REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN TRANSMISSION CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3380

THE ACTING COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

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7/27

D E C I S I O N

In this suit for refund of alleged erroneously paid withholding tax at source, the basic question presented is whether interest payments of a domestic corporation on loans extended by Japanese corporations, which are allegedly financed and guaranteed by the Export-Import Bank of Japan, are excluded from gross income taxation pursuant to the then Section 29(b)(8) of the National Internal Revenue Code [now Section 29(c)(8)], which provides in pertinent part:

> "SECTION 29. Gross Income. - x x x
>
> "(b) Exclusions from gross income. - The following items shall not be included

in gross income and shall be exempt from taxation under this Title.

" x x x

"(8) Miscellaneous items. - (a) Income received from their investments in the Philippines in loans x x x by (1) foreign governments; (2) financing institutions owned, controlled, or enjoying refinancing from them; and (3) international or regional financing institutions established by governments.

" x x x"
[Underscoring supplied]

The facts are not disputed, the parties having agreed to submit this case for decision based on the pleadings and the records after petitioner has presented its evidence.

Petitioner Asian Transmission Corporation is a domestic corporation organized and existing under Philippine laws with principal office at Silangan Canlubang Industrial Park, Canlubang, Laguna. It entered into a loan agreement with the Mitsubishi Motors Corporation (Mitsubishi, for short), a corporation duly organized and existing under the laws of Japan, on two occasions, viz (a) the amount of Japanese Yen One Hundred Twenty-Seven Million Five Hundred Thousand (¥127,500,000) executed on April 15, 1975 and (b) the amount of Japanese Yen

Three Hundred Million (¥300,000,000) executed on August 10, 1977.

Likewise, petitioner entered into loan agreements with the Nissho-Iwai Co., Ltd. (Nissho-Iwai, for brevity), also a corporation duly organized and existing under the laws of Japan, in the amounts of Japanese Yen One Hundred Twenty Seven Million Five Hundred Thousand (¥127,500,000) and Japanese Yen Three Hundred Million (¥300,000,000) on April 15, 1975 and August 10, 1977, respectively.

For the 3rd and 4th quarters of 1979 and 1st, 2nd, 3rd and 4th quarters of 1980, petitioner paid interest on the loans extended by Mitsubishi paying withholding taxes thereon amounting to P258,462.31, the details of which are as follows:

QUARTER	RECEIPT NO.	CONFIRMATION RECEIPT NO.	DATE OF PAYMENT	WITHHOLDING TAX PAID
1979				
3RD	2270965	2574588	10.21.79	P 41,010.49
4TH	2374861	2846460	01.18.80	40,567.76
TOTAL				P 81,578.25

1980				
1ST	TAX DEBIT MEMO		04.21.80	P 39,360.74
2ND	3033940	0337227	07.21.80	40,017.34
3RD	3034924	5325055	10.20.80	49,503.71
4TH	3761249	6218914	01.20.81	48,002.27
TOTAL				P176,884.06
GRAND TOTAL				P258,462.31

Similarly, for the 3rd and 4th quarters of 1979 and the 1st, 2nd, 3rd and 4th quarters of 1980, petitioner paid withholding taxes on interest payments on the loans extended by Nissho-Iwai amounting to P258,773.07, details of which are as follows:

QUARTER	RECEIPT NO.	CONFIRMATION RECEIPT NO.	DATE OF PAYMENT	WITHHOLDING TAX PAID
1979				
3RD	2270966	2574579	10.21.79	P 41,010.49
4TH	2374863	2846457	01.18.80	40,679.36
TOTAL				P 81,689.85
1980				
1ST	TAX DEBIT MEMO		04.21.80	P 39,360.74
2ND	3033938	0337228	07.21.80	40,122.90
3RD	3034926	5325057	10.20.80	49,503.71
4TH	3761248	6218915	01.20.81	48,095.87
TOTAL				P177,083.22
GRAND TOTAL				P258,773.07

Thereafter, in a letter dated September 22, 1981, petitioner Asian Transmission, through its auditors, filed with respondent's Bureau a claim for refund of the aforementioned amounts of P258,462.31 and P258,773.07, or a total of P517,235.38, alleging that the loans were extended to petitioner by the Export-Import Bank of Japan (Eximbank, for short) through Mitsubishi and Nissho-Iwai, and therefore exempt from Philippine withholding tax on income pursuant to the then Section 29(b)(8), supra, of the National Internal Revenue Code, Eximbank being a financial institution owned and controlled by the government of Japan.

On October 15, 1981, petitioner filed its petition for review with this Court in accordance with Section 292 of the applicable National Internal Revenue Code, to which respondent filed his answer denying the claim for refund.

Are petitioner's interest payments on its loans from Mitsubishi and Nissho-Iwai exempt from withholding taxes?

It will greatly simplify matters if the provisions of law involved, and factual situations related thereto, that are beyond dispute, be reduced to basic legal propositions, to wit:

(1) Under Section 29 of the Tax Code, interest income is included in gross income. Hence, interest income is subject to income tax.

(2) Interests received by Mitsubishi and Nissho-Iwai paid by Asian Transmission on the loans extended by Mitsubishi and Nissho-Iwai would therefore be subject to withholding tax being without doubt interest income on the part of Mitsubishi and Nissho-Iwai.

(3) However, if the interests paid by Asian Transmission were received by Eximbank of Japan on loans extended by Eximbank of Japan, a financing institution owned by the Japanese Government, such interests are exempt from withholding tax pursuant to the then Section 29(b)(8) of the Tax Code, which provides that income received from investments in the Philippines in loans by financing institutions owned, controlled, or enjoying refinancing from foreign governments are not included in gross income and shall be exempt from income taxation.

(4) Mitsubishi and Nissho-Iwai are nowhere embraced or covered by the foregoing provisions of Section 29(b)(8) of the Revenue Code as they are admittedly neither foreign governments nor

financing institutions owned, controlled, or enjoying refinancing from foreign government nor international or regional financing institutions established by a foreign government. They are foreign corporations organized and existing under the laws of Japan.

The question therefore is whether the interest payments of petitioner Asian Transmission on the loans contracted with Mitsubishi and Nissho-Iwai are income received from the investments in the Philippines in loans by Eximbank of Japan.

A reading of the loan agreements entered into on April 15, 1975 and August 10, 1977 and the amendments executed on September 5, 1977 by and between Mitsubishi and petitioner Asian Transmission, and by and between Nissho-Iwai and petitioner Asian Transmission will readily show that the contracts created a creditor-debtor relationship only between Mitsubishi and Asian Transmission, and Nissho-Iwai and Asian Transmission. (pp. 16-29, BIR records; pp. 35-49, BIR records; pp. 50-63, BIR records.) Mitsubishi and Nissho-Iwai obligated themselves to provide funds (loans) to Asian Transmission. To comply and fulfill their part of the loan agreements, Mitsubishi and Nissho-Iwai had to produce the funds. From whatever source, Asian Transmission was not concerned. Nowhere and nowise in the loan agreements was there stated that Mitsubishi and Nissho-Iwai had to obtain loans from Eximbank of Japan. Neither can it be inferred or deduced from the loan agreements that Mitsubishi and Nissho-Iwai acted for and in behalf of Eximbank of Japan, or Eximbank of Japan had to finance or guarantee the loans extended by Mitsubishi and Nissho-Iwai to Asian Transmission. As a matter of fact, nothing there in the loan agreements is said that the funds or loans extended by Mitsubishi and Nissho-Iwai to Asian Transmission came from Eximbank of Japan. Eximbank of Japan was not in any manner privy to these contracts of loan.

Accordingly, it is self evident that the loans contracted by Asian Transmission with Mitsubishi and Nissho-Iwai are <u>not investments in the Philippines in loans by Eximbank of Japan</u> and the interest payments of Asian Transmission on the loans contracted with Mitsubishi and Nissho-Iwai <u>are not income received from the investments in the</u>

Philippines in loans by Eximbank of Japan. As expressly nd clearly provided in the loan agreements of borrower Asian Transmission in favor of its lenders Mitsubishi and Nissho-Iwai, all payments of principal and interest shall be made to the lenders by telegraphic transfer to such bank account in Tokyo, Japan as will be designated by the lenders. (pp. 23, 57-71, BIR records.) Nothing there in the loan agreements speaks of interest payable to Eximbank of Japan. The terms of the loan agreements provide the safest guide as to the nature of the contracts and the intention of the parties.

We see no significance therefore in the certification dated March 15, 1982 (Exh. A) issued by the Chief Representative of the Export-Import Bank of Japan for the Philippines stating that the loans contracted by petitioner with Mitsubishi Motors Corporation and Nissho-Iwai Co., Ltd., were financed and guaranteed by the Export-Import Bank of Japan. To begin with, the certification (Exh. A) is only a xerox or photo copy. It does not bear the seal of the Export-Import Bank of Japan or the office of its chief representative in the Philippines. Secondly, as aptly stated by respondent, the signature appearing above the typewritten name Shunsuke Araki as chief representative of the Export-Import Bank of Japan in the Philippines was never identified by a competent witness. Neither Mr. Shunsuke Araki, a responsible official of the said Bank who certified to the fact that the loans of petitioner with Mitsubishi and Nissho-Iwai were guaranteed and financed by Eximbank of Japan, or his authorized representative, was presented as witness to explain or clarify the bank's actual participation or involvement in the loan transactions. Then, the certification is dated March 15, 1982, after the claim for r fund of alleged erroneous payments of withholding tax had already been filed with the Bureau of Internal Revenue on September 23, 1981 and the petition for review was filed with this Court on October 15, 1981. Hence, Exhibit A could, at best, be no more than an afterthought which might provide support for the claim for refund. But more importantly, the certification that the loans extended by Mitsubishi and Nissho-Iwai to petitioner Asian Transmission does not prove that the interest payments of petitioner Asian Transmission to Mitsubishi and Nissho-Iwai on loans extended by them are income received from the investments in the Philippines in loans by the Export-Import Bank of Japan.

To support its cause, petitioner cites Mitsubishi Metal Corporation and Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2801, April 18, 1980; and Mitsubishi Metal Corporation, et al. vs. Commissioner of Internal Revenue, CTA Case No. 3015, January 15, 1981, which are pending appeal in the Supreme Court, but in both cases, Mitsubishi obtained the loans as conduit of the Export-Import Bank of Japan and a consortium of private Japanese banks financed by the Government of Japan. As correctly pointed out by respondent, the said cases involve a contract of loan and sale wherein Mitsubishi Metal Corporation arranged, as agent, to secure a loan for Atlas Consolidated Mining & Development Corporation to finance the installation of a new concentrator in Atlas' Bigaa Area intended to expand the productive capacity of its Toledo mines, and Atlas agreed to sell to Mitsubishi the entire copper concentrates produced from said concentrator for 15 years. In accordance with their contract, Mitsubishi, as agent of Atlas, made arrangements and applied for a loan with Eximbank of Japan and a consortium of Japanese banks in order to accommodate Atlas which was subsequently approved by Eximbank and the consortium of Japanese Banks. In other words, the relationship between Atlas and Mitsubishi with respect to the loan applied for by Mitsubishi and approved by Eximbank of Japan and the consortium of Japanese banks was that of agency, which business relations never existed in the present case. Then, unlike in the instant case, the interest payments by Atlas to Mitsubishi were all remitted to Eximbank and the consortium of Japanese banks without retaining any portion thereof as its income.

The Court recognizes that inasmuch as the power of ta ation is necessary to the existence of the government, any act limiting such power, or where the intent to tax is clear, and the taxpayer claims that he is not encompassed by the statute, such statute should be strictly construed in favor of the government and against the taxpayer. In other words, exemptions from taxation are to be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. (**Jai-Alai Corporation vs. Collector,** 106 Phil. 345; **Esso Standard Eastern vs. Commissioner of Customs,** L-21841, Oct. 28, 1966, 25 SCRA 488; **Phil. Acetylene vs. Commissioner of Internal Revenue,** L-19707, August 17, 1967, 20 SCRA 1056; **Commissioner of Internal Revenue vs. Guerrero,** L-20942, Sept. 22, 1967, 21 SCRA 180.) The exception contained in the tax statutes must be strictly construed against the one claiming the exemption because the law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (**Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd., et al.,** L-24754, July 18, 1975, 65 SCRA 142.) An exemption from the common burden cannot be permitted to exist upon vague implication or inference. (**Manila Electric Co. vs. Vera,** L-23847, Oct. 22, 1975, 67 SCRA 351.)

WHEREFORE, finding the petition for review without merit, the same is dismissed and the refund sought is hereby denied, at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, July 27, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals