REPUBLIC OF THE PHILIPPINES

# *Court of Tax Appeals*

QUEZON CITY

## *Third Division*

**FUTAMURA CHEMICAL CO. LTD.,**
*Petitioner,*

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8906**

Members:
**BAUTISTA,** *Chairperson,*
**FABON-VICTORINO,** *and*
**RINGPIS-LIBAN,** *JJ.*

Promulgated:
JAN 30 2017
10:55 a.m.

x-----------------------------------------------------------------------------------------x

# *D E C I S I O N*

***BAUTISTA, J:***

## *The Case*

The Petition for Review[1] filed pursuant to *Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[2] prays for the

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[1] *Records, Vol. 1, Petition for Review ("PFR"),* pp. 6-251, with annexes.

[2] A.M. No. 05-11-07-CTA (2005). *Section 3(a)(2), Rule 4 of the RRCTA* provides:

> Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* –
> The Court in Divisions shall exercise:
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
> xxx xxx xxx
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action; *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day period-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue

refund in the amount of Php18,836,500.00 representing capital gains tax ("CGT") erroneously or illegally collected on the sale by petitioner Futamura Chemical Co. Ltd. ("Futamura Chemical"), a non-resident foreign corporation, of its shares of stock in Philippine-Japan Active Carbon Corporation ("PJACC"), a domestic corporation.

### *The Parties*

Futamura Chemical is a corporation duly organized and existing under the laws of Japan with registered office address at 2-29-16 Meieki, Nakamura-ku, Nagoya City, Japan.[3]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested with authority to implement and enforce the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other tax laws.[4] He holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[5]

### *The Facts*

On September 14, 2012, Futamura Chemical sold 535,950 of its common shares in PJACC to Kowa Company, Ltd. ("Kowa").[6] PJACC is a corporation duly organized and existing under the laws of the Philippines with office address at Davao City, Philippines;[7] while Kowa is a corporation duly organized and existing under the laws of Japan with office address at 3-6-29 Nishiki, Naka-ku, Nagoya City, Japan.[8]

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> on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

[3] *Records, Vol. 1, PFR,* p. 7; *Records, Vol. 3, Exhibit "P-1," Certificate of All Current Entries in the Commercial Register,* pp. 1083-1086; *Records, Vol. 3, Exhibit "P-2," Articles of Incorporation,* pp. 1094-1101; *Records, Vol. 3, Exhibit "P-3," Residence Certificate,* pp. 1110-1112.

[4] *Records, Vol. 1, PFR,* p. 7.

[5] *Id.*

[6] *Id., Vol. 3, Exhibit "P-7," Deed of Absolute Sale,* pp. 1148-1152.

[7] *Records, Vol. 3, Exhibit "P-12," Certificate of Incorporation,* p. 1170; *Records, Vol. 3, "Exhibit "P-13," Articles of Incorporation,* pp. 1171-1178; *Records, Vol. 3, Exhibit "P-7," Deed of Absolute Sale,* pp. 1148-1152.

[8] *Records, Vol. 3, Exhibit "P-7," Deed of Absolute Sale,* pp. 1148-1152.

Consequently, on October 5, 2012, Futamura Chemical filed and paid the documentary stamp tax on the sale of the shares in the amount of Php200,981.25;[9] and on October 12, 2012, it filed and paid the CGT on the sale of the shares in the amount of Php18,836,500.00.[10]

In view of the alleged exemption of the sale of shares of PJACC from payment of CGT pursuant to the *Convention Between Japan and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "RP-Japan Tax Treaty")*,[11] Futamura Chemical filed an administrative claim for refund of the erroneously paid CGT on the sale of shares on October 31, 2013.[12] It then filed a supplement to the administrative claim for refund[13], an Application for Tax Credits/Refunds (BIR Form No. 1914)[14], and an Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C)[15] on September 29, 2014. Thereafter, it filed a request for confirmatory ruling of the application of the *RP-Japan Tax Treaty*[16] on October 8, 2014.

Due to the inaction of respondent, petitioner filed the present Petition for Review[17] on October 10, 2014, praying for the refund of the erroneously paid CGT on the sale of shares.

On December 11, 2014, respondent filed his Answer[18].

Petitioner filed its Pre-Trial Brief[19] on March 12, 2015; however, respondent failed to file its Pre-Trial Brief despite notice and warning[20]. Respondent's counsel likewise failed to appear at the

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[9] *Records, Vol. 3, Exhibit "P-28," Documentary Stamp Tax Declaration/Return (One-Time Transactions) (BIR Form No. 2000-OT)*, pp. 1368-1369; *Records, Vol. 3, Exhibit "P-29," BIR Tax Payment Deposit Slip*, p. 1370.
[10] *Records, Vol. 3, Exhibit "P-9," Capital Gains Tax Return (BIR Form No. 1707)*, p. 1167; *Records, Vol. 3, Exhibit "P-10," BIR Tax Payment Deposit Slip*, p. 1168.
[11] February 13, 1980.
[12] *Records, Vol. 3, Exhibit "P-17," Administrative Claim for Refund*, pp. 1296-1297.
[13] *Id., Exhibit "P-18," Supplement to Administrative Claim for Refund*, pp. 1300-1311.
[14] *Id., Exhibit "P-19," Application for Tax Credits/Refunds (BIR Form No. 1914)*, p. 1312.
[15] *Id., Exhibit "P-20," Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C)*, p. 1313.
[16] *Id., Exhibit "P-21," Request for Confirmatory Ruling of the Application of the RP-Japan Tax Treaty*, pp. 1314-1330.
[17] *Id., Vol. 1, PFR*, pp. 6-251, with annexes.
[18] *Records, Vol. 1, Answer*, pp. 260-263.
[19] *Id., Petitioner's Pre-Trial Brief ("PTB")*, pp. 277-287.
[20] *Id., Minutes of Hearing dated May 5, 2015*, p. 295.

scheduled Pre-Trial Conference.[21] Thus, during the May 5, 2015 hearing, the Court resolved to declare respondent in default and allowed petitioner to present evidence *ex parte*.[22]

During the trial, petitioner presented the following witnesses: *(1)* Atty. Art O. Tan, the Corporate Secretary of PJACC;[23] *(2)* Mr. Hamao Kojima, the Group Leader of the Department of Accounting and Finance Group of Futamura Chemical;[24] and *(3)* Mr. Masato Tanaka, the Executive Vice President and General Manager of PJACC.[25]

On November 6, 2011, petitioner filed its Formal Offer of Evidence[26], moving for the admission of *Exhibits* "P-1," "P-1-a," "P-2," "P-2-a," "P-3" to "P-6," "P-6-a" to "P-6-n," "P-7," "P-7-a" to "P-7-c," "P-8," "P-9," "P-9-a," "P-10" to "P-14," "P-14-a," "P-15," "P-15-a," "P-16," "P-16-a" to "P-16-d," "P-17" to "P-27," "P-27-a," "P-27-a-1," "P-27-a-2," "P-27-b," "P-27-b-1," "P-28," "P-28-a," "P-29" to "P-31," "P-31-a" to "P-31-c," "P-32" to "P-53," "P-53-a," "P-53-a-1," "P-53-a-2," "P-53-b," "P-53-b-1," "P-53-b-2," "P-53-c," "P-53-c-1," "P-53-c-2," "P-54," "P-54-a" to "P-54-t," "P-55," "P-55-a," "P-56," "P-56-a," "P-57," "P-57-a," "P-58," and "P-58-a." The Court admitted all of petitioner's evidence in a Resolution[27] dated January 18, 2016.

In compliance with the Court's Resolution[28] dated January 18, 2016, which ordered petitioner to file its memorandum within thirty (30) days from notice, petitioner filed its Memorandum[29] on February 24, 2016.

Accordingly, the Court issued the Resolution[30] dated March 2, 2016 submitting the case for decision; hence, this Decision.

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[21] *Records, Vol. 1,* p. 295.

[22] *Records, Vol. 1, Minutes of Hearing dated May 5, 2015,* p. 295; *Records, Vol. 1, Resolution dated May 19, 2015,* pp. 306-307.

[23] *Records, Vol. 2, Minutes of Hearing dated August 11, 2015,* p. 965; *Records, Vol. 2, Exhibit "P-55," Judicial Affidavit of Atty. Art O. Tan,* pp. 824-958, with annexes; *Transcript of Stenographic Notes ("TSN"), August 11, 2015 Hearing.*

[24] *Records, Vol. 2, Minutes of Hearing dated August 25, 2015,* p. 1008; *Records, Vol. 1, Exhibit "P-57," Judicial Affidavit of Mr. Hamao Kojima,* pp. 347-570, with annexes; *TSN, August 25, 2015 Hearing.*

[25] *Records, Vol. 3, Minutes of Hearing dated October 27, 2015,* p. 1031; *Records, Vol. 2, Exhibit "P-58," Judicial Affidavit of Mr. Masato Tanaka,* pp. 595-820, with annexes; *TSN, October 27, 2015 Hearing.*

[26] *Records, Vol. 3, Petitioner's Formal Offer of Exhibits,* pp. 1033-1080.

[27] *Id., Resolution dated January 18, 2016,* pp. 1481-1482.

[28] *Id., Resolution dated January 18, 2016,* pp. 1481-1482.

[29] *Id., Petitioner's Memorandum,* pp. 1483-1511.

[30] *Id., Resolution dated March 2, 2016,* p. 1513.

## *The Issue*[31]

WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF THE ERRONEOUSLY PAID OR ILLEGALLY COLLECTED CGT ON THE SALE OF ITS SHARES OF STOCK IN PJACC IN THE AMOUNT OF PHP18,836,500.00.

## *The Ruling of the Court*

The Petition for Review is meritorious.

**The claim for refund was timely filed.**

*Section 204(C)* in relation to *Section 229 of the 1997 National Internal Revenue Code, as amended* (the *"1997 NIRC"*)[32] requires the filing of an administrative claim for refund before the filing of a judicial claim, both of which claims should be filed within two (2) years from payment of the tax. The relevant provisions read:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty</u>; *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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[31] *Records, Vol. 1, Petitioner's PTB,* p. 279.
[32] Republic Act No. 8424, as amended (1997).

xxx xxx xxx

Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.*- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the fact of the return upon which payment has been made, such payment appears clearly to have been erroneously paid.[33]

As applied to the present case, the Court holds that petitioner timely filed its administrative and judicial claims for refund of erroneously or illegally collected CGT on its sale of shares in PJACC, the relevant dates of which are summarized as follows:

| DATE OF PAYMENT | DATE OF FILING OF ADMINISTRATIVE CLAIM | DATE OF FILING OF PETITION FOR REVIEW | LAST DAY TO FILE BOTH CLAIMS |
|---|---|---|---|
| October 12, 2012 | October 31, 2013 | October 10, 2014 | October 12, 2014 |

It is worthy to note that the administrative claim referred to under *Sections 204(C) and 229 of the 1997 NIRC* refers to any written claim for refund filed with the CIR or his duly authorized representative; and that the administrative claim need not be in the form of an Application for Tax Credits/Refunds (BIR Form No. 1914) or otherwise. In fact, in *CIR v. Lawl Pte Ltd.*[34], the Court *En Banc* had occasion to rule that a written claim for refund may be filed with the International Tax Affairs Division of the BIR, and the same shall be considered a valid administrative claim thus:

While it may be true that the foregoing provisions state

[33] Underscoring ours.
[34] CTA *E.B.* No. 1118 (CTA Case No. 8307), May 12, 2015.

> that the written claim for refund must be *"filed with the Commissioner"*, it does not necessarily follow that all of such claims must be filed with the said office, so that the same may be considered filed *"with the proper authority"*. It is *non-sequitur*. In fact, petitioner herself, in effect, share this view when she points to RDO No. 39 as the office where allegedly, respondent should have filed the instant claim.
>
> Nevertheless, respondent was correct when it filed its written claim for refund with the ITAD of the BIR.
>
> xxx xxx xxx
>
> Considering that the ITAD is indeed the office of the BIR tasked to process claims for tax refund arising from the application of treaty provisions, respondent was justified in filing its claim for refund with the ITAD of the BIR. Thus, respondent is deemed to have sufficiently complied with Sections 204(C) and 229 of the NIRC of 1997, insofar as the filing of its refund claim with the proper office is concerned.

As applied to the present case, not only did petitioner file a written claim for refund[35] on October 31, 2013, it likewise filed the following: the Application for Tax Credits/Refunds (BIR Form No. 1914)[36] on September 29, 2014, an Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C)[37] also on September 29, 2014, and a request for confirmatory ruling of the application of the *RP-Japan Tax Treaty*[38] on October 8, 2014 – all of which, taken together with the filing of the judicial claim for refund on October 10, 2014, were filed within the two (2)-year prescriptive period under *Sections 204(C) and 229 of the 1997 NIRC*. The foregoing documents, together with the fact of payment of the CGT on October 12, 2012 as evidenced by the Capital Gains Tax Return (BIR Form No. 1707)[39], clearly shows that petitioner's administrative and judicial claims for refund were timely made.

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[35] *Records, Vol. 3, Exhibit "P-17," Administrative Claim for Refund*, pp. 1296-1299.

[36] *Id., Exhibit "P-19," Application for Tax Credits/Refunds (BIR Form No. 1914)*, p. 1312.

[37] *Id., Exhibit "P-20," Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C)*, p. 1313.

[38] *Id., Exhibit "P-21," Request for Confirmatory Ruling of the Application of the RP-Japan Tax Treaty*, pp. 1314-1330.

[39] *Records, Vol. 3, Exhibit "P-9," Capital Gains Tax Return (BIR Form No. 1707)*, p. 1167; *Records, Vol. 3, Exhibit "P-10," BIR Tax Payment Deposit Slip*, p. 1168.

**Petitioner is entitled to its claim for refund of erroneously or illegally collected CGT pursuant to the *RP-Japan Tax Treaty*.**

At the outset, it is undisputed that petitioner paid CGT on the sale of the shares in PJACC on October 12, 2012 in the amount of Php18,836,500.00 as evidenced by a BIR Tax Payment Deposit Slip.[40] What is in issue is whether the said amount should be refunded due to petitioner's exemption from payment thereof pursuant to the *RP-Japan Tax Treaty*.

*Section 28(B)(5)(c)*, in relation to *Sections 32(A)(3) and 32(B)(5) of the 1997 NIRC*, provides that non-resident foreign corporations are subject to CGT on their net capital gains realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation made outside the stock exchange, and any gain derived from such dealings in property shall form part of gross income except that income exempt under any treaty obligation binding on the Government of the Philippines shall be excluded from gross income and exempt from income tax. The relevant provisions read:

> Sec. 28. *Rates of Income Tax on Foreign Corporations.* -
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* -
>
> xxx xxx xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* -
>
> xxx xxx xxx
>
> (c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* - A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

[40] *Records, Vol. 3, Exhibit "P-10," BIR Tax Payment Deposit Slip*, p. 1168.

| | |
|---|---|
| Not over Php100,000 | 5% |
| On any amount in excess of Php100,000 | 10% |

xxx xxx xxx

Sec. 32. *Gross Income.* -

xxx xxx xxx

(A) General Definition. - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx xxx xxx

(3) Gains derived from dealings in property;

xxx xxx xxx

(B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(5) *Income Exempt under Treaty.* - Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

In the present case, petitioner presented the following documents to show that it is a corporation duly organized and existing under the laws of Japan: the Certificate of All Current Entries in the Commercial Register[41], the Articles of Incorporation[42], and the Residence Certificate[43] issued by the Nakamura Tax Office. Petitioner likewise presented the Certification of Non-Registration of Company[44] issued by the Securities and Exchange Commission ("SEC") to show that it is not registered either as a corporation or as a partnership in the Philippines.

[41] *Records, Vol. 3, Exhibit "P-1," Certificate of All Current Entries in the Commercial Register,* pp. 1083-1086.
[42] *Id., Exhibit "P-2," Articles of Incorporation,* pp. 1094-1101.
[43] *Id., Exhibit "P-3," Residence Certificate,* p. 1110.
[44] *Id., Exhibit "P-4," Certification of Non-Registration of Company,* p. 1113.

Further, the sale of petitioner's shares of stock in PJACC, a corporation organized and existing under Philippine laws as evidenced by the Certificate of Incorporation[45] issued by the SEC, was not made through the stock exchange. This is supported by the Deed of Absolute Sale[46] dated September 14, 2012.

Generally, any gain realized by petitioner from the sale of shares in PJACC should be subject to CGT. However, considering that the Philippines has a tax treaty with Japan, said income from the sale of shares may be exempt from income tax if the conditions set forth under the *RP-Japan Tax Treaty* are met.

Petitioner bases its tax exemption on *Article 13 of the RP-Japan Tax Treaty*. The relevant provision reads:

ARTICLE 13

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

(2) Gains from the alienation of any property, other than immovable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise or of such a fixed base, may be taxed in that other Contracting State.

(3) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

(4) Gains from the alienation of shares of company, a partnership or a trust the property of which consists principally

[45] *Records, Vol. 3, Exhibit "P-12," Certificate of Incorporation,* p. 1170.
[46] *Id., Exhibit "P-7," Deed of Absolute Sale,* pp. 1148-1152.

of immovable property situated in a Contracting State, may be taxed in that Contracting State.

(5) Gains from the alienation of any property other than those referred to in paragraphs (1), (2), (3) and (4) shall be taxable only in the Contracting State of which the alienator is a resident.

Applying *Paragraphs (4) and (5), Article 13 of the RP-Japan Tax Treaty* to the present case, the rule can be summarized as follows:

1. Gains from the alienation of shares of a company, the property of which consists principally in immovable property situated in the Philippines, may be taxed in the Philippines;

2. However, if the company's property does not consist principally in immovable property situated in the Philippines, such gains shall be taxable only in Japan - the Contracting State of which the alienator (*i.e.*, petitioner) is a resident of.

Meanwhile, *Revenue Regulations ("RR") No. 04-86*[47] was issued to provide the guidelines in determining whether under the applicable tax treaty, the assets of a corporation consists principally of real property interest. *RR No. 04-86* simplifies the rule, thus: capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally in real property interest located in the Philippines.[48] It then defines the term "real property interest" as interests on properties enumerated therein, including real properties as defined under Philippine laws; and the term "principally" to mean more than 50% of the entire assets in terms of value.[49] Finally, *RR No. 04-86* provides that the basis of determining the composition of a company's assets shall be the value of all the assets of the subject corporation, both real and personal, as appearing in its financial statement on the date of the sale of the share or interest and as verified by the BIR.[50]

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[47] April 2, 1986.
[48] RR No. 04-86, § 1 (Apr. 2, 1986).
[49] *Id.*, § 2 (a) and (b) (Apr. 2, 1986).
[50] *Id.*, § 4 (Apr. 2, 1986).

Guided by the parameters set forth in *RR No. 04-86*, a perusal of PJACC's 2011 Audited Financial Statements[51], and the Certification with attached Interim Balance Sheet and Comparative Schedule of Property, Plant, and Equipment[52] show that PJACC's assets do not consist principally in real property interest located in the Philippines. Based on PJACC's 2011 Audited Financial Statements, the following are the Assets of PJACC for calendar year ended December 31, 2011:[53]

| | | |
|---|---|---|
| **Current Assets** | | |
| Cash | Php | 33,401,203 |
| Trade and other receivables | | 46,929,571 |
| Inventories | | 284,314,093 |
| Derivative assets | | 603,977 |
| Other current assets | | 38,430,164 |
| Total Current Assets | Php | 403,679,008 |
| | | |
| **Noncurrent Assets** | | |
| Property, plant and equipment - net | Php | 125,610,575 |
| Deferred tax assets - net | | 11,623,415 |
| Refundable deposits - net | | 1,182,479 |
| Total Noncurrent Assets | Php | 138,416,469 |
| | | |
| **TOTAL ASSETS** | **Php** | **542,095,477** |

The foregoing shows that the percentage of PJACC's real property interest as of December 31, 2011 is only 23.17%[54] of its total assets. Accordingly, the conclusion can be made that the assets of PJACC do not consist primarily in immovable property situated in the Philippines. Consequently, pursuant to *Paragraph (5) in relation to Paragraph (4), Article 13 of the RP-Japan Tax Treaty*, the capital gains derived by petitioner from the sale of its shares of stock in PJACC shall be taxable only in Japan, and shall be exempt from CGT in the Philippines.

**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** in favor of petitioner Futamura Chemical Co. Ltd. the amount of **EIGHTEEN MILLION EIGHT HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED PESOS (Php18,836,500.00)**, representing erroneously or illegally collected

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[51] *Records, Vol. 3, Exhibit "P-14," 2011 Audited Financial Statements*, pp. 1204-1246.

[52] *Id., Exhibit "P-16," Certification*, pp. 1291-1295, with annexes.

[53] *Id., Exhibit "P-14-a," 2011 Balance Sheet*, p. 1207.

[54] Php125,610,575 divided by Php542,095,477.

capital gains tax on the sale by petitioner of its shares of stock in Philippine-Japan Active Carbon Corporation.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Ma. Belen M. Ringpis-Liban

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice