Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

CITIBANK N.A.,
Petitioner,

- versus -

C.T.A. CASE NO. 5023

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 03 1995

x - x

D E C I S I O N

This case involves a claim for refund of alleged overpaid branch profit remittance tax in the amount of P1,307,920.58 for the year 1991.

Petitioner is a resident foreign corporation existing under Philippine laws, with principal office at 6th floor Citibank Centre Paseo de Roxas, Makati, Metro Manila.

On August 22, 1991, petitioners application for profit remittance to its head office abroad in the amount of P802,866,196.50 was approved by the Central Bank which is computed as follows:

CB-DRD Registered Assigned Capital / Total Assigned Capital		x	Branch Profit
RBU =	P768,650,937.00 / P918,889,000.00	x P19,037,872.00	P15,925,185.91
Less: 15% profit remittance tax			2,388,777.89
Sub-total			P13,536,408.02

FCDU= P768,650,937.00 / P918,889,000.00	x P60,880,114.00	P50,926,234.48
(Subject to remittance tax)		
Less: 15% profit remittance tax		7,638,935.17
Sub-total		P 43,287,299.31
Net Amount Remittable		**P802,866,196.50**

Then, on August 26, 1991, the portion pertaining to the branch profit remittance tax (15% of P66,851,420.39 or P10,027,713.06) was paid to the government.

On February 22, 1993, petitioner, through its auditors filed a request for refund in the amount of P1,307,920.58 representing its alleged overpaid branch profit remittance tax for 1991, computed as follows:

Net profit before profit remittance tax (P15,925,185.91 + P50,926,234.48)	P66,851,420.39
	x 15%
15% profit remittance tax actually paid (P2,388,777.89 + P7,638,935.17)	P10,027,713.06
Net profit before profit remittance tax	P66,851,420.39
	/ 1.15
	P58,131,669.90
	x 15%
15% profit remittance tax that should have been paid	8,719,750.48
Erroneous 15% profit remittance tax actually paid	P10,027,713.06
Less: 15% profit remittance that should have been paid	8,719,750.48
Excess 15% profit remittance tax	P 1,307,962.58

Up to the filing of the petition for review on August 25, 1993, respondent has not acted on petitioner's claim.

The sole issue to be resolved in this case is whether or not the branch profits tax are computed based on the profits actually remitted abroad or on the total branch profits out of which the remittance is made.

First. Petitioner contends that the 15% Branch Profit Remittance Tax should be based on the profits actually remitted abroad and cited as authority Section 25(a)(5) of the National Internal Revenue Code. Likewise, petitioner relies on the case of Bank of America NT & SA vs. Commissioner of Internal Revenue (*CTA Case No. 3799, October 29, 1986*).

While respondent stressed that what is applicable in this case is Revenue Memorandum No. 8-82 (dated March 17, 1982) which reads in part as:

> "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."

Moreover, respondent also cites as basis Section 24(b)(2)(ii) of the Tax Code.

Insofar as pertinent Revenue Memorandum Circular No. 8-82 (dated March 17, 1982) is herein quoted for reference:

"**Subject:** Classification as to the proper tax base in 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 xxx 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.

Again on January 21, 1980, the BIR in another ruling issued in answer to a query as to the tax base upon which 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 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 deduction 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. Ancheta
Acting Commissioner

Since Section 24(b)(2)(ii) of the NIRC is material to the issues on hand, we find it necessary to reproduce the provision which reads:

"**(ii) Tax on branch profits remittances.** - Any profit remitted by a branch to its head office shall be subject to a tax of 15% [except those registered with the Export Processing Zone Authority]. *Provided,* That any profit remitted by a branch to its head office authorized to engage

> in petroleum operations in the Philippines shall be subject to tax at 7-1/2%. In both cases, the tax shall be collected and paid in the same manner as provided in Sections 51 and 52 of this Code and *Provided*, further, That interest, dividends, rents, royalties, including remunerations for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be considered as branch profits unless the same are effectively connected with the conduct of trade or business in the Philippines. (as amended by P.D. 1705, P.D. 1773 and P.D. 1994.)

In the case of Commissioner of Internal Revenue v. Bank of America NT & SA, the Court of Appeals upheld the validity of Revenue Memorandum Circular No. 8-82 which reads:

> xxx. 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 is says." (*Bank of America NT & SA and the Court of Tax Appeals CA GR. SP No. 22529, September 19, 1990*)

The High Court in its latest pronouncement in the case of Bank of America NT & SA vs. The Court of Appeals, et.al., G.R. Nos. 103092 and 103106, July 21, 1994 reversed the ruling laid down by the Court of Appeals in this case and sustained the decision of the Court of Tax Appeals when it held thus:

> "x x x In all the situations x x x where the mechanism of withholding of taxes at source operates to ensure collection of the tax, and which respondent claims the base on which the tax is computed is the amount to be paid or remitted, the law applicable expressly, specifically and unequivocally mandates that the tax is on the total amount thereof which shall be collected and paid as provided in Sections 53 and 54 of the Tax Code. Thus:
>
> > "Dividends received by an individual who is a citizen or resident of the Philippines from a domestic corporation, shall be subject to a final tax at the rate of fifteen (15%) per cent on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code. (Emphasis supplied; Sec. 21, Tax Code)
> >
> > 'Interest from Philippine Currency bank deposits and yield from deposit substitutes whether received by citizens of the Philippines or by resident alien individuals, shall be subject to a final tax as follows: (a) 15% of the interest or savings deposits, and (b) 20% of the interest on time deposits and yield from deposits substitutes, which shall be collected and paid as provided in Sections 53 and 54 of this Code: x x x

(Underlining supplied; Sec. 21, Tax Code applicable.)'

"On the other hand, there is absolutely nothing in Section 24(b) (2) (ii), supra, which indicates that the 15% tax on branch profit remittance is on the total amount of profit to be remitted abroad which shall be collected and paid in accordance with the tax withholding device provided in Sections 53 and 54 of the Tax Code. The statute employs 'Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%)' - without more. Nowhere is there said of 'base on the total amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad, which shall be collected and paid as provided in Sections 53 and 54 of this Code.' Where the law does not qualify that the tax is imposed and collected at source based on profit to be remitted abroad, that qualification should not be read into the law. It is a basic rule of statutory construction that there is no safer nor better canon of interpretation than that when the language of the law is clear and unambiguous, it should be applied as written. And to our mind, the term 'any profit remitted abroad' can only mean such profit as is 'forwarded sent, or transmitted abroad' as the word 'remitted' is commonly and popularly accepted and understood. To say therefore that the tax on branch profit remittance is imposed and collected at source and necessarily the tax base should be the amount actually applied for the branch with the Central Bank as profit to be remitted abroad is to ignore the unmistakable meaning of plain words." (Underscoring supplied)

From the foregoing it is settled that insofar as the 15% remittance tax is concerned the tax base should be "the profit remitted abroad". The law speaks clearly and is no longer capable of any other interpretation. Here, the tax is imposed on the amount sent abroad pursuant to Section 25(a)(5) of the Tax Code which provides:

> "Tax on branch profits remittances. - Any profit remitted by a branch to its head office shall be subject to a tax of 15% (except those registered with the Export Processing Zone Authority) x x x"

Accordingly, as the 15% tax is imposed only on the profit "remitted", that portion of the profit corresponding to the profit remittance tax itself which is not remitted abroad (as it is paid to the government), should not form part of the tax base for purposes of computing the branch profits remittance tax.

WHEREFORE, in view of the foregoing premises, respondent is hereby ordered to refund or issue a tax credit certificate in favor of the petitioner for the amount of P1,307,962.58 representing overpaid branch profits remittance tax for the year 1991.

SO ORDERED.

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 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals