

THIRD DIVISION

[G.R. Nos. 118498 & 124377, October 12, 1999]

**FILIPINAS SYNTHETIC FIBER CORPORATION, PETITIONER VS.
COURT OF APPEALS, COURT OF TAX APPEALS AND
COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

DECISION

PURISIMA, J.:

Before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking to set aside the Decisions of the Court of Appeals in CA-GR. SP Nos. 32922^[1] and 32022.^[2]

In G.R. No. 118498, the Court of Appeals culled the antecedent facts that matter as follows:

"The basic operative facts are not in dispute, to wit: Filipinas Synthetic Fiber Corporation ..., a domestic corporation received on December 27, 1979 a letter of demand ... from the Commissioner of Internal Revenue ... assessing it for deficiency withholding tax at source in the total amount of P829,748.77, inclusive of interest and compromise penalties, **for the period from the fourth quarter of 1974 to the fourth quarter of 1975.** The bulk of the deficiency withholding tax assessment, however, consisted of interest and compromise penalties for alleged late payment of withholding taxes due on interest loans, royalties and guarantee fees paid by the petitioner to non-resident corporations. The assessment was seasonably protested by the petitioner through its auditor, SGV and Company. Respondent denied the protest in a letter dated 14 May 1985 ... on the following ground: "For Philippine internal revenue tax purposes, the liability to withhold and pay income tax withheld at source from certain payments due to a foreign corporation is at the time of accrual and not at the time of actual payment or remittance thereof", citing BIR Ruling No. 71-003 and BIR Ruling No. 24-71-003-154-84 dated 12 September 1984 as well as the decision of the Court of Tax Appeals ... in CTA Case No. 3307 entitled "Construction Resources of Asia, Inc., versus Commissioner of Internal Revenue". The aforementioned case held that "the liability of the taxpayer to withhold and pay the income tax withheld at source from certain payments due to a non-resident foreign corporation attaches at the time of accrual payment or remittance thereof" and "the withholding agent/corporation is obliged to remit the tax to the government since it already and properly belongs to the government. Since the taxpayer failed to pay the withholding tax on interest, royalties, and guarantee fee at the time of their accrual and in the books of the corporation the aforesaid assessment is therefore legal and proper."

On June 28, 1985, petitioner brought a Petition for Review^[3] before the Court of Tax Appeals, docketed as CTA Case No. 3951. On June 15, 1993, the said court came out with its Decision, ruling thus:

“IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering petitioner to pay respondent the amount of P306,165.35 as deficiency withholding tax at source for the fourth quarter of 1974 to the third quarter of 1975 plus 10% surcharge and 14% annual interest from November 29, 1979 to July 31, 1980, plus 20% interest from August 1, 1980 until fully paid but not to exceed that which corresponds to a period of three (3) years pursuant to P.D. No. 1705.

SO ORDERED.”

With the denial of its motion for reconsideration, petitioner appealed the CTA disposition to the Court of Appeals, which affirmed in toto the appealed decision.

Dissatisfied therewith, petitioner found its way to this Court via the present Petition; contending that:

“THE CA ERRED IN HOLDING THAT FILSYN’S LIABILITY TO WITHHOLD THE INCOME TAX FOR INTEREST, ROYALTIES AND DIVIDENDS, WHICH WERE PAYABLE TO NON-RESIDENT FOREIGN CORPORATIONS, ATTACHED UPON “SETTING-UP” OR ACCRUAL OF THESE AMOUNTS RATHER THAN WHEN SAID AMOUNTS BECOME DUE AND DEMANDABLE UNDER THE APPLICABLE CONTRACTS.”

In **G.R. No. 124377**, what is being questioned by petitioner is the assessed deficiency withholding tax at source **for the period from the fourth quarter of 1975 to the fourth quarter of 1976** amounting to P379,700.68.

The pivot of inquiry here is - whether the liability to withhold tax at source on income payments to non-resident foreign corporations arises upon remittance of the amounts due to the foreign creditors or upon accrual thereof.

It is petitioner’s submission that the withholding taxes on the said interest income and royalties were paid to the government when the subject interest and royalties were actually remitted abroad. Stated otherwise, whatever amount has accrued in the books, the withholding tax due thereon is ultimately paid to the government upon remittance abroad of the amount accrued.

Section 53 of the National Internal Revenue Code, in force at that time (1975), reads:

“Withholding Tax at source ...

x x x

(b) Non-resident aliens and foreign corporations - Every individual, corporation, partnership, or association, in whatever capacity acting, including a lessee or mortgagor of real or personal property, trustee acting in any trust capacity, executor, administrator, receiver, conservator, fiduciary, employer, and every officer or employee of the Government of the Republic of the Philippines having the control, receipt, custody, disposal, or payment of interest, dividends, rents, royalties, salaries,