REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8756

Members:

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

Promulgated:

JAN 13 2017
2:30 p.m.

x- -x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] dated January 8, 2014, petitioner Coral Bay Nickel Corporation prays for the cancellation and setting aside of the Final Decision on Disputed Assessment (FDDA) dated December 6, 2013 finding it liable for alleged deficiency final withholding tax (FWT) for taxable year 2007.

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC) under Company Registration No. A200205418, issued on April 4, 2002, with principal place of business at Barangay Rio Tuba, Bataraza, Palawan. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 005-961-540-000,[2] and with the Board of Investments (BOI) on June 27, 2002, as evidenced by its Certificate of Registration No. EP-2002-089.[3]

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[1] Docket, pp. 6-25.
[2] Par. 3, Admitted Facts, JSFI, docket, p. 553.
[3] Par. 4, Admitted Facts, JSFI, docket, p. 553.

Petitioner is engaged in owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market or otherwise treating metals, minerals and mined products to be used in production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to producing, manufacturing, processing, refining, treating, selling, using, dealing in, distributing, marketing and otherwise turning to account or disposing of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by products thereof.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), authorized to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

By virtue of the Letter of Authority (LOA) No. 00007327, petitioner received from respondent a Notice of Informal Conference dated October 27, 2010.[5] Petitioner filed Reply to the said Notice on December 1, 2010.[6]

On February 16, 2011, petitioner received from respondent a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, for its alleged deficiency value-added tax (VAT), fringe benefits tax (FBT), withholding tax (WT), and excise tax (ET).[7] Petitioner filed Reply thereto on March 3, 2011.[8]

On May 29, 2013, petitioner received from respondent a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Assessment Notices for alleged deficiency

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[4] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 553.
[5] Par. 6, Admitted Facts, JSFI, docket, p. 554.
[6] Par. 7, Admitted Facts, JSFI, docket, p. 554.
[7] Par. 8, Admitted Facts, JSFI, docket, p. 554.
[8] Par. 9, Admitted Facts, JSFI, docket, p. 554.

tax liabilities for taxable year ending December 31, 2007, as follows:[9]

Expanded Withholding Tax	₱ 15,795,303.06
Final Withholding Tax	242,665,223.95
Fringe Benefits Tax	218,503.08
TOTAL	₱258,679,030.09

Petitioner paid the assessed amounts for EWT and FBT on June 14, 2013.[10]

On June 26, 2013, petitioner protested the assessment for the alleged deficiency FWT amounting to ₱242,665,223.95, inclusive of interest and penalties.[11] This was followed by Supplementary Protests filed on August 27, 2013, on August 28, 2013, and on October 21, 2013.[12]

On December 10, 2013, petitioner received from respondent the FDDA dated December 6, 2013, together with the Details of Discrepancy for taxable year 2007, assessing it for deficiency FWT in the amount of ₱254,721,476.95, inclusive of twenty percent (20%) interest amounting to ₱138,520,253.40 and compromise penalty of ₱25,000.[13]

Hence, the instant Petition for Review[14] filed on January 8, 2014 to which respondent filed his Answer[15] on March 10, 2014.

After the Pre-Trial Conference, a Pre-Trial Order[16] was issued on June 18, 2014.

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[9] Par. 10, Admitted Facts, JSFI, docket, p. 554.
[10] Par. 11, Admitted Facts, JSFI, docket, p. 554.
[11] Par. 12, Admitted Facts, JSFI, docket, p. 554.
[12] Par. 13, Admitted Facts, JSFI, docket, p. 555.
[13] Pars. 14-15, Admitted Facts, JSFI, docket, p. 555
[14] Docket, pp. 6-25.
[15] Docket, pp. 248-266.
[16] Docket, pp. 570-578.

In support of its allegations, petitioner presented Allen Roy T. Catacutan,[17] and Ivan V. Hilario[18] as its witnesses.

Petitioner's Tax and Audit Officer **Allen Roy T. Catacutan** testified[19] that he was part of the team that handled the BIR assessment against petitioner. After the Notice of Informal Conference, LOA and the PAN, the BIR issued to petitioner a Formal Letter of Demand for petitioner's alleged deficiency EWT, FBT and FWT. Petitioner paid the assessed amount for EWT and FBT but protested the assessment for FWT.

The witness opined that the deficiency assessment for FWT is erroneous since a higher withholding tax rate on petitioner's payments of dividends, interest payments, and royalty payments to different Japanese corporations was applied when petitioner is entitled to the 10% preferential withholding tax rate based on the RP-Japan Tax Treaty. Under the said Treaty, a Philippine company such as petitioner with a pioneer status per its registration with the BOI is entitled to 10% preferential rate when making income payments to Japanese companies with tax residency in Japan. To prove this fact, he secured from the BOI a Certification[20] that from date of registration on June 27, 2002 up to 2007, petitioner's pioneer status has remained valid and existing.

On December 10, 2013, petitioner received the assailed FDDA still assessing petitioner for deficiency FWT, but for a reduced amount.[21] This prompted petitioner to elevate its case to this Court through a Petition for Review.

Petitioner's General Accountant, **Ivan V. Hilario** testified[22] that his duties included applying the incentives granted by the BOI to petitioner's daily transactions, including

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[17] Minutes of the Hearing dated June 19, 2014, docket, p. 579; dated September 29, 2014, docket, p. 597.
[18] Minutes of the Hearing dated August 4, 2014, docket, p. 584.
[19] See Judicial Affidavit dated May 2, 2014, docket pp. 783-800; no cross-examination see TSN dated June 19, 2016 p. 8.
[20] Exhibit P-28, docket p. 811 which was identified when the witness was recalled to the witness stand on September 29, 2014.
[21] Exhibit P-26 p. 13
[22] See Judicial Affidavit dated April 30, 2014, docket pp. 801-810; no cross-examination see TSN dated August 4, 2014 p. 10.

the computation of appropriate taxes for filing tax returns with the BIR. Together with the BOI Certificate, he filed a tax treaty relief application (TTRA) for petitioner with the BIR for the purpose of availing the 10% preferential tax rate for petitioner's income payments to various Japanese corporations. Per its journal entries, petitioner actually utilized the 10% preferential tax rate for the income payments made to these Japanese corporations in the year 2007.

On October 13, 2014, petitioner formally offered its evidence,[23] which were all admitted in the Resolution dated November 24, 2014[24].

For its part, respondent called to the witness stand Revenue Officers (ROs) Jesus DS. Reyes[25] and Roque Gildo M. Ganaden[26] to substantiate his stance.

RO **Jesus DS. Reyes** testified[27] that he audited the account of petitioner for the year 2007 pursuant to the Letter of Authority (LOA) issued by respondent. In the course of the audit, petitioner executed a Waiver of the Defense of Prescription provided under the National Internal Revenue Code (NIRC) on April 20, 2010 extending the period to assess until December 31, 2010. It was accepted by the BIR on April 30, 2010.

Finding petitioner liable for deficiency taxes, respondent sent it a Notice of Informal Conference dated October 27, 2010. It was during this incident held on November 12, 2010 that petitioner executed the second Waiver. Thereafter, a PAN was issued to which petitioner filed a protest. In the meantime, petitioner executed three more Waivers extending the period to assess until December 31, 2011, October 31, 2012, and finally until June 30, 2013. All the Waivers were executed by the President of petitioner, Takanori Fujimura.

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[23] Formal Offer of Exhibits, docket, pp. 601-617.
[24] Docket, pp. 826-827.
[25] Minutes of the Hearing dated March 3, 2015, docket, p. 857.
[26] Minutes of the Hearing dated September 21, 2015, docket, p. 905.
[27] See Judicial Affidavit dated April 25, 2014, docket pp. 521-527.

Upon his recommendation, respondent issued FLD dated May 29, 2013 with attached Details of Discrepancies and Assessment Notices. The said FLD did not contain any finding of fraud, late or non-filing of any monthly withholding tax return on the part of petitioner.

The other witness RO **Roque Gildo M. Ganaden** testified[28] that upon evaluation of petitioner's protest against the FLD of May 29, 2013, he recommended the issuance of FDDA which was approved and later issued. He personally served it upon petitioner on December 10, 2013. He confirmed that the FDDA made no finding on the existence of fraud, late or non-filing of the FWT returns on the part of petitioner for the taxable year 2007.

Admittedly, the protest included prescription as an issue nevertheless he did not check or examine the Waivers of the Defense of Prescription executed by petitioner through its President.

With the issuance of the Resolution dated November 25, 2015[29], respondent rested his case.

The case was submitted for decision on January 27, 2016.[30]

The lone issue submitted by the parties for the resolution of the Court is as follows:

> Whether or not Petitioner is liable to pay for the deficiency final withholding tax amounting to ₱254,721,476.95 inclusive of interest and penalties for taxable year ended December 31, 2007."

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[28] See Judicial Affidavit dated April 24, 2014, docket pp. 532-535.
[29] Docket, pp. 921-922.
[30] Resolution dated January 27, 2016, docket, p. 944.

DISCUSSION/RULING

Petitioner claims that respondent's right to assess deficiency FWT for the months of January, February, and March 2007 had already prescribed in accordance with Section 203 of the NIRC of 1997, as amended, which reads as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Corollary to the foregoing, Sections 7 and 8.1(a) of Revenue Regulations (RR) No. 09-01, as last amended by RR No. 26-02, provide that the electronic filing of Monthly FWT Returns of large taxpayers engaged in manufacturing, such as herein petitioner, must be made within fourteen (14) days following the end of the month. The dates of filing of petitioner's Monthly FWT Returns as well as the last day for respondent to assess petitioner deficiency FWT for taxable year 2007 are summarized below:

Reference (BIR Records)	CY 2007	Date Filed	Last Day to File	Last Day to Assess
p. 143	January	Feb. 12, 2007	Feb. 14, 2007	Feb. 15, 2010[31]
p. 141	February	March 12, 2007	March 14, 2007	March 15, 2010[32]
p. 136	March	April 13, 2007	April 16, 2007[33]	April 16, 2010
p. 134	April	May 15, 2007	May 14, 2007	May 17, 2010[34]
p. 129	May	June 15, 2007	June 14, 2007	June 15, 2010
p. 127	June	July 13, 2007	July 16, 2007[35]	July 16, 2010

[31] February 14, 2010 fell on a Sunday.
[32] March 14, 2010 fell on a Sunday.
[33] April 14, 2007 fell on a Saturday.
[34] May 15, 2010 fell on a Saturday.
[35] July 14, 2007 fell on a Saturday.

p. 123	July	Aug. 14, 2007	Aug. 14, 2007	Aug. 16, 2010[36]
p. 118	August	Sept. 14, 2007	Sept. 14, 2007	Sept. 14, 2010
p. 115	September	Oct. 8, 2007	Oct. 15, 2007[37]	Oct. 15, 2010
p. 111	October	Nov. 12, 2007	Nov. 14, 2007	Nov. 15, 2010[38]
p. 107	November	Dec. 11, 2007	Dec. 14, 2007	Dec. 14, 2010
p. 104	December	Jan. 15, 2008	Jan. 14, 2008	Jan. 17, 2011[39]

As shown above, respondent had until January 17, 2011, at the latest, within which to assess petitioner deficiency FWT for taxable year 2007.

Evidently, the subject assessment for FWT included in the FLD with attached Details of Discrepancies and Assessment Notices received by petitioner on May 29, 2013 was issued beyond the 3-year prescriptive period mandated in Section 203 of the NIRC, as amended.

Be that as it may, Section 222(b) of the NIRC of 1997, as amended, provides that the prescriptive period in Section 203 of the same Code may be extended by way of a written agreement between the taxpayer and the respondent executed before the lapse of the said 3-year prescriptive period, thus:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

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[36] August 14, 2010 fell on a Saturday.
[37] October 14, 2007 fell on a Sunday.
[38] November 14, 2010 fell on a Sunday.
[39] January 15, 2011 fell on a Saturday.

> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.**
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> x x x x x x x x x
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> (e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree. *(Emphasis supplied)*

It was undisputed that petitioner executed five (5) Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC, on the following dates:

Exhibit	Date Executed by petitioner	Date Accepted by respondent	Last Day Agreed Upon
R-7[40]	April 20, 2010	April 30, 2010	December 31, 2010
R-9[41]	Nov. 12, 2010	Nov. 22, 2010	June 30, 2011
R-11[42]	Feb. 24, 2011	March 08, 2011	December 31, 2011
R-12[43]	Nov. 04, 2011	Nov. 17, 2011	October 31, 2012
R-13[44]	Sept. 19, 2012	Sept. 25, 2012	June 30, 2013

Clear from the above table that the first Waiver executed by petitioner on April 20, 2010 gained validity only on April 30, 2010 when it was accepted by respondent.

Note that respondent's right to assess deficiency FWT for the months of January, February, and March 2007 was only until February 15, 2010, March 15, 2010, and April 16, 2010, respectively. In fine, when the first Waiver became effective on April 30, 2010, respondent's right to assess deficiency FWT for the months of January, February, and March 2007 had

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[40] BIR Records, p. 325
[41] BIR Records, p. 387
[42] BIR Records, p. 448
[43] BIR Records, p. 452
[44] BIR Records, p. 456

already prescribed. In other words, the execution of the Waiver of April 2010 by petitioner did not save the day for respondent, there being no more period to extend through the said Waiver. Hence, the cancellation of the assessment for the period January to March 2007 is inevitable.

Since respondent's right to assess for the months of January to March 2007 had already lapsed when the first Waiver became effective, the succeeding Waivers will not affect and also did not extend the period to assess for the said months.

With the first Waiver being effective only for the months of April to December 2007, the other four (4) succeeding Waivers extended respondent's right to assess deficiency FWT until June 30, 2013 at the latest but only for the remaining months of April to December 2007. Clearly, the FLD received by petitioner on May 29, 2013[45] was timely issued insofar as the assessment for deficiency FWT for the months of April to December 2007 was concerned.

On the merits of the assessment, respondent computed the basic deficiency FWT due in the amount of ₱116,176,223.55 by subjecting the dividends, interest, and royalties, including technical fees, paid by petitioner to residents of Japan to the following FWT rates *vis-à-vis* the 10% FWT rate used by petitioner:[46]

Income Payment	Tax Base (In Php)	Per BIR Assessment Rate	Per BIR Assessment Tax to be Withheld (In Php)	Per FWT Returns filed by petitioner Rate	Per FWT Returns filed by petitioner Tax Withheld (In Php)	Basic Deficiency FWT (In Php)
Dividends						
Sumitomo Metal Mining Co. Ltd.	247,860,000.00	10%	24,786,000.00	10%	24,786,000.00	-
Sojitz Corporation	82,620,000.00	25%	20,655,000.00	10%	8,262,000.00	12,393,000.00
Mitsui & Company, Ltd.	82,620,000.00	25%	20,655,000.00	10%	8,262,000.00	12,393,000.00
Interest						
January to October						
Sumitomo Metal Mining Co. Ltd.	82,442,383.80	20%	16,488,476.76	10%	8,244,238.38	8,244,238.38

[45] Par. 10, Admitted Facts, JSFI, docket, p. 554.
[46] Exhibit "P-21", docket, p. 766; BIR Records, p. 642.

Sojitz Corporation	67,086,883.90	20%	13,417,376.78	10%	6,708,688.39	6,708,688.39
Sumitomo Mitsui Banking Corp. - HK Branch	23,706,710.70	20%	4,741,342.14	10%	2,370,671.07	2,370,671.07
November and December						
Sumitomo Metal Mining Co. Ltd.	7,399,661.90	15%	1,109,949.29	10%	739,966.19	369,983.10
Sojitz Corporation	7,345,428.30	15%	1,101,814.25	10%	734,542.83	367,271.42
Royalties						
January to October						
Sumitomo Metal Mining Co. Ltd.	204,612,303.00	35%	71,614,306.05	10%	20,461,230.30	51,153,075.75
Sumitomo Seika Chemicals Co. Ltd. (Technical Fee)	15,688,750.00	35%	5,491,062.50	10%	1,568,875.00	3,922,187.50
Sumitomo Metal Mining Co. Ltd. (Technical Fee)	53,595,650.00	35%	18,758,477.50	10%	5,359,565.00	13,398,912.50
November to December						
Sumitomo Metal Mining Co. Ltd.	25,127,014.40	25%	6,281,753.60	10%	2,512,701.44	3,769,052.16
Sumitomo Metal Mining Co. Ltd. (Technical Fee)	7,240,955.30	25%	1,810,238.83	10%	724,095.53	1,086,143.30
Other Payments to NRFCs						
Weir Minerals Netherlands BV	5,127,209.57	35%	1,794,523.35	35%	1,794,523.35	
Sumitomo Mitsui Construction Co. Ltd.	10,533,220.00	7.5%	789,991.50	7.5%	789,991.50	-
	923,006,170.87		**209,495,312.53**		**93,319,088.98**	**116,176,223.55**

As contained in the FDDA[47] the deficiency assessment arose from the BIR's use of tax rates higher than the 10% preferential rate indicated in petitioner's tax returns. Respondent denied petitioner's entitlement to the 10% preferential rate under the RP-Japan Tax Treaty on the alleged ground that the application for availment of the benefit under the tax treaty was belatedly filed depriving it of the benefit of paying lower tax rate. According to respondent, the application for tax treaty relief is a condition precedent for it to avail of the preferential tax treaty rate provided by the Philippines-Japan Tax Treaty (on dividends, interest, and royalties) pursuant to Revenue Memorandum Order (RMO) 01-2000.

[47] Exhibit "P-21", Annex A, docket, pp. 765 and 766.

Respondent as well held that petitioner is not entitled to the preferential tax rate under the Philippines-Japan Tax Treaty for failure to comply with the requisites to qualify under the treaty. The BIR did not recognize petitioner as a pioneer enterprise duly registered with the BOI since petitioner was already registered with the Philippine Export Zone Authority (PEZA).

It must be stressed that even prior application for tax treaty relief with the BIR is not required before a taxpayer can avail of the preferential tax treatments under Philippine tax treaties. In this particular case, petitioner filed an application to avail the preferential tax rate under the Philippine-Japan Tax Treaty. With a valid international obligation, the Government is bound to fulfill the same. Thus, the BIR or the respondent may not impose additional requirements that would negate the availment of the benefits provided under the international agreement. The Supreme Court explained its ruling on the matter, in this wise:

> A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken. Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under such agreement.
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> Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.
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> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement

> to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.
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> The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.[48]

Undeniably, the foregoing tenet is in accord with the Constitutional mandate that provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.[49]

But was petitioner able to prove compliance with all the conditions set forth under the Philippines-Japan Tax Treaty to be entitled to the tax treaty rate of 10% on dividends, interests, and royalties including technical fees for taxable year 2007?

The Philippines-Japan Tax Treaty provides for the following tax treatment of dividends, interests, and royalties:

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[48] Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2013.

[49] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84 and *Commissioner of Internal Revenue vs. CBK Power Company Limited,* G.R. Nos. 193407-08, January 14, 2015.

"Article 10

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting 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 beneficial owner is a company which holds directly at least 25 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends;

(b) 25 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) Notwithstanding the provisions of paragraph (2), the amount of tax imposed by the Philippines on the dividends paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of the dividends, shall not exceed 10 per cent of the gross amount of the dividends.

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Article 11

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the

beneficial owner of the interest the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest if the interest is paid in respect of Government securities, or bonds or debentures;

(b) 15 per cent of the gross amount of the interest in all other cases.

(3) Notwithstanding the provisions of paragraph (2), the amount of tax imposed by the Philippines on the interest paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of the interest, shall not exceed 10 per cent of the gross amount of the interest.

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Article 12

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

(a) 15 per cent of the gross amount of the royalties if the royalties are paid in respect of the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting;

(b) 25 per cent of the gross amount of the royalties in all other cases.

(3) Notwithstanding the provisions of paragraph (2), the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of the royalties, shall not exceed 10 per cent of the gross amount of the royalties."

Under paragraph 3 of Articles 10, 11 and 12 of the Philippines-Japan Tax Treaty, dividends, interests, and royalties arising in the Philippines and paid to a resident of Japan may be taxed in the Philippines at a rate of 10% of the gross amount if the company paying the dividends, interests or royalties is registered with the BOI and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines.

Evidence show that petitioner is a corporation organized and existing under the laws of the Philippines with SEC Company Registration No. A200205418.[50] Petitioner was registered with the BOI on June 27, 2002 as a pioneer producer of mixed sulfide of nickel and cobalt under Certificate of Registration No. EP-2002-089[51].

To be sure, respondent's claim that by registering with PEZA, petitioner had abandoned its BOI registration is untenable. The Certifications issued by the BOI dated May 8, 2012[52] and July 15, 2014[53], show that petitioner's BOI registration was still valid and existing until 2007. In the more recent certification, the BOI certified as follows:

> This is to certify that the company's BOI registration from its date of registration with the Board on 27 June 2002 to date, and in particular for the calendar year 2007, has not been revoked nor cancelled and has remained to be valid, existing and of good standing. Further, that it has not committed any violation to the terms and conditions of its BOI registration.
>
> This is to certify further that its registration with the Board is on a pioneer status.
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> This certification is being issued upon the request of Coral Bay Nickel Corporation in support of its application with the Bureau of Internal Revenue for the purpose of availing the preferential tax rate under RP-Japan Tax Treaty.

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[50] Exhibit "P-8", docket, p. 689.
[51] Exhibits "P-10" to "P-10-2", docket, pp. 731 to 736.
[52] Exhibit "P-11", docket, p. 737.
[53] Exhibit "P-28", docket, p. 811.

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Moreover, petitioner presented duly consularized residence certificates of Mitsui and Company Ltd.[54], Sojitz Corporation[55], Sumitomo Metal Mining Company Ltd.[56], Sumitomo Seika Chemicals Company Ltd.[57], and Sumitomo Mitsui Banking Corporation[58], issued by the Tax Authorities of Japan, proving that the said income recipients were residents of Japan thus covered by the Philippines-Japan Tax Treaty.

Therefore, petitioner is entitled to and correctly applied the preferential tax treaty rate of 10% on dividends, interest, and royalties (including technical fees) paid to residents of Japan for taxable year 2007. Consequently, respondent's assessment for deficiency FWT using higher tax rates for taxable year 2007 for the months of April to December lacks legal basis.

WHEREFORE, the Petition for Review dated January 8, 2014 filed by Coral Bay Nickel Corporation is hereby GRANTED. Accordingly, the FDDA dated December 6, 2013 issued by respondent Commissioner of Internal Revenue against petitioner for taxable year 2007 for deficiency FWT in the amount of ₱254,721,476.95, inclusive of interest and compromise penalty, is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[54] Exhibit "P-12", docket, pp. 738 to 739.
[55] Exhibit "P-13", docket, pp. 740 to 741.
[56] Exhibit "P-14", docket, pp. 742 to 743.
[57] Exhibit "P-15", docket, pp. 744 to 745.
[58] Exhibit "P-16", docket, pp. 746 to 747.

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 Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice