H.W. Porter & Co. v. Commissioner, 47 B.T.A. 473 (1942)

A U.S. taxpayer cannot claim a credit for foreign income taxes paid if the tax was levied on and paid by a foreign entity, even if the taxpayer indirectly bore the economic burden of the tax through a withholding.

Summary

H.W. Porter & Co. sought a tax credit for income taxes withheld by a British licensee from royalty payments. The Board of Tax Appeals denied the credit, holding that the British company paid the tax on its own profits, and the withholding was merely a mechanism permitted under British law. The court emphasized that the tax was levied on the British company, collected from it, and remedies for non-payment would run against it. The Board distinguished this situation from one where the British entity acted as a collection agent for taxes owed directly by the U.S. entity. The decision reinforces the principle that a tax credit is only available when the taxpayer directly pays the foreign tax.

Facts

H.W. Porter & Co., a U.S. company, received royalty payments from a British licensee. Under General Rule 19(2) of British income tax law, the British company withheld a portion of the royalty payments, representing the amount of tax thereon, and remitted the balance to Porter. The British company had the discretion to withhold or not withhold this amount. The tax liability of the British company was the same regardless of whether or not it withheld from the payments. Porter sought to claim a credit on its U.S. income tax return for the amount withheld, arguing it represented income taxes paid to a foreign country.

Procedural History

The Commissioner of Internal Revenue denied H.W. Porter & Co.’s claim for a foreign tax credit. Porter appealed to the Board of Tax Appeals, contesting the Commissioner’s determination.

Issue(s)

Whether H.W. Porter & Co. is entitled to a credit under Section 131(a)(1) of the 1934 Revenue Act for income taxes withheld by a British licensee from royalty payments, where the British company paid the tax on its own profits without deducting the royalty payment as an expense.

Holding

No, because the tax was levied on and paid by the British company, not H.W. Porter & Co., even though the withholding effectively reduced the royalty income received by Porter.

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Court’s Reasoning

The Board relied heavily on *Biddle v. Commissioner, 302 U.S. 573*, which held that the critical determination is whether the taxpayer has done the substantial equivalent of paying the tax under foreign law. The Board found that the British company paid its own tax on its profits. The withholding was merely a privilege granted to the British company, and its tax liability remained the same whether or not it withheld from the royalty payments. The Board rejected Porter’s argument that the British company was acting as an agent of the Crown to collect Porter’s taxes. The Board cited *Commissioners of Inland Revenue v. Dalgety & Co., Ltd.*, which held that a company pays tax on the whole of its income, even if it deducts tax payable by the recipient when making an interest payment. The Board concluded that it is

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