18

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GRIFFITH LABORATORIES (PHILS.), INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5149

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 05 1997

x - x

D E C I S I O N

This petition is seeking for the refund or issuance of tax credit certificate in the amount of P1,453,165.44 alleged to be overpaid withholding taxes on royalties made by the petitioner covering the period July 1987 to September 1992.

Petitioner, a domestic corporation, duly organized and existing under Philippine laws, entered into a TECHNICAL LICENSE AGREEMENT (Exhs. "C-2"), dated September 17, 1985, with GRIFFITH LABORATORIES USA, INC. and MICRO-BIOTROL, INC., both corporations organized and existing under the laws of the State of Delaware, U.S.A., with offices at 12200 South Central Avenue, Alsip, Illinois 60658, U.S.A., for the manufacture and sale of Griffith Products and Services.

Under this License Agreement, petitioner is obliged to pay the licensor, royalty equivalent to 2% of net sales of all Griffith Products and Services in consideration of the rights, licenses and assistance granted by the licensor.

On November 12, 1985, an Amendment to the Technical and License Agreement (Exh. "C-1") was likewise entered into between the same parties in pursuant to the requirements of the Technology Transfer Board for the amendments of certain provision of the Technical License Agreement as conditions for its registration. The Technical License Agreement and its Amendments shall be effective for five (5) years from January 28, 1986 to January 27, 1991.

Before the expiration of the aforementioned License Agreement and its Amendments, a RENEWAL TECHNICAL LICENSE AGREEMENT (Exh. "D-2"), dated January 18, 1991, was entered into between the petitioner and the its licensors. An Amendment to the Renewal Technical License Agreement was entered on April 1, 1991 in consonance with the conditions set by the Philippine Technology Transfer Registry for the approval of its registration. The aforesaid Renewal of License Agreement and its Amendments shall be effective for five (5) years from April 1, 1991 to March 31, 1996.

On August 30, 1991, another Amendment to the Renewal Technical License Agreement (Exh. "E-1") was entered into between the petitioner, Griffith Laboratories (Philippines), Inc. and its licensors, Griffith Laboratories U.S.A., Inc. and Micro-Biotrol, Inc. which likewise was effective for five (5) years from April 1, 1991 to March 31, 1996

The License Agreements and its Amendments between petitioner and the licensors, were all duly registered and approved by the Bureau of Patents, Trademark and Technology Transfer (BPTTT) as follows:

1) Certificate of Registration No. 0648-A, dated January 28, 1986 (Exh. "C");
2) Certificate of Registration No. 1200, dated April 22, 1991 (Exh. "D"); and
3) Certificate of Registration No. 1200-A, dated October 23, 1991 (Exh. "E").

For the period July 1987 to September 1992, petitioner had been withholding 10% of the royalty payments in accordance with the rate of royalty tax under the most favored nation clause of Art. 13 par. 2 (b) (iii) of the RP-US Tax Treaty (January 1, 1983) in relation to Art 12 par. 2 (b) of the RP-West Germany Tax Treaty (January 1, 1985) as interpreted in BIR Ruling No. 263-86, dated November 27, 1986, and subsequent BIR Rulings upholding the 10% rate of royalty tax on U.S. residents.

On July 1, 1992, respondent issued Revenue Memorandum Circular No. 39-92, revoking existing rulings and holding that:

> "A resident of a third State is not entitled to the `most favored nation's' tax rate of 10% on royalty income derived from the Philippines because the payment of such tax is not under similar circumstances since there is a matching credit in Germany (20% for royalties), while there is no such similar credit granted by the United States."

In compliance with the respondent's Revenue Memorandum Circular No. 39-92, petitioner recomputed the withholding tax for the period July 1987 to September 1992 at 25% and paid the difference of P1,453,165.44 to the Bureau of Internal Revenue on October 30, 1992.

Subsequently, however, on March 31, 1993, this Court settled the same issue in the case of **IBM Philippines vs. Commissioner of Internal Revenue, C.T.A. Case No. 4308,** where it ruled that the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third state. Under the RP-West Germany Tax Treaty, the tax so charged shall not exceed 10% of the gross amount of the royalties, being the lowest rate imposable, the same rate should be applied on royalties derived by a resident of the United States.

The petitioner, therefore, in accordance with the requirements of Section 204(3) of the Tax Code, filed a written claim for refund (Exh. "JJ"), dated September 16, 1993, with respondent's office on the excess 15% royalty tax payments, amounting to P1,433,165.44, computed as follows:

Period Covered	Royalty Payable	10% Tax Withheld	Additional 15% Tax Withheld
July 1987-December 1991	P7,718,676.41	P 771,867.64	P1,157,801.46
January-March 1992	649,389.80	64,938.98	97,408.47
April-June 1992	610,502.16	61,050.22	91,575.32
July-September 1992	709,201.22	70,920.12	106,380.18
Total	P9,687,769.59	P 968,776.96	P1,453,165.44

Considering that the two-year period mandated by law under Sections 204 and 230 of the Tax Code is about to expire, the inaction of the respondent on the petitioner's claim for refund or issuance of tax credit certificate in the amount of P1,453,165.44, prompted the latter to file before this Court on September 13, 1994 the instant petition.

Respondent, as a defense, professed that in an action for refund the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action. Respondent added that tax refunds are construed strictly against the taxpayer.

Inadvertently, however, the respondent failed to offer any evidence nor has she submitted a memorandum in support thereof.

We are tasked therefore to resolve the following familiar issues:

1. Whether or not the correct rate of withholding tax on royalties paid by the petitioner to the U.S. licensors is 10% or 25%; and
2. Whether or not petitioner is entitled to the tax refund or tax credit in the amount of P1,453.165.44, representing overpaid or erroneously paid withholding tax on royalties for the period July 1987 to September 1992.

The first issue involves a legal question which had long been settled by this Court through a number of cases which affirmed the ruling pronounced by then Commissioner of Internal Revenue, Bienvenido Tan, Jr. in BIR Ruling No. 456-88. In that ruling, a 10% tax rate shall be imposed on royalties derived by a resident of the United States from sources within the Philippines pursuant to the most favored nation provision of the RP-US Tax Treaty (Article 12(b)(iii) in relation to Article 12(2)(b) of the RP-West Germany Tax Treaty ***(Warner Lambert Phillippines, Inc., vs. Commissioner of Internal Revenue, CTA Case Nos. 5163 and 5169, August 25, 1997; Eastern Telecommunications Philippines, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5230, August 5, 1997; G.D. Searle Philippines, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5120, August 5, 1997; Rhone Poulenc Rorer Philippines, Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 5179, July 29, 1997; California Manufacturing Company, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5186, June 27, 1997; Unisys Australia Limited (Philippine Branch), vs. Commissioner of Internal Revenue, CTA Case No. 5151, June 24, 1997; Wrigley Philippines, Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 5175, April 10, 1997; 3M Philippines, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5118, March 25, 1997; International Flavors and Fragrances (Philippines), Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5127, March 3, 1997; General Milling Corporation vs. Commissioner of Internal Revenue, CTA Case 5173, February 19, 1997; BASF Coatings and Inks Philippines, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 5135, October 1, 1996; Philtread Tire and Rubber Corporation, CTA Case No. 5117, September 12, 1996; Abbot Laboratories, (Philippines) vs. Commissioner of Internal Revenue, CTA Case No. 5119, September 9, 1996; Amalgamated Specialties***

Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5105, July 8, 1996; S.C. Johnson and Son, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5136, May 7, 1996; Armco Marsteel Alloy Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5115, February 6, 1996; Gilette (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4248, February 8, 1995; SmithKline and French Overseas Company vs. Commissioner of Internal Revenue, CTA Case No. 5048, September 22, 1995; IBM Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4308, March 3, 1993; Kimberly-Clark Corporation (U.S.A.) and Kimberly-Clark (Philippines) Inc. vs. Commissioner or Internal Revenue, CTA Case No. 4288, January 30, 1992; General Electric Philippines Meter and Instrument Co., Inc. vs Commissioner of Internal Revenue, CTA Case No. 4158, December 5, 1991).

In the case of **S.C. Johnson & Sons, Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 5136, May 7, 1996** (which was affirmed in toto by the Court of Appeals in Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., in CA-G.R. No. SP. 40802, dated November 7, 1996), we ruled:

> "This Court is of the persuasion that petitioner's stand is correct and concurs with the opinion rendered by the then Commissioner of Internal Revenue, Bienvenido Tan, Jr.,(BIR Ruling No. 456-88, supra), that under the most favored nation provision of the RP-US Tax Treaty [Article 13, paragraph 2(b)(iii)], the tax imposable on royalties derived by a resident of the United States from sources within the Philippines shall be the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third

state. Article 12, paragraph 2(b) of the RP-West Germany Tax Treaty, provides that royalties arising in the Philippines and paid to a resident of West Germany may also be taxed in the Philippines, but the tax so charged shall not exceed 10% of the gross amount of royalties. Said treaty also provides that for as long as the transfer of technology under Philippine law, is subject to approval, the limitation of the tax rate in case of royalties arising in the Philippines, apply if the contract giving rise to such royalties has been approved by Philippine competent authorities."

We do not intend to depart from the wisdom of said rulings and thus, the same should be applied in the case at bar.

To prove its claim, petitioner presented evidences properly identified by its witnesses, on the alleged amount sought to be refunded by submitting during the trial of this case the following:

(1) Technical License Agreement and Amendment to the Technical License Agreement between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner (Exhs. "C-1" and "C-2");

2) Certificate of Registration No. 0648-A issued by the BPTTT registering the Technical License Agreement and its Amendments between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner, valid for five years from January 28, 1986 to January 27, 1991 (Exh. "C");

3) Renewal Technical License Agreement and Amendment to the Renewal Technical License Agreement between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner (Exhs. "D-1" and "D-2");

4) Certificate of Registration No. 1200 issued by the BPTTT registering the Renewal Technical License Agreement and Amendment to the Renewal Technical License Agreement between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner (Exhs. "D");

5) Amendment to the Renewal Technical License Agreement between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner (Exhs. "E-1");

6) Certificate of Registration No. 1200-A issued by the BPTTT registering the Amendment to the Renewal Technical License Agreement between Griffith Laboratories USA, Micro-Biotrol, Inc. and the petitioner (Exhs. “E”);

7) The Corporate Annual Income Tax Returns (BIR Form No. 1702) of petitioner for the fiscal years ending September 30, 1987 to September 30, 1992 (Exhs. “F”, “G”, “H”, “I”, “J” and “K”) with the Schedular Deductions on Royalty (Exhs. “F-1”, “G-1”, “H-1”, “I-1”, “J-1”, and “K-1”);

8) Central Bank Confirmation Receipts showing corporate income tax payments for the fiscal years 1987-1990 (“F-2”, “G-2”, “H-2”, and “I-2”);

9) The Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W) for the period covering July 1987 to September 1992 (Exhs. “L”, “M”, “N”, “O”, “P”, “Q”, “R”, “S”, “T”, “U”, “V”, “W”, “X”, ”Y”, ”Z”, “”AA”, “BB”, “CC”, “DD”, “EE”, “FF” and “II-1”);

10) Central Bank Confirmation Receipts showing remittance of final taxes withheld for the period July 1987 to October 1991 (Exhs. “L-1”, “M-1”, “N-1”, “O-1”, “P-1”, “Q-1”, “R-1”, “S-1”, “T-1”, “U-1”, “V-1”, “W-1”, “X-1”, “Y-1”, “Z-1”, “AA-1” and “BB-1”), and the machine validations of payment found in the Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W) as shown in Exhs. “CC”, “DD”, “EE” and “FF”, as well as the Certifications, dated August 9, 1995 and November 6, 1995, issued by the BIR regarding the veracity of the payments made by petitioner (Exhs. “GG”, “GG-1” and “GG-2”),

11) Statements of Royalty due to Griffith Laboratories USA, Inc., Report of Certified Public Accountants, and Certified True Copy of Worksheet prepared by Griffith Laboratories (Phils.), Inc., re: Summary of Sales Subject to Royalty for the periods covering July 1987 to September 30, 1992 (Exhs, “LL” to “LL-17); and

12) Claim for Tax Refund or Tax Credit of Overpaid Withholding Tax in the Amount of P1,453,165.44 on Royalties paid to Griffith Laboratories USA and Micro-Biotrol, Inc. filed by petitioner with the Chief, International Tax Affairs Division of the BIR, dated September 16, 1993 (Exh. “JJ”).

After a thorough examination of all the evidence presented by the petitioner in court, this Court finds that petitioner had overpaid the withholding tax on royalties, hence, entitled to a refund.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund to petitioner the amount of P1,453,165.44, representing overpaid taxes withheld on royalties from July 1987 to September 1992.

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 the above decision was reached after due consultation with 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