REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

R.F. & J. ALEXANDER & CO., LTD. and
TOOTAL LTD. and ALLIED THREAD
CO., INC. (As Withholding Agent),
Petitioners,

- versus - C.T.A. CASE NO. 2961

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

7/9/81

D E C I S I O N

Section 24(b)(1) of the National Internal Revenue Code imposes on a foreign corporation not engaged in trade or business in the Philippines an income tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, as, among others, dividends, or other fixed or determinable, annual, periodical or casual gains, profits and income, and capital gains. However, on dividends received from a domestic corporation liable to tax, the tax is fifteen percent (15%) of the dividends received, which is collected and paid as provided in Section 53(d) of the Tax Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%) which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends. (Now Section 24(b)(iii), 1977 National Internal Revenue Code.)

In this suit for recovery of alleged overpaid withholding tax on dividends, it appears that petitioner Allied Thread Co., Inc. (hereinafter called "Allied") declared and paid dividends on June 28, 1976 to its co-petitioners R.F. & J. Alexander & Co., Ltd. (hereinafter called "Alexander") and Tootal Ltd. (hereinafter called "Tootal"), from which Allied withheld and paid to the Bureau of Internal Revenue the 35% withholding (income) tax, pursuant to the above Section 24(b)(1) in relation to Section 53(b) of the National Internal Revenue Code. Averring, however, that under the Income Tax Law of the United Kingdom in which Alexander and Tootal are domiciled, the allowable deemed paid tax credit exceeds 20% of the dividends received by them, Allied now claims that since it withheld 35% tax on the dividends paid to its co-petitioners instead of only 15%, in accordance with the above

Section 24(b)(1) of the Code, it had overpaid the withholding tax by 20%. Consequently, claim for refund or tax credit of the overpaid or erroneously paid withholding tax on dividends declared and paid by Allied to its co-petitioners Alexander and Tootal was filed with respondent Commissioner of Internal Revenue. And to interrupt the running of the prescriptive period for the refund or tax credit claimed, petitioners filed the present suit in accordance with Section 292 of the National Internal Revenue Code.

There is no dispute as to the facts of the case.

After petitioners have presented their evidence, both oral and documentary, and rested their case, counsel for respondent, without controverting or disputing the evidence of petitioners and without offering proof as to the truth of his own allegations in the answer, submitted this appeal for decision on the basis of the pleadings and the records of the case. (Minutes of the session of the Court, June 4, 1980, p. 76, CTA records.) And the records of the case consist of the uncontested oral and documentary evidence of petitioners supporting and justifying their claim for refund or tax credit, and the record of the Bureau of Internal Revenue pertaining to this proceeding which is only the written claim for refund or tax credit filed by petitioners with respondent together with the documents which support their claim. Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such as his own as are admitted (Bauerman vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), the factual background of the case as gathered from the petition for review, borne out by the records, and supported by the uncontroverted evidence of petitioners may be stated as follows:

1. Petitioners Alexander (R.F. & J. Alexander & Co., Ltd.) and Tootal (Tootal Ltd.) which are non-resident foreign corporations, not engaged in trade or business in the Philippines and existing under and by virtue of English Law, are both domiciled in and with principal offices in

the United Kingdom. (p. 31, t.s.n., March 11, 1980, Testimony of Alejo Alvarez; Exhs. "A", "B", & "F".)

2. Petitioner Allied (Allied Thread Co., Inc.) is a domestic corporation organized and existing by virtue of the laws of the Philippines, with office and place of business at Pasig, Metro Manila. (par. 1, Petition for Review; admitted, par. 1, Answer.)

3. Petitioners Alexander and Tootal are foreign corporate stockholders of co-petitioner Allied. (Exh. "1".)

4. On June 23, 1976, Allied filed a withholding tax return (BIR Form No. 17.43-B) covering, among others, the dividends it declared and paid to Alexander and Tootal amounting to ₱1,377,090.00 and ₱1,773,015.00, respectively. (p. 15, t.s.n., May 11, 1979, testimony of Witness Alfredo Carillo; Exhs. "D" & "F".)

5. As withholding agent, Allied paid the 35% withholding tax on dividends remitted to Alexander and Tootal in the respective amount of ₱481,982.00 and ₱620,555.00, or a total of ₱1,102,537.00, under Official Receipt No. 2861946, dated July 23, 1976. (Exhs. "C", "D", "E" & "F".)

Such dividends were remitted on June 28, 1976. (p. 3, t.s.n., July 20, 1979, testimony of Alfredo Carillo; Exh. "F".)

6. Alleging that the tax on dividends paid to a non-resident United Kingdom corporation by a domestic corporation is only 15% pursuant to Presidential Decree No. 369 which amended Section 24(b)(1) /now Section 24(b)(iii)/ of the National Internal Revenue Code, petitioners, on June 21, 1978, filed a claim for refund or tax credit of excess withholding tax on dividends, representing the difference between the 35% tax paid and the 15% that should have been paid, such refundable or creditable tax amounting to a total of ₱630,021.00, computed as follows:

Non-resident foreign corporation	Amount of Dividends Paid	35% Tax Withheld	15% Tax That Should Have been withheld	Excess Tax Withheld
Alexander	₱1,377,090	₱ 481,982	₱206,564	₱ 275,418
Tootal	1,773,015	620,555	265,952	354,603
Total	₱3,150,105	₱1,102,537	₱472,516	₱630,021

7. In accordance with Section 292 of the National Internal Revenue Code and Section 7 of Republic Act No. 1125, petitioners on June 28, 1978, filed their petition for review with this Court.

On December 4, 1978, respondent filed his answer which in effect is a denial of the claim for refund or tax credit of petitioners.

Are petitioners entitled to the refund or tax credit of the overpayment of tax withheld at source pursuant to Section 24(b)(1) of the Revenue Code?

Petitioners submit, and respondent does not dispute, that the claim for refund and the petition for review were filed within two years from the date of overpayment; and Alexander and Tootal are non-resident British corporations. This is clearly borne out by the records of the case and the evidence presented. While respondent also admits that peti- tioner Allied declared dividends during the fiscal year ended January 31, 1976 in favor of co-petitioners Alexander and Tootal, filed the corresponding quarterly return of income tax withheld and paid the 35% withholding tax, respondent avers that "there is no showing that these dividends were actually remitted to the payee non-resident foreign corpo- rations." (pp. 121-122, CTA records.)

To begin with, respondent admits, as stated above, that Allied declared dividends in favor of Alexander and Tootal, filed the corresponding quarterly return and paid the 35% withholding tax withheld therefrom; and Alexander and Tootal explicitly affirmed that the dividends declared in their favor were remitted to them. (pars. 4 & 5, Petition for Review.) While this affirmation was made in the petition for review prepared by their lawyer, attorneys have authority to bind their clients in any case in relation thereto made in writing, and in taking appeals and in all matters of ordinary judicial procedure. (Sec. 23, Rule 138, Rules of Court.) Secondly, the fact that Allied declared the dividends, filed the corresponding quarterly return of income tax withheld at source, paid the 35% withholding tax amounting to ₱1,102,537.00 to the Bureau of Internal Revenue has been clearly and sufficiently established by the evidence. (Exhs. "C", "D", "E" & "F"; t.s.n. pp. 10-19, hearings on May 11, 1979 and July 20, 1979, testimony of Alfredo Carillo.) It is axiomatic that a domestic corporation does not declare dividends in favor of non-resident foreign corporations, file the corresponding return of income tax withheld at source and pay to the Bureau of Internal Revenue the 35% withholding tax unless such dividends have been remitted to the payee non-resident foreign corporations. Otherwise, if no dividends were declared and remitted by Allied to Alexander and Tootal, there would be no legal basis for the withholding of the income tax at source, filing of the return and payment to the Bureau of Internal Revenue of the tax withheld. The entire 35% withholding tax of ₱1,102,537.00 paid to the Bureau of Internal Revenue would therefore be refundable to petitioners instead of the sum of ₱630,021.00 as 15% excess tax withheld. To say that these dividends were not remitted to the payee non-resident foreign corporations is to incur in self-contradiction. Then too, Alfredo Carillo, cost and budget project accountant of Allied testified before this Court that ₱1,377,090.00 and ₱1,773,015.00 were remitted to Alexander and Tootal, respectively, as dividends withholding the respective amount of ₱481,982.00 and ₱620,555.00 as income tax thereon. (pp. 15-16, t.s.n., May 11, 1979; p. 18, t.s.n., May 11, 1979.) No evidence whatsoever was introduce by respondent to controvert or rebut the evidence of petitioners. Against this backdrop, the bare statement of respondent that these dividends were not actually remitted to the payee non-resident foreign corporations, unaccompanied by adequate evidence, has no weight with the Court.

Another roadblock astride petitioner's route to refund or tax credit of the amount of ₱630,021.00

representing overpaid withholding tax, pointed out by respondent, is petitioners' alleged failure to show that non-resident foreign corporations Alexander and Tootal own at least 25% of the voting power in Allied, an express requirement provided for under Section 498(4)(b) of the United Kingdom Income and Corporation Taxes Act 1970. As already stated above, dividends declared and paid by a domestic corporation to a non-resident foreign corporation are subject only to the 15% withholding tax at source and not to 35% pursuant to Section 24(b)(1) /now Section 24(b)(iii)/ of the National Internal Revenue Code, in relation to Sections 53 and 54 thereof, if the country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20%. While respondent concedes that the law of the United Kingdom where Alexander and Tootal are domiciled allows a tax credit of more than 20% for taxes paid in the Philippines, he contends that petitioners failed to show as required under Section 498(4)(b) of the United Kingdom Income and Corporation Taxes Act 1970 that non-resident foreign corporations

Alexander and Tootal own at least 25% of the voting power in Allied.

To quote the pertinent portions of the United Kingdom Income and Corporation Taxes Act 1970:

> "SEC. 498. - (1) To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing the last-mentioned tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 497 above providing for such relief:
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> " x x x x x x x x x
>
> "(3) Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income (profit from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory):
>
> "(4) Where a dividend paid by a company resident in the territory is paid to a company resident in the United Kingdom which either -
>
> "(a) controls directly or indirectly,or
> "(b) is subsidiary of a company which controls directly or indirectly,
>
> not less that 25% of the voting power in the company paying the dividend, or not less than 10% per cent of the voting power if the territory is one of the Commonwealth territories, any tax in respect of its profits paid under the

> law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend."

Petitioners Alexander and Tootal are foreign corporate stockholders of co-petitioner Allied; and the evidence clearly show that Alexander owns 550,836 shares, or 44%, while Tootal owns 709,206 shares, or 56%, of the total shares of stock, all common and voting shares of Allied. (Exh. "1", "I-1" & "I-2"; p. 31, t.s.n., March 11, 1980, testimony of Alejo Alvarez.) This evidence has not been controverted or rebutted by respondent. To say therefore that Alexander and Tootal do not own at least 25% of the voting power in Allied is to ignore the logical connotations of plain facts and figures. Ownership of 44% or 56% of the total shares of stock in Allied, and the control primarily dependent upon such ownership - the important ingredients of voting power - negate any allegation that Alexander and Tootal do not own at least 25% of the voting power in Allied.

For its fiscal year ended January 31, 1976, Allied had a taxable net income of ₱10,528,437.00 on which it paid income tax amounting to ₱3,674,953.00 or 34.90%. (Exhs. "G", "H", "K", "L", "M", "N", "O" & "P", pp. 58-62, pp. 65-70, CTA records.) From the remaining profits of ₱6,853,484.00, Allied paid dividends to Alexander and Tootal. In accordance with Section 498 of the Income and Corporation Taxes Act 1970 of the United Kingdom, a tax credit for taxes paid in the Philippines is granted on the dividends received from Allied by Alexander and Tootal on the basis of such income tax paid by Allied in the Philippines on its income out of which the dividends were paid. Pursuant to the said Section 498 of the Income and Corporation Taxes Act 1970, a tax credit of 34.90% should therefore be granted for taxes paid on dividends remitted by Allied to Alexander and Tootal, which is clearly more than the 20% minimum required in Section 24(b)(1) of the National Internal Revenue Code. It seems clear beyond doubt therefore that as far as the dividends remitted by Allied to Alexander and Tootal are concerned, United Kingdom grants a tax credit of more than 20% on taxes deemed to have been paid in the Philippines on such dividends.

The conditions provided in Section 24(b)(1) of the National Internal Revenue Code, in relation to Sections 53 and 54 thereof, having been fulfilled the correct withholding tax rate on the dividends paid and remitted by Allied to Alexander and Tootal should be 15% and not 35% pursuant to said Section of the law which is now Section 24(b)(iii) of the Code. There is therefore an overpayment of ₱630,021.00.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant as tax credit the amounts of ₱275,418.00 and ₱354,603.00, or a total of ₱630,021.00, as overpaid withholding tax, in favor of petitioners R.F. & J. Alexander & Co., Ltd.; Tootal Ltd., and Allied Thread Co., Inc. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 9, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge