REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARUBENI CORPORATION,
(formerly MARUBENI-IIDA CO.,
LTD.),
Petitioner,

2/12/86

- versus - C.T.A. CASE NO. 3605

THE ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

2/12/86

D E C I S I O N

Questioned in this petition for review is the decision of respondent Commissioner of Internal Revenue denying petitioner Marubeni Corporation's claim for refund or tax credit of the amount of ₱229,424.40 as alleged overpaid profit remittance tax withheld on dividends remitted by the Atlantic, Gulf & Pacific Company of Manila to the Marubeni Corporation of Japan during the first and third quarters of 1981.

The pertinent facts as alleged in the petition for review and admitted in the answer are:

Petitioner is a foreign corporation duly organized and existing under the laws of Japan, and duly licensed to engage in business under Philippine law, with branch office at the 4th Floor, FEMII Building, Aduana, Intramuros, Manila.

Respondent is the duly designated, qualified and incumbent Acting Commissioner of Internal Revenue of the Philippines authorized under the law to act on claims for tax refund and credit, and on other matters involving the enforcement of the National Internal Revenue laws; respondent holds office at the BIR National Office Building, East Avenue, Diliman, Quezon City, where he may be served with summons.

For the first quarter of 1981 ending March 31, Atlantic, Gulf & Pacific Co. of Manila (A G & P) declared and paid cash dividends to petitioner of ₱849,720, and withheld the corresponding 10% final dividend tax thereon.

Similarly, for the third quarter of 1981 ending September 30, AG & P declared and paid cash dividends to petitioner of ₱849,720, and withheld the corresponding 10% final dividend tax thereon.

AG & P directly remitted to the petitioner's head office in Tokyo, Japan, the cash dividends, net not only of the 10% final dividend tax, in the amounts of ₱764,748, for each quarter (first and third) of 1981, but it also withheld the 15% profit remittance tax based on the remittable amount after deducting the final withholding tax of 10%. A schedule of dividends declared and paid by AG & P to its client

(Marubeni Corporation of Japan), the 10% final inter-corporate dividend tax and the 15% branch profit remittance paid thereon, is shown below:

| 1 9 8 1 | First Quarter (Three months ended 3.31.81) | Third Quarter (Three months ended 9.30.81) | Total of First and Third Quarter |
|---|---|---|---|
| Cash Dividends Paid | ₱849,720.44 | ₱849,720.00 | ₱1,699,440.00 |
| 10% Dividend Tax Withheld | ₱ 84,972.00 | ₱ 84,972.00 | ₱ 169,944.00 |
| Cash Dividends Net of 10% Dividend Tax Withheld | ₱764,748.00 | ₱764,748.00 | ₱1,529,496.00 |
| 15% Branch Profit Remittance Tax Withheld | ₱114,712.20 | ₱114,712.20 | ₱ 229,424.40 |
| Net Amount Remitted To Petitioner | ₱650,035.80 | ₱650,035.80 | ₱1,300,071.60 |

The 10% final dividend tax of ₱84,972 and the 15% branch profit remittance tax of ₱114,712.20 for the first quarter of 1981 was paid to the Bureau of Internal Revenue by AG & P on April 20, 1981 under Central Bank Receipt No. 6757880. Copies of the Quarterly Return of Income Tax Withheld at Source for March 31, 1981 of AG & P on dividends payable to petitioner, Revenue Tax Receipt No. 6890370 and Central Bank Confirmation Receipt No. 6757880 dated April 20, 1981 showing the aforementioned payments of dividend tax and branch profit remittance tax are hereto attached as Annexes "A", "A-1" and "A-2", respectively, and made integral parts hereof.

On the other hand, the 10% final dividend tax of ₱84,972 and the 15% branch profit remittance tax of ₱114,712.20 for the third quarter of 1981 was paid to the Bureau of Internal Revenue by AG & P on August 4, 1981 under Central Bank Confirmation Receipt No. 7905930. Copies of the Quarterly Return of Income Tax Withheld at Source for September 30, 1981 of AG & P on dividends payable to petitioner, Revenue Tax Receipt No. 7291011 and Central Bank Confirmation Receipt No. 7905930 dated August 4, 1981, showing the aforesaid payments of dividend tax and branch profit remittance tax, are hereto attached as Annexes "B", "B-1" and "B-2", respectively, and made integral parts hereof.

For the first and third quarters of 1981, AG & P as withholding agent thus paid 15% branch profit remittance tax on cash dividends declared and remitted to petitioner at its head office in Tokyo in the total amount of ₱229,424.40 on April 20 and August 4, 1981.

Pursuant to Section 24(b)(2) of the Tax Code, as amended by Presidential Decree No. 1705 which took effect on August 1, 1980 and Presidential Decree No. 1773 which took effect on January 16, 1981, only profits remitted abroad by a branch office to its head office which are <u>effectively connected with its trade or business in the Philippines</u> are subject to the 15%

branch profit remittance tax. Section 24(b)(2) provides in pertinent part:

> "(ii) Tax on branch profit remittances. Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) /except those registered with the Export Processing Zone Authority/; x x x And Provided further, That interests, dividends, rents, royalties, including remunerations for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be considered as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines." /Emphasis supplied/

In Ruling No. 157-81 dated July 13, 1981, respondent held that dividends received by petitioner from AG & P, a domestic corporation, are not effectively connected with its conduct of trade and business in the Philippines and as such are not considered branch profits subject to the 15% profit remittance tax imposed under Section 24(b)(2) of the Tax Code, as amended by Presidential Decree Nos. 1705 and 1773. The pertinent portion of the ruling reads:

> "In the instant case, the dividends received by Marubeni from AG & P are not income arising from the business activity in which Marubeni is engaged. Accordingly, said dividends if remitted abroad are not considered branch profits for purposes of the 15% profit remittance tax imposed by Section 24(b)(2) of the Tax Code, as amended by Presidential Decree Nos. 1705 and 1773."

A copy of BIR Ruling No. 157-81 is hereto attached as Annex "C" and made an integral part hereof.

In a letter dated September 21, 1981 and filed with respondent's office on September 24, 1981, petitioner, through its auditors, claimed for the refund or issuance of a tax credit of the aforementioned erroneously paid amount of ₱229,424.40. A copy of the said written claim for refund or tax credit is hereto attached as Annex "D" and made an integral part hereof.

In a letter dated June 14, 1982 and received by petitioner's auditors on March 9, 1983, respondent denied petitioner's claim for refund/tax credit of ₱229,424.40 on the following grounds:

> "While it is true that said dividends remitted were not subject to the 15% profit remittance tax as the same were not income earned by a Philippine Branch of Marubeni Corporation of Japan; and neither is it subject to the 10% intercorporate dividend tax, the recipient of the dividends, being a non-resident stockholder, nevertheless, said dividend income is subject to the 25% tax pursuant to Article 10(2)(b) of the Tax Treaty dated February 13, 1980 between the Philippines and Japan.
>
> Inasmuch as the cash dividends remitted by AG & P to Marubeni Corporation, Japan is subject to 25% tax, and that the taxes withheld of 10% as intercorporate dividend tax and 15% as profit remittance tax totals 25%, the amount refundable offsets the liability, hence, nothing is left to be refunded."

A copy of the said letter of June 14, 1982, received by petitioner's auditors on March 4, 1983, is hereto attached as Annex "E" and made an integral part hereof.

Hence the instant appeal praying that respondent be ordered to refund or grant as tax credit in favor of petitioner the amount of ₱229,424.40 representing branch profit remittance tax on dividends remitted by the Atlantic, Gulf & Pacific Company of Manila to the Marubeni Corporation of Japan.

As special and affirmative defenses respondent Commissioner of Internal Revenue avers that:

Marubeni Corporation, Japan, a non-resident corporation, directly made its investments in Atlantic Gulf and Pacific Company, a domestic corporation, without coursing such transaction through petitioner Marubeni Corporation, Philippines, a resident corporation.

Under the Tax Code, dividends paid by a domestic corporation to a non-resident corporation are subject to a 35% tax.

However, under Article 10(2)(b) of the Tax Treaty between the Philippines and Japan dated 13 February 1980, such dividends are subject to a special rate of 25%.

Atlantic Gulf & Pacific Company withheld 10% intercorporate dividend tax while petitioner Marubeni

Corporation, Philippines paid 15% profit remittance tax on the same dividends.

The sum of the 10% intercorporate dividends tax withheld and remitted by AG & P and the branch profit remittance tax paid by petitioner is equivalent to the special rate of 25%. There is, therefore, no refundable amount due petitioner.

Taxes are presumed to have been collected in accordance with law.

In an action for the refund of taxes, the burden of proof lies upon the taxpayer to show that the taxes paid were erroneously or illegally collected. Failure to sustain said burden is fatal to the action for refund.

It is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the Tax Code of 1977, as amended.

Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation. (Com. of Int. Rev. vs. Ledesma, 3 SCRA 95.)

The theory of petitioner is that it is a resident foreign corporation subject only to the 10% inter-corporate dividend tax on dividends received from a domestic corporation, and not a non-resident foreign corporation subject to the 25% dividend tax prescribed under the Tax Treaty between the Philippines and Japan. It may be stated that under Section 24(c)(1) of the National Internal Revenue Code dividends received by a domestic or resident foreign corporation from a domestic corporation are subject to a final tax of 10% on the total amount thereof.

On the other hand, respondent contends that since the Marubeni Corporation of Japan, a non-resident corporation, directly made its investments in the Atlantic, Gulf & Pacific Company of Manila, a domestic corporation, without coursing such transaction through petitioner Marubeni Corporation Philippine branch, a resident corporation, the dividends paid by the Atlantic, Gulf & Pacific Company of Manila to the Marubeni Corporation of Japan are dividends received by a non-resident corporation subject to the 35% corporate tax as a foreign corporation not engaged in trade or business in the Philippines, in accordance with Section 24(b) of the National Internal Revenue Code. However, under Article 10(2)(b) of the Tax Treaty between the Philippines and Japan dated 13 February 1980, such dividends are subject to a special rate of 25%.

We find no merit in the appeal of petitioner.

Whatever the dialectics employed, no amount of sophistry can ignore the fact that the dividends in question are income taxable to the Marubeni Corporation of Tokyo, Japan. The said dividends were distributions made by the Atlantic, Gulf & Pacific Company of Manila to its shareholder out of its profits on the investments of the Marubeni Corporation of Japan, a non-resident foreign corporation. The investments in the Atlantic, Gulf & Pacific Company of the Marubeni Corporation of Japan were directly made by it and the dividends on the investments were likewise directly remitted to and received by the Marubeni Corporation of Japan. Petitioner Marubeni Corporation Philippine Branch has no participation or intervention, directly or indirectly, in the investments and in the receipt of the dividends. And it appears that the funds invested in the Atlantic, Gulf & Pacific Company did not come out of the funds infused by the Marubeni Corporation of Japan to the Marubeni Corporation Philippine Branch. As a matter of fact, the Central Bank of the Philippines, in authorizing the remittance of the foreign exchange equivalent of the dividends in question, treated the Marubeni Corporation of Japan as a non-resident stockholder of the Atlantic, Gulf & Pacific Company based on the supporting documents submitted to it.

Subject to certain exceptions not pertinent hereto, income is taxable to the person who earned it. Admittedly, the dividends under consideration were earned by the Marubeni Corporation of Japan, and hence, taxable to the said corporation. While it is true that the Marubeni Corporation Philippine Branch is duly licensed to engage in business under Philippine law, such dividends are not the income of the Philippine branch and are not taxable to the said Philippine branch. We see no significance therefore in the identity concept or principal-agent relationship theory of petitioner because such dividends are the income of and taxable to the Japanese corporation in Japan and not to the Philippine branch.

While it is true that said dividends remitted were not subject to the 15% profit remittance tax as the same were not income earned by the Philippine branch of the Marubeni Corporation of Japan; and neither are they subject to the 10% intercorporate dividend tax, the recipient of the dividends being a non-resident stockholder, nevertheless, the said dividend income is subject to the 25% tax pursuant to Article 10(2)(b) of the Tax Treaty dated February 13, 1980 between the Philippines and Japan. Consequently, inasmuch as the cash dividends remitted by the Atlantic, Gulf & Pacific Company of Manila to the Marubeni Corporation, Japan, is subject to 25% tax, and that the taxes withheld of 10% as intercorporate dividend tax and 15% profit remittance tax totals 25%, the amount refundable is offset by the tax liability of the Marubeni Corporation of Japan.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, February 12, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge