Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 103092 July 21, 1994

BANK OF AMERICA NT & SA, petitioner,
vs.
HONORABLE COURT OF APPEALS, AND THE COMMISSIONER OF INTERNAL REVENUE, respondents.

G.R. No. 103106 July 21, 1994

BANK OF AMERICA NT & SA, petitioner,
vs.
THE HONORABLE COURT OF APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE, respondents.

Sycip, Salazar, Hernandez & Gatmaitan and Agcaoili & Associates for petitioner.

VITUG, ***J.:***

Section 24(b) (2) (ii) of the National Internal Revenue Code, in the language it was worded in 1982 (the taxable period relevant to the case at bench), provided, in part, thusly:

> Sec. 24. Rates of tax on corporations. . . .
> (b) Tax on foreign corporations. . . .
> (2) (ii) Tax on branch profit and remittances. —
> Any *profit remitted abroad* by a branch to its head office shall be subject to a tax of fifteen per cent (15%) . . . ."

Petitioner Bank of America NT & SA argues that the 15% branch profit remittance tax on the basis of the above provision should be assessed on the amount actually remitted abroad, which is to say that the 15% profit remittance tax itself should not form part of the tax base. Respondent Commissioner of Internal Revenue, contending otherwise, holds the position that, in computing the 15% remittance tax, the tax should be inclusive of the sum deemed remitted.

The statement of facts made by the Court of Tax Appeals, later adopted by the Court of Appeals, and not in any serious dispute by the parties, can be quoted thusly:

> Petitioner is a foreign corporation duly licensed to engage in business in the Philippines with Philippine branch office at BA Lepanto Bldg., Paseo de Roxas, Makati, Metro Manila. On July 20, 1982 it paid 15% branch profit remittance tax in the amount of P7,538,460.72 on profit from its regular banking unit operations and P445,790.25 on profit from its foreign currency deposit unit operations or a total of P7,984,250.97. The tax was based on net profits after income tax without deducting the amount corresponding to the 15% tax.
>
> Petitioner filed a claim for refund with the Bureau of Internal Revenue of that portion of the payment which corresponds to the 15% branch profit remittance tax, on the ground that the tax should have been computed on the basis of profits actually remitted, which is

P45,244,088.85, and not on the amount before profit remittance tax, which is P53,228,339.82. Subsequently, without awaiting respondent's decision, petitioner filed a petition for review on June 14, 1984 with this Honorable Court for the recovery of the amount of P1,041,424.03 computed as follows:

Net Profits After Profit Tax Due Alleged
Income Tax But Remittance Alleged by Overpayment
Before Profit Tax Paid Petitioner Item 1-2
Remittance Tax _________ _________ ___________

A. Regular Banking
Unit Operations
(P50,256,404.82)

1. Computation of BIR
15% x P50,256,404.82 - P7,538,460.72

2. Computation of
Petitioner
- P50,256,404.82 x 15% P6,555,183.24 — P983,277.48
1.15

B. Foreign Currency
Deposit Unit
Operations
(P2,971,935)

1. Computation of BIR
15% x - P2,971,935.00 P445,790.25

2. Computation of
Petitioner
- P2,971,935.00 x 15% P387,643.70 P58,146.55

T O T A L. . P7,984,250.97 P6,942,286.94 P1,041,424.02"[1]

The Court of Tax Appeals upheld petitioner bank in its claim for refund. The Commissioner of Internal Revenue filed a timely appeal to the Supreme Court (docketed G.R. No. 76512) which referred it to the Court of Appeals following this Court's pronouncement in Development Bank of the Philippines vs. Court of Appeals, *et al*. (180 SCRA 609). On 19 September 1990, the Court of Appeals set aside the decision of the Court of Tax Appeals. Explaining its reversal of the tax court's decision, the appellate court said:

> The Court of Tax Appeals sought to deduce legislative intent *vis-a-vis* the aforesaid law through an analysis of the wordings thereof, which to their minds reveal an intent to mitigate at least the harshness of successive taxation. 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.[2]

Hence, these petitions for review in G.R. No. 103092 and G.R. No. 103106 (filed separately due to inadvertence) by the law firms of "Agcaoili and

Associates" and of "Sycip, Salazar, Hernandez and Gatmaitan" in representation of petitioner bank.

We agree with the Court of Appeals that not much reliance can be made on our decision in Burroughs Limited vs. Commission of Internal Revenue (142 SCRA 324), for there we ruled against the Commissioner mainly on the basis of what the Court so then perceived as his position in a 21 January 1980 ruling the reversal of which, by his subsequent ruling of 17 March 1982, could not apply retroactively against Burroughs in conformity with Section 327 (now Section 246, re: non-retroactivity of rulings) of the National Internal Revenue Code. Hence, we held:

> 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 which provides —
>
>> Sec. 327. Non-retroactivity of rulings. Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer except in the following cases (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith. (ABS-CBN Broadcasting Corp. v. CTA, 108 SCRA 151-152)
>
> The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them.

The Court of Tax Appeals itself commented similarly when it observed thusly in its decision:

> In finding the Commissioner's contention without merit, this Court however ruled against the applicability of Revenue Memorandum Circular No. 8-82 dated March 17, 1982 to the Burroughs Limited case because the taxpayer paid the branch profit remittance tax involved therein on March 14, 1979 in accordance with the ruling of the Commissioner of Internal Revenue dated January 21, 1980. In view of Section 327 of the then in force National Internal Revenue Code, Revenue Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect because any revocation or modification of any ruling or circular of the Bureau of Internal Revenue should not be given retroactive application if such revocation or modification will, subject to certain exceptions not pertinent thereto, prejudice taxpayers.[3]

The Solicitor General correctly points out that almost invariably in an *ad valorem* tax, the tax paid or withheld is not deducted from the tax base. Such impositions as the ordinary income tax, estate and gift taxes, and the value added tax are generally computed in like manner. In these cases, however, it is so because the law, in defining the tax base and in providing for tax withholding, clearly spells it out to be such. As so well expounded by the Tax Court —

> . . . In all the situations . . . 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*: . . . (Emphasis supplied; Sec. 21, Tax Code applicable.)

And on rental payments payable by the lessee to the lessor (at 5%), also cited by respondent, Section 1, paragraph (C), of Revenue Regulations No. 13-78, November 1, 1978, provides that:

> Section 1. *Income payments subject to withholding tax and rates prescribed therein*. — Except as therein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
>
> xxx xxx xxx
>
> (C) *Rentals* — When the *gross rental* or the payment required to be made as a condition to the continued use or possession of property, whether real or personal, to which the payor or obligor has not taken or is not taking title or in which he has no equity, exceeds five hundred pesos (P500.00) per contract or payment whichever is greater — five per centum (5%).

Note that the basis of the 5% withholding tax, as expressly and unambiguously provided therein, is on the *gross rental*. Revenue Regulations No. 13-78 was promulgated pursuant to Section 53(f) of the then in force National Internal Revenue Code which authorized the Minister of Finance, upon recommendation of the Commissioner of Internal Revenue, to require the withholding of income tax on the same items of income payable to persons (natural or judicial) residing in the Philippines by the persons making such payments at the rate of not less than 2 1/2% but not more than 35% which are to be credited against the income tax liability of the taxpayer for the taxable year.

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.[4]

In the 15% remittance tax, the law specifies its own tax base to be on the "profit remitted abroad." There is absolutely nothing equivocal or uncertain about the language of the provision. The tax is imposed on the amount sent abroad, and the law (then in force) calls for nothing further. The taxpayer is a single entity, and it should be understandable if, such as in this case, it is the local branch of the corporation, using its own local funds, which remits the tax to the Philippine Government.

The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries *vis-a-vis* local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax *pari-passu* ends between domestic branches and subsidiaries of foreign corporations.

The Solicitor General suggests that the analogy should extend to the ordinary application of the withholding tax system and so with the rule on constructive remittance concept as well. It is difficult to accept the proposition. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest. It is hardly the case, however, in the imposition of the 15% remittance tax where there is but one taxpayer using its own domestic funds in the payment of the tax. To say that there is constructive remittance even of such funds would be stretching far too much that imaginary rule. Sound logic does not defy but must concede to facts.

We hold, accordingly, that the written claim for refund of the excess tax payment filed, within the two-year prescriptive period, with the Court of Tax Appeals has been lawfully made.

WHEREFORE, the decision of the Court of Appeals appealed from is REVERSED and SET ASIDE, and that of the Court of Tax Appeals is REINSTATED.

SO ORDERED.

Bidin, Romero and Melo, JJ., concur.
Feliciano, J., took no part.

#Footnotes

1 *Rollo* of G.R. No. 103106, pp. 47-48.
2 *Rollo* of G.R. No. 103106, p. 54.
3 *Rollo* of G.R. No. 103106, p. 50.
4 *Rollo* of G.R. No. 103106, pp. 133-135.