

Title:

Bank of America NT & SA vs. The Commissioner of Internal Revenue and the Honorable Court of Appeals

Facts:

The case revolves around the dispute on the calculation of the 15% branch profit remittance tax imposed on the profits remitted abroad by the Philippine branch of Bank of America NT & SA (“the Bank”) for the taxable year 1982. The Bank paid a total of P7,984,250.97 as branch profit remittance tax based on its net profits after income tax. The Bank later claimed a refund of P1,041,424.03, arguing that the 15% remittance tax should be computed on the profits actually remitted abroad rather than on the pre-tax amount.

The Bank’s claim for refund was initially granted by the Court of Tax Appeals but was later reversed by the Court of Appeals. The Bank then filed separate petitions for review, which were eventually consolidated by the Supreme Court under G.R. Nos. 103092 and 103106.

Issues:

1. Should the 15% branch profit remittance tax be computed on the net amount actually remitted abroad or should it include the remittance tax itself as part of the taxable base?
2. Does the imposition of the branch profit remittance tax based on the total amount remitted abroad, inclusive of the tax itself, equate to double taxation and thus contradict the legislative intent to mitigate such effect?

Court’s Decision:

The Supreme Court reversed the decision of the Court of Appeals, reinstating the decision of the Court of Tax Appeals in favor of the Bank. The Court clarified that the remittance tax should be calculated based on the amount actually remitted abroad, excluding the remittance tax itself. The Court emphasized that the language of Section 24(b)(2)(ii) of the National Internal Revenue Code was clear and unambiguous, specifying that the tax base for the 15% remittance tax is the “profit remitted abroad,” which implies the amount forwarded abroad without considering the tax as part of it. Therefore, the Court disagreed with the Commissioner of Internal Revenue’s interpretation and the analogies he attempted to draw from the withholding tax system and the constructive remittance concept.

Doctrine:

The ruling established the doctrine that the 15% branch profit remittance tax should be computed solely on the profits actually remitted abroad by a branch to its head office,

excluding the remittance tax itself from the tax base. The Supreme Court's decision reaffirms the principle of strict interpretation in the application of tax laws, where the explicit wording of the statute should be the primary guide in its interpretation without adding or deducting from it.

Class Notes:

1. **Tax Base for Branch Profit Remittance Tax:** The tax base for the 15% branch profit remittance tax is the amount of profit actually remitted abroad, excluding the tax itself.
2. **Interpretation of Tax Laws:** Tax laws are to be interpreted strictly, and where the language of the statute is clear, it should be applied as written without further interpretation or expansion.
3. **National Internal Revenue Code, Section 24(b)(2)(ii) (1982):** Provides the legal framework for the imposition of the branch profit remittance tax, specifying the "profit remitted abroad" as the tax base.

Historical Background:

The 15% branch profit remittance tax was instituted to provide parity between local branches and Philippine subsidiaries of foreign corporations in tax treatment. This case elucidates the correct application of the tax and underscores the Supreme Court's role in settling interpretative disputes in tax laws, reflecting the judicial system's integral function in ensuring that legislative intent and fairness in tax burdens are properly upheld.