

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
BURROUGHS LIMITED AND THE COURT OF TAX APPEALS,
RESPONDENTS.***G.R. No. 66653. June 19, 1986*

Ponente: PARAS, J.

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Petition for certiorari to review and set aside the Decision dated June 27, 1983 of respondent Court of Tax Appeals in its C.T.A. Case No. 3204, entitled "Burroughs Limited vs. Commissioner of Internal Revenue" which ordered petitioner Commissioner of Internal Revenue to grant in favor of private respondent Burroughs Limited, tax credit in the sum of P172,058.90, representing erroneously overpaid branch profit remittance tax.

Burroughs Limited is a foreign corporation authorized to engage in trade or business in the Philippines through a branch office located at De la Rosa corner Esteban Streets, Legaspi Village, Makati, Metro Manila.

Sometime in March 1979, said branch office applied with the Central Bank for authority to remit to its parent company abroad, branch profit amounting to P7,647,058.00. Thus, on March 14, 1979, it paid the 15% branch profit remittance tax, pursuant to Sec. 24 (b) (2) (ii) and remitted to its head office the amount of P6,499,999.30 computed as follows -

Amount applied for remittance-----

P7,647,058.00

Deduct: 15% branch profit remittance tax -----

1,147,058.70

Net amount actually remitted-----

P6,499,999.30

Claiming that the 15% profit remittance tax should have been computed on the basis of the amount actually remitted (P6,499,999.30) and not on the amount before profit remittance tax (P7,647,058.00), private respondent filed on December 24, 1980, a written claim for the refund or tax credit of the amount of P172,058.90 representing alleged - overpaid branch profit remittance tax, computed as follows:

Profits actually remitted-----

P6,499,999.30

Remittance tax rate-----

15%

Branch profit remittance tax due thereon-----

P974,999.89

Branch profit remittance tax paid-----

P1,147,058.70

Less: Branch profit remittance tax as above computed-----

974,999.89

Total amount refundable-----

P 172,058.81

On February 24, 1981, private respondent filed with respondent court, a petition for review, doc-keted as C.T.A. Case No. 3204 for the recovery of the above-mentioned amount of P172,058.81.

On June 27, 1983, respondent court rendered its Decision, the dispositive portion of which reads ?

"ACCORDINGLY, respondent Commission of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Burroughs Limited the amount of P172,058.90. Without pronouncement as to costs.

SO ORDERED."

Unable to obtain a reconsideration from the aforesaid decision, petitioner filed the instant petition before this Court with the prayers as herein earlier stated upon the sole issue of - whether the tax base upon which the 15% branch profit remittance tax shall be imposed under the provisions of section 24(b) of the Tax Code, as amended, is the amount applied for remittance on the profit actually remitted after deducting the 15% profit remittance tax. Stated differently - is private respondent Burroughs Limited legally entitled to a refund of the aforementioned amount of P172,058.90.

We rule in the affirmative. The pertinent provision of the National Revenue Code is Sec. 24 (b) (2) (ii) which states:

"Sec. 24. Rates of tax on corporations. x x x

(b) Tax on foreign corporations. x x x

(2) (ii) Tax on branch profits re-mittances. - 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 Bureau of Internal Revenue ruling dated January 21, 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana the aforequoted provision had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax x x x shall be imposed x x x (is) the profit actually remitted abroad and not on the total branch profits out of which the remittance is to be made." The said ruling is herein-below quoted as follows:

"In reply to your letter of November 3, 1978, relative to your query as to the tax base upon which the 15%

branch profits remittance tax provided for under Section 24 (b))2) of the 1977 Tax Code shall be imposed, please be advised 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.

Please be guided accordingly."

Applying, therefore, the aforequoted ruling, the claim of private respondent that it made an overpayment in the amount of P172,058.90 which is the difference between the remittance tax actually paid of P1,147,058.70 and the remittance tax that should have been paid of P974,999.89, computed as follows -

Profits actually remitted -----

P6,499,999.30

Remittance tax rate -----

15%

Remittance tax due -----

P 974,999.89

is well-taken. As correctly held by respondent Court in its assailed decision ?

"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. Based on such ruling petitioner should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remitted to its head office in the United States, instead of P1,147,058.70, on its net profits of P7,647,058.00. Undoubtedly, petitioner has over-paid its branch profit remittance tax in the amount of P172,058.90."

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or re-pealed the BIR ruling of January 21, 1980. The said memorandum circular states -

"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."

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 tax-payer 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.

WHEREFORE, the assailed decision of respondent Court of Tax Appeals is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Feria, Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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