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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES INSURANCE BROKERS, INC. AND JMIB HOLDINGS BV,
Petitioners,

- versus -

C.T.A. CASE NO. 5140

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 19 1997

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DECISION

This is a claim for refund or tax credit of alleged overpaid income tax withheld from dividends remitted to a foreign corporation in the amount of ₱108,300.00, during the month of April 1993.

Petitioner Jardine Davies Insurance Brokers, Inc., (hereinafter referred to as JDIB) is a corporation duly organized and existing under and by virtue of Philippine laws, while the other petitioner JMIB Holdings BV (hereinafter referred as JMIB) is a corporation organized and existing under and by virtue of the laws of Netherlands (Admitted in the Answer, par. 1, p. 15, CTA rec.).

On March 3, 1993, the Board of Directors of JDIB declared cash dividends payable to its stockholders of record as of March 15, 1993, quoted hereunder is the Board Resolution, to wit:

"RESOLVED, That, there is hereby declared out of the unrestricted retained earnings of

> the Company, upon its outstanding and fully issued capital stock of 300,000 shares, a cash dividend of FOURTEEN PESOS AND FORTY-FOUR CENTAVOS (P14.44) per share, payable on March 26, 1993, to stockholders of record on March 15, 1993." (see Secretary's Certificate, dated March 5, 1993, p. 10, BIR rec.).

JMIB owns a total of 149,997 shares, as shown in the List of Stockholders of JDIB as of March 15, 1993 (p. 9, BIR rec.). The dividends paid to JMIB amounted to P2,166,000.00. On April 12, 1993, JDIB remitted to the BIR the amount of P324,900.00, representing 15% final tax on the dividends paid to JMIB (Exhs. A, A-1 and A-2).

JDIB, as withholding agent, filed a claim for refund or tax credit on November 8, 1993, alleging, among others, that there was an overpayment of income tax withheld on dividends remitted to JMIB in the amount of P108,300.00 (Exh. C). This overpayment resulted from the alleged erroneous imposition of the 15% final tax on dividends instead of the 10% tax rate that should have been imposed pursuant to Article 10(2)(a) of the R.P. - Netherlands Tax Treaty. The details of this overpayment are shown hereunder, thus:

Dividends due JMIB	₱2,166,000.00
15 % Tax Paid	₱ 324,900.00
Less : 10% Tax due	216,600.00
Amount to be refunded	₱ 108,300.00

This claim for refund or tax credit did not elicit any response from respondent's office for almost a year, which inaction prompted the petitioner to file a petition for review on August 25, 1994, reiterating the same grounds it advanced in the administrative level.

Respondent, in her Answer, claims that there is no proof of remittance of the tax withheld on dividends. She also stressed that the BIR's inaction was mainly due to petitioner's failure to submit the necessary documents as required under Revenue Memorandum Order No. 10-92, dated February 1, 1992, to its International Tax Affairs Division. As a result, respondent claims that it could not determine whether or not the petitioner is entitled to the lower tax rate of 10% pursuant to the R.P. - Netherlands Tax Treaty.

The issue presented for determination is whether or not the petitioner is entitled to the refund of P108,300.00, representing the alleged overpaid final tax withheld on dividends remitted by JDIB to JMIB.

The answer to the foregoing depends on the resolution of a corollary issue - whether or not the dividends remitted by JDIB to JMIB are subject to the 10% tax rate provided in Article 10(2)(a) of the R.P. - Netherlands Tax Treaty.

Article 10 paragraphs 1 and 2 of the R.P. - Netherlands Tax Treaty is quoted hereunder, thus:

"Article 10
Dividends

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the recipient is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases."

The Secretary's Certificate shows that out of the 300,000 shares of stock of JDIB, JMIB owns a total of 149,997 shares. Second, it appears that JMIB is a Dutch national as shown in the List of Stockholders of record as of March 15, 1993. Since JMIB, the recipient of the dividends, is a resident of Netherlands and owns more than 10% of the capital of JDIB, a domestic corporation, then its tax rate should only be 10% of the gross amount of the dividends, as declared in the aforequoted provision of the R.P. - Netherlands Tax Treaty, instead of the 15% originally imposed.

Respondent argues that the 10% tax rate under the R.P. - Netherlands Tax Treaty depends on the submission of all the documents enumerated in Revenue Memorandum Order No. 10-92. It was alleged that petitioner failed to submit the pertinent documents mentioned in said memorandum order, namely:

a) Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of incorporation (Exh. 1-A);

b) Certification from Phil. Securities Exchange Commission that income recipient is/is not registered to engage in business in the Philippines (Exh. 1-B);

c) Central Bank Approval of Inward Remittance of Foreign Investments in Shares of Stocks (Exh. 1-C);

d) Central Bank approval of outward remittance of dividends (Exh. 1-D);

e) Bank Drafts evidencing actual remittance of dividends (Exh. 1-E); and

f) Certified copy of Board resolution approving declaration of dividends (Exh. 1-F).

During the hearings conducted on this case, counsel for petitioners argued that if the sole reason for the BIR's inaction on its claim was because of its non-submission of the aforementioned documents, then respondent's officials should have informed them of this fact. Counsel for respondent countered that their office is not under any obligation to inform them because RMO

No. 10-92 containing all this information was "circularized", therefore petitioner should have known all of the requirements.

We do not agree with respondent's contention that the submission of all the documents mentioned in RMO 10-92 is essential to the grant of the claim for refund or tax credit. As correctly put by the petitioners, the documentary requirements provided in Revenue Memorandum Order No. 10-92 were meant to facilitate the processing of application for tax refund/credit involving the availment of the tax treaty rate. For this Court's purposes, the complete submission of said documents is not a condition *sine qua non* for the entitlement to the refund being claimed.

When petitioner filed an appeal with this Court, it transformed the administrative claim for refund into a judicial claim for refund, because an appeal to the Court of Tax Appeals is manifestly judicial (**Lopez and Sons, Inc. v. Court of Tax Appeals, 100 Phil. 850**).

Section 230 of the Tax Code, as amended, provides the following:

> "SEC. 230. *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 excessive 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 begun after the expiration of two 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The final tax on dividends was paid on April 12, 1993, the date when the Monthly Remittance Return of Income Taxes Withheld for the month of March 1993 was filed. Petitioners' claim for refund with the BIR was filed on November 8, 1993 (Exh. C) and the consequent appeal with this Court was filed on August 25, 1994. Hence, both the administrative claim and the petition for review were filed within the two-year period from the date of payment of the tax.

Now, whether or not there was an overpayment of tax depends on the applicability of the provisions of the R.P. - Netherlands Tax Treaty to herein petitioners. Article 10(2)(a) of the said treaty, earlier quoted, provides that the 10% tax rate shall be applied if the recipient of the dividends owns or holds directly at least 10% of the capital of the company paying the dividends.

In support of its claim, petitioner presented the Secretary's Certificate (Exh. B) where its Corporate Secretary declared under oath, that JMIB, the recipient of the dividends (a Dutch national) owns almost 50% of its capital stock.

We find the said Secretary's Certificate (Exh. B) signed by Ms. Fe S. Quiaoit on February 3, 1995 sufficient in form and substance even if the same was notarized by petitioners' counsel himself (Atty. Felipe T. Dumpit) considering that this tallies with the statements of N. C. Javier, Corporate Secretary, in his Secretary's Certificate, dated March 5, 1993, duly notarized by Ms. Fe C. De Los Santos-Quiaoit (see p. 3, BIR rec.). For all intent and purposes, we see nothing wrong with the declarations made by them. Respondent did not present any evidence that will contradict this single evidence showing ownership of more than 50% of the capital stock of JDIB by JMIB. She merely offered in evidence the documents required under RMO No. 10-92.

The residency of the income recipient (JMIB) was admitted by respondent in her answer (see par. 1, Answer, p. 15, CTA rec.). This was corroborated by the List of Stockholders of records as of March 15, 1993 attached to the letter claim for refund or tax credit filed with the BIR on November 8, 1993 (p. 2, BIR rec.). The resolution of the Board of Directors of JDIB declaring dividends was quoted in the Secretary's Certificate. The tax withheld was actually paid as shown by the machine validation of the amount of tax paid (Exh. A-3, p. 5, CTA rec.) in the Monthly Remittance Return of Income Tax Withheld for the Month of March, 1993 (Exh. A). Thus, this Court finds the evidence presented by petitioners sufficient to prove its entitlement to the refund or tax credit being claimed.

WHEREFORE, in view of the foregoing, the petition for review is hereby **GRANTED**. Respondent is hereby ordered to refund or in the alternative issue a Tax Credit Certificate in favor of the Petitioners in the amount of P108,300.00, representing overpaid final tax withheld on dividends for the year 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals