REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE COCA-COLA EXPORT CORPORATION,
Petitioner.

- versus -

C.T.A. CASE NO. 5002

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
AUG 11 1995

x - x

DECISION

This is a petition for review commenced by petitioner, The Coca-Cola Export Corporation, to seek from respondent a refund or tax credit of alleged overpaid withholding tax on dividend income for 1991 in the amount of P1,870,540.00.

Petitioner, represents itself as a corporation organized and existing under the laws of the State of Delaware, U.S.A., and duly licensed to do business in the Philippines through its Philippines Branch in the manufacture and sale of beverage base and concentrate.

Petitioner alleged in its petition filed with this Court on June 23, 1993 that it owns, together with its Philippine Branch, 405,000 common shares of stocks of

Coca-Cola Bottlers Philippines, Inc., of which 300,000 shares are held by it while 105,000 shares are held by its Philippine Branch.

Petitioner further alleged that Coca-Cola Bottlers Philippines, Inc. declared a "cash dividend of P168,348,600.00 to all stockholders of record as of April 22, 1991," and petitioner was paid a gross dividend of P37,410,800.00, from which, 20% tax amounting to P7,482,160.00 was remitted to the Bureau of Internal Revenue covered by BIR Payment Order No. C 11097558 and Confirmation Receipt No. B 18773838, both dated June 28, 1991.

Petitioner, on July 30, 1992, believing that the 20% tax withheld on dividends it received from a domestic corporation was erroneous on the ground that under Section 25(b)(5)(B) of the Tax Code, the tax due thereon should only be 15% and not 20%, insisted that the tax withheld in excess by P1,870,540.00 should be refunded to it.

Petitioner further invoked the ruling of the Supreme Court in the case of (**Marubeni Corporation vs. Commissioner of Internal Revenue**, G.R. No. 76573 September 14, 1989) to the effect that dividends on investments in domestic corporation remitted to non-resident foreign corporation is subject only to 15% tax and the resolution of the Supreme Court in the case of (**Commissioner of Internal Revenue vs. Proter and Gamble Philippine Manufacturing Corporation,** G.R. No. 66838 December 2, 1991) which declares that "Section 902, U.S. Tax Code, specifically and clearly complies with the requirements of Section 24(b)(3) [now Section 25(b)(5)(B)], NIRC."

Respondent has not acted on petitioner's request for refund or tax credit. Petitioner filed the instant petition for review and therefore prays for judgment against respondent and such other relief as this Court may deem just and equitable under the premises.

Respondent in her answer filed on September 8, 1993 specifically and qualifiedly denied practically all the allegations in the petition except those relating to her personality as Commissioner of Internal Revenue and the jurisdiction of this Court, on grounds of lack of knowledge and information to form a belief as to the truth thereof or that the allegations are mere opinions, arguments and erroneous conclusions of fact and/or of law. And as special and affirmative defenses alleged among others, that:

> a) Petitioner's claim for tax credit/refund is still under the usual routine

investigation and/or examination by respondent's bureau;

b) The dividends payments made by Coca-Cola Bottlers Philippines, Inc. is subject to the 35% final withholding tax pursuant to section 25(b) of the Tax Code, as amended;

c) The withholding tax on dividend allegedly remitted and paid to respondent was collected and paid in accordance with law and pertinent BIR implementing rules and regulations, hence, the same is not refundable;

d) In order for petitioner herein to validly avail of a reduced 15% final tax on dividends received by petitioner from Coca-Coal Bottlers Philippines, Inc., petitioner must comply with the requirements set forth therein under Section 25(b)(5)(B) as well as BIR Ruling No. 080-92 dated March 17, 1992, implementing the said provision of the Tax Code;

e) Claims for refund are construed strictly against claimant, the same being in the nature of exemption from taxation; and

f) In an action for refund or tax credit the taxpayer has the burden of showing that the taxes were erroneously or illegally paid, and failure to sustain said burden is fatal to the action for tax refund or credit.

The main issue presented for resolution of this Court is whether of not petitioner is entitled to the refund or tax credit of P1,870,540.00 representing its alleged overpaid withholding tax on its dividend income for 1991.

During the trial of this case, petitioner through counsel introduce in evidence the testimony of its lone witness **Mr. Gerardo E. Espiridion** to prove that:

1) cash dividend was declared by the Coca-Cola Bottlers Philippines, Inc., a domestic corporation;

2) the cash dividend due to the Coca-Cola Export Corporation was remitted abroad; and

3) the 20% tax withheld on said cash dividend was actually remitted to the Bureau of Internal Revenue.

Petitioner's witness thus testified that he is presently employed as Tax Supervisor of Coca-Cola Bottlers Philippines Inc., a corporation duly organized and existing under the laws of the Philippines, registered with the Securities and Exchanged Commission under Registration Certificate No. 0098792 issued on May 5, 1981; that the stockholders of Coca-Cola Bottlers Philippine Inc. are San Miguel Corporation, the Head Office and the Philippine Branch of petitioner; that petitioner is a foreign corporation duly organized and existing under the laws of the State of Delaware, U.S.A., licensed to engage in business in the Philippines; that as Tax Supervisor of Coca-Cola Bottlers Philippines, Inc. he perform tax audits and review payment of the tax by Coca-Cola Bottlers Philippines, Inc. including income tax, value added tax and withholding tax on dividends; that Coca-Cola Bottlers Philippines, Inc. declared cash dividends on April 23, 1991; that Coca-Cola Bottlers Philippines, Inc. through the Bank of the Philippine

Islands applied with the Central Bank and was granted approval to remit the dividends due The Coca-Cola Export Corporation; that the Coca-Cola Bottlers of the Philippines, Inc. withheld 20% of the cash dividends amounting to P7,482,160 as tax; and that Coca-Cola Bottlers of the Philippines, Inc. remitted to respondent the tax withheld on the cash dividends as shown by its Monthly Remittance Returns of Income Tax Withheld for June 1991, Payment Order No. C 119097558 and CB Confirmation Receipt No. B 18773838, both dated June 28, 1991 (Pls. see t.s.n. hearing on October 20, 1993).

During the hearing on May 17, 1994 counsel for respondent manifested that while she was able to trace their records of the case to Makati West office of the BIR and inspite of the service of a subpoena duces tecum, no record was produced in Court, hence she is constrained to submit the case for decision on the basis of the pleadings.

Petitioner then filed its memorandum on June 14, 1994 while respondent filed her memorandum on August 15, 1994.

As stated earlier, respondent in the instant case, specifically denies all the allegations in the petition for review except for the juridical personality of the

BIR and the jurisdiction of this Court. It is therefore, incumbent on the part of petitioner to prove its material allegations as well as to the truth of its claim.

After careful consideration of the parties pleadings, their arguments and the evidence presented in this case, we are convinced that petitioner has complied with the requirements in order that the dividends received by its non-resident parent corporation in the U.S.A. may be subject to the preferential 15% tax rate instead of the 20%. Petitioner has presented testimonial and documentary evidence bearing on the declaration by Coca-Cola Bottlers Philippines, Inc., of cash dividends to all the stockholders, approval by the Central Bank of cash dividend due petitioner to be remitted to the U.S.A., Monthly Remittance Return of Income Tax Withheld, BIR Payment Order and CB Confirmation Receipt among others, which are deemed sufficient. In other words, petitioner was able to meet the conditions in consonance with the Resolution En Banc* of the Supreme Court, dated December 2, 1991, in the case of **Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation**, 204 SCRA 377, in this wise:

---

*This reversed the decision of the Second Division in **Commissioner of Internal Revenue vs. Procter & Gamble PMC**, No. L-66839, April 15, 1988, 160 SCRA 560.

> It is important to note that Section 34(b)(1), NIRC, now Section 25(b)(5)(B) of the Tax Code, does *not* require that the US must give a *"deemed paid" tax credit for the dividend tax (20 percentage points) waived by the Philippines* in making applicable the preferred dividend tax rate of fifteen percent (15%). In other words, our NIRC does *not* require that the US tax law *deem the parent-corporation to have paid the twenty (20) percentage points of dividends tax waived* by the Philippines. The NIRC *only* requires that the US "shall allow" P&G-USA a "deemed paid" tax credit in *an amount equivalent to the twenty (20) percentage points* waived by the Philippines.

By and large, we have to recognize the principle of reciprocity which is the rationale behind granting preferential tax rate of 15% under Section 25(b)(5)(B) of the Tax Code and avoid double taxation.

As to respondent's argument that claims for refund are construed strictly against claimants, it may not be amiss to state that the Supreme Court has considered a total exemption by the country of domicile of non-resident corporate stockholder on dividends received, as ample basis for the applicability of the 15% tax rate (Pls. see **Commissioner of Internal Revenue vs. Wander Philippines, Inc.**, 160 SCRA 573).

In fine petitioner has sufficiently established validity of its claims and entitlement to the refund of the amount prayed for.

WHEREFORE, respondent is hereby Ordered to Refund or Issue a Tax Credit Certificate in the amount of P1,870,540.00.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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