REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE HONGKONG AND SHANGHAI
BANKING CORPORATION
Petitioner,

- versus - CTA CASE NO. 3867

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

9/28

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

D E C I S I O N

Petitioner, a branch of a foreign corporation duly licensed to engage in commercial banking in the Philippines, comes on an issue questioning the taxable base of an additional imposition of the 15% branch profit remittance tax prescribed in Section 24(b)(2)(ii) of the Tax Code, insofar as pertinent reads:

> Tax on branch profits remittance. - Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) xxx.

It appears that on various dates petitioner remitted to the head office the total amount of P87,016,957.80 as branch profits for the years 1976, 1977, and 1978 and paid the corresponding total amount of P13,052,543.67 as the 15% branch profit remittance tax computed on the profits actually remitted.

Nevertheless, petitioner was subsequently assessed for a deficiency of the 15% branch profit remittance tax based on the total profits without reduction for the profit remittance tax and not on the amount actually remitted abroad. Hence, the collection of an additional branch profit remittance tax of the amount of P1,957,881.55 which petitioner paid under protest on November 12, 1982.

As a consequence, petitioner filed an administrative claim and instituted judicial action for the refund/tax credit thereof.

In a ruling dated January 21, 1980 by the then Commissioner Efren I. Plana, the aforequoted provision of Section 124 *ibid.* had been interpreted to mean 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."

The rule applied, the claimed overpayment is computed thiswise:

Total profits actually remitted abroad (1976, 1977 and 1978 profits)	P 87,016,957.80
15% profit remittance tax paid thereon	13,052,543.67
Total - profits for 1976, 1977 and 1978 before reductions for remittance tax	P100,069,501.47
15% thereof (respondent's position) ...	15,010,425.22
Less: Profit remittance tax previously paid	13,052,543.67
Overpayment	P 1,957,881.55

Respondent's unvarying assertion is that the BIR Ruling of January 21, 1980 was revoked or modified by Revenue Memorandum Circular No. 8-82 dated March 17, 1982, stating, among others, that -

> 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.

Be that as it may, the question in this case is the same as the question raised in the case of ***Commissioner of Internal Revenue v. Burroughs Limited and the Court of Tax Appeals,*** *G.R. No. L-66653, June 19, 1986*, where the Supreme Court held that -

> Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private

> respondent Burroughs Limited paid the branch profit remittance tax in question 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 xxx.

No facts or legal principles have been presented in this case that were not considered in the Burroughs case, and that case is *stare decisis* and governs the issue in this case.

WHEREFORE, respondent is hereby ordered to grant the refund or tax credit in favor of the petitioner for the amount sought.

SO ORDERED.

Quezon City, Metro Manila, September 28, 1990.

ALEX Z. REYES
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals