file

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS DE FILIPINAS (PHILIPPINE BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 3827

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

10/14/88

D E C I S I O N

The case involves a claim for refund of alleged overpaid branch profit remittance tax.

The essential facts are not in dispute.

Petitioner is a foreign corporation duly licensed to engaged in business through its branch office in the Philippines.

On August 16, 1982 petitioner paid the amount of P1,506,440.78 as branch profit remittance tax based on 1978 net profit after income tax.

On August 15, 1984 it filed a claim for refund of the amount of P196,492.27 representing erroneously overpaid branch profit remittance tax; and

On August 16, 1984, the instant petition for review.

The issues raised are: 1) Whether the Court has acquired jurisdiction, and 2) Whether the 15% branch profit remittance tax be based on the amount actually remitted on the total amount applied for with the Central Bank of the Philippines.

As to the first, the impression precipitately broached by the respondent is that the instant petition is time-barred having been filed after a lapse of 731 days (1984 being a leap year) hence, one (1) day beyond the 2-year period of limitation prescribed in Section 292 of the Tax Code.

At this juncture We do not see our way clear through this myopic view. This kind of pecayunish approach would be stretching too far the narrow labyrinthical technicalities of the law. Between August 16, 1982 (payment of the tax) and August 16, 1984 (filing of petition) is manifestly a two-year period. "In computing a period, the first day shall be excluded and the last day included." (Art. 13 Civil Code of the Philippines).

The Court takes jurisdiction.

The second issue bears on the taxable base for the imposition of the 15% branch profit remittance tax mandated in Section 24(b)(2)(ii) of the Tax Code, viz.:

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

In a letter dated January 21, 1980 in response to a query the then Commissioner of Internal Revenue interpreted the above-cited provision to mean that "the 15% branch profit tax shall be imposed on the branch profits actually remitted abroad and not on the total branch profits out of which the remittance is to be made."

This Court had the occasion to apply the said ruling in the Burroughs Limited v. Commissioner of Internal Revenue, CTA Case No. 3204, June 23, 1983, where it held, inter alia, that "Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24(b)(2) of the Tax Code 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." (Affirmed by the Supreme Court, 142 SCRA 325).

Going by the said pronouncement petitioner comes with the instant claim for the refund of an overpayment of branch profit remittance tax in the amount of P196,492.27, computed this wise:

1978 net profit after income tax but before branch profit remittance tax	P10,042,938.58
Profit actually remitted abroad	P 8,536,497.80
15% tax due thereon	P 1,309,948.51
Tax actually paid by petitioner	1,506,440.78
Overpayment	P 196,492.27

The respondent's unvarying assertion is that the BIR Ruling of January 21, 1980 was revoked and repealed by Revenue Memorandum Circular No. 8-82 dated March 17, 1982, stating 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.

Apparently the intendment was to resolve a seemingly troubling and recurring question which centers around the interpretation of Section

24(b)(2)(ii), cited earlier. The loopy circumstance in the January 21, 1980 ruling is stressed by the respondent as thus: How would the amount of P1,506,440.78 which represents the difference between P10,042,938.78 and P8,538,487.80 be treated? Is it still a part of the profit remittable or not? What is the logical reason for deducting first the 15% branch profit remittance tax from the taxable base of P10,042,938.58? It goes without saying that the memorandum circular now sets in place if not strengthens the moorings of the statute.

A fortiori, the holding in the Burroughs Limited case lends settling cognizance to the validity of the Memorandum Circular No. 8-82, where as ruled by the Supreme Court -

> What was applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because the 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 x x x.

Stated otherwise, the circular must be prospective in application. Established at bar is a payment effected on August 16, 1982 subsequent to the issuance thereof. Hence petitioner's case falls within the compelling import and force of the Revenue Memorandum Circular No. 8-82 dated March 17, 1982.

Accordingly, the alleged erroneously paid P1,506,440.78 representing the 15% branch profit remittance tax based on the 1978 net profit after income tax in the amount of P10,042,738.58 is rightly imposed and collected.

JUDGEMENT for the respondent Commissioner of Internal Revenue at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 14, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

(On leave)
AMANTE FILLER
Presiding Judge

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 af[illegible] r due consultation among 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