ot 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 P115,000.00 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.'
>
> "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.
>
> "It is desired that this Circular be given as wide publicity as possible.
>
> (Sgd.) RUBEN B. ANCETA
> Acting Commissioner"

This memorandum circular was issued pursuant to Section 245 of the Tax Code. In fine, respondent underscores the validity and prospective application of Revenue Memorandum Circular No. 8-82.

> The sole issue to be resolved is whether or not petitioner overpaid its 15% branch profit remittance tax for 1985, hence, entitled to the refund or tax credit of P168,190.40.

The question is not new.

We agree with the respondent that inasmuch as the tax involved was collected after the effectivity of RMC 8-82, the Burroughs case involving 1979 tax is not controlling.

It must be stressed that by reason of similar factual antecedents, provision of law, as well as the BIR ruling, revenue circular involved, and the issue litigated the decision in the case of **Commissioner Internal Revenue vs. Bank of America, NT & SA and the Court of Tax Appeals**, CA-GR SP No. 22529, September 19, 1990, which sustained petitioner's appeal, is deemed controlling and we quote the pertinent part thereof, to wit:

> "This Court notes that the private respondent admits the authority of the Commissioner of Internal Revenue to make rulings, thus:
>
> > Undersigned Cousel does not dispute the authority of the Commissioner of Internal Revenue to make rulings or render opinions in connection with the implementation of the provisions of internal revenue laws and that his issuance of Revenue Memorandum Circular No. 8-82 was made pursuant to such authority. (Private Respondent's Comment, dated May 4, 11987, p. 3)
>
> "The aforesaid private respondent however adds correctly that such rulings are subject to the power of judicial review. Belatedly, in its Rejoinder to Reply Memorandum (dated June 30, 1990), the private respondent, in an apparent effort to clutch at whatever legal straw might appear to be available, asserts that Revenue Memorandum No. 8-82 is invalid because it was issued solely by

the petitioner Commissioner. If this is so, then Honorable Plana's ruling, which is a principal factor in the decision of the case of Commissioner of Internal Revenue vs. Burroughs Limited, 142 SCRA 324 (which ruling was specifically adduced by the aforesaid private respondent in its Petition for Review filed with the Court of Tax Appeals in the instant case) should also be invalid for the same reason. This Court therefore is not persuaded by the afore-cited belated assertion of the private respondent. We are of the opinion, and so hold, that Revenue Memorandum No. 8-82 is valid and, being a subsequent ruling, should be the applicable ruling as far as the case now before US is concerned. The Court of Tax Appeals has expressed the view when it ruled,

> Since the branch profit remittance tax involved in this appeal was paid by petitioner Bank of America on July 20, 1982, after the effectivity of Revenue Memorandum Circular dated March 17, 1982, we see no significance therefore in the argument of petitioner that the case should be decided in the light of Burroughs Limited. (C.T.A. Decision, pp. 6-7)

"Private respondent Bank of America makes the following averments in its Comment of May 4, 1987:

> Private Respondent submits that the law is clear and unequivocal. Hence, it should be enforced, as written. Considering that the law is plain and unambiguous in its terms, it merely calls for its application as worded. Petitioner should no longer interpret it, otherwise the constitutional injunction

> against delegation of legislative power arises. (Comment, pp. 4-5)

"This Court is disposed to agree with the statement that the pertinent law - Section 24(b)(2)(ii) of the Tax Code - is clear and convincing. Therefore, there could be no construction where there is nothing to construe. As held in the case of West Coast Hotel Co. vs. Parrish, 300 U.S. 379, 404,

> The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation.

"However, since the law applicable in the case at bar is a tax law, then We should apply the law having in mind the dictum 'This is a tax language and should be read in its tax sense' (United States vs. Ogilvie Hardware Co. 330 U.S. 709, 721). This Court will now proceed to read the tax sense in the above-mentioned provision of the Tax Code.

"Although it is true that, as private respondent contends,

> Nowhere is there any mention of 'based on the total amount actually applied for by the branch with the Central Bank of the Philippines, as profit to be remitted abroad". Since there is no qualification, no qualification should be made or read into the law, as Petitioner would want it. (Comment, p. 5)

it is likewise true that Section 24(b)(2)(ii) does not contain the following underlined proviso; 'Any profit remittted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) after deducting the 15% branch profit remittance tax.

"The Court of Tax Appeals sought to deduce legislative intent vis-a-vis the aforesaid law through an analysis of the wordings thereof, which to their minds reveal an intent 'to mitigate at least the harshness of successive taxation'. 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." (Underscoring supplied.)

We find no congent reason to deviate from the conclusion reached in the above cited case and the same should resolve the similar question presented in this suit.

WHEREFORE, the instant Petition for Review is hereby dismissed. The amount sought to be refunded or credited is consequently **DENIED**.

SO ORDERED.

Quezon City, Metro Manila, September 8, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRAÑES
Acting 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