REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MITSUBISHI METAL CORP. AND
ATLAS CONSOLIDATED MINING AND
DEVELOPMENT CORPORATION,
Petitioners,

- versus - C.T.A. CASE NO. 3015

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

1/15/81

D E C I S I O N

This is a claim for tax credit by Atlas Consolidated Mining and Development Corporation (hereinafter referred to as Atlas for short) of the amount of ₱439,167.91, representing withholding tax at source alleged to have been erroneously collected on interest income derived from loans extended to it, through its agent, Mitsubishi Metal Corporation (hereinafter referred to as Mitsubishi for short) and obtained from the Export-Import Bank of Japan, a financing institution owned by the Japanese Government, and the consortium of Japanese banks enjoying refinancing from the Japanese Government, which interest income is allegedly exempt from withholding tax under Section 29 (b) (7) (A) of the National Internal Revenue Code, which provides as follows:

> Sec. 29. Gross Income. x x x
>
> (b) Exclusion from gross income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

> (7) Miscellaneous Items. -
> (A) Income received from their investments in the Philippines in loans, stocks, bonds, or other domestic securities, or from interest on their deposits in banks in the Philippines by (1) foreign governments, (2) financing institutions owned, controlled, or enjoying refinancing from them, and (3) international or regional financing institutions established by governments. (Emphasis Supplied).

Based from the evidence, both testimonial and documentary, the pleadings and the Bureau of Internal Revenue record, it will show that Mitsubishi, a Japanese corporation duly licensed to engage in business in the Philippines, on April 17, 1970, have entered into contract with the Atlas, wherein it will arrange, as agent, to secure a loan for the latter in the amount of $20,000,000.00 to finance the installation of a new concentrator in the latter's Biga Area, which was intended to expand the productive capacity of the Toledo Mines, and that the latter agreed to sell to the former the entire copper concentrates produced from said concentrator for a period of fifteen (15) years. Of the said loan, $9,000,000.00 shall be used for the purchase of the concentrator machinery from Japan. (Exh. G, pp. 51-54, BIR Rec., CTA Case 2801). In accordance with their contract, Mitsubishi made arrangements and applied for a loan with the Export-Import Bank of Japan in order to accommodate Atlas. Subsequently, through the agency of Atlas, loan applications were approved by the Export-Import Bank of Japan in the amounts of ¥4,320,000,000.00 and ¥2,880,000,000.00 (which is equivalent to the said loan of $20,000,000.00).

For taxable years 1977 and 1978, the corresponding 15% quarterly income tax payments were withheld on the corresponding interest payments of Atlas, pursuant to Sections 24 (b) (1) and 53 (b) (2) of the Tax Code, as amended by Presidential Decree No. 131, effective January 1, 1973, and were remitted to the Government in the total sum of ₱439,167.91 itemized as follows:

O.R. No. 15181213	dated 1/4/78	₱136,228.63
O.R. No. 12738213	dated 10/3/77	₱146,788.16
O.R. No. 09598186	dated 7/5/77	₱156,151.12
Total		₱439,167.91

These remittances were covered by Official Receipts issued by the Central Bank of the Philippines. (Exhs. C-5, B-5 and B-3, pp. 7, 13 and 15, BIR Rec.).

In support of their claim for tax credit, the claimants (petitioners herein) contended that inasmuch as the cooperative loans were secured from the Export-Import Bank of Japan, a financing institution owned by the Japanese government, and the consortium of Japanese banks enjoying refinancing from the Japanese government, the interest income on such loans is exempt from the withholding tax pursuant to Section 29 (b) (7) of the Tax Code.

The loan of $20,000,000.00 to Atlas, through the Mitsubishi, was secured pursuant to the loan and sales contract dated April 17, 1970 between Mitsubishi and Atlas aforesaid, and which was intended to finance the expansion project of Atlas, and this was certified to by Director Kenjo Kadowaki of the Overseas Investment Loan Department of the Export-Import Bank of Japan. (p. 18 BIR rec., CTA Case 2801), and the interest paid by Atlas through Mitsubishi on said loans were remitted in full by the latter to the Export-Import Bank of Japan and to the other members of the consortium of private banks which extended the loan. (Exhs. N & N-3, pp. 135-136, BIR Rec., CTA Case 2801).

On August 27, 1976, Mitsubishi executed a waiver and disclaimer of its interest in the pending claim for tax credit in favor of Atlas inasmuch as, under the terms of their contract, Atlas shall shoulder the tax on the interest payable on said loan. (Exh. N, p. 116, BIR Rec., CTA Case 2801).

The issue raised for disposition in this case is whether the interest income paid on the loans extended to Atlas is exempt from withholding tax pursuant to Section 29 (b) (7) (A) of the National Internal Revenue Code.

This issue is not new, it being identical to the same issue resolved by this Court in its decision dated April 18, 1980, in a case between the same parties entitled "Mitsubishi Metal Corporation and Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue", in CTA Case No. 2801. In resolving the issue, this Court, in its aforesaid decision in CTA Case No. 2801, held that the interest income being an earning of the Export-Import Bank of Japan, and not of Mitsubishi or the consortium banks, and the Export-Import Bank of Japan being a financing institution owned and controlled by the Japanese government, it is exempt from withholding income tax under Section 29 (b) (7) (A) of the National Internal Revenue Code. This Court said:

> The law is clear and specific. It merely calls for application as thus worded. Adverting to the terms of the applicable provision, it is apparent that income received from investments in the Philippines in loans (1) by a financing institution owned or controlled by a foreign government or (2) by a financing institution enjoying refinancing from a foreign government is not included in gross income and is exempt from income taxation. Consequently, the interest income is exempt from the withholding tax.
>
> Respondent does not quarrel with petitioners that the Export-Import Bank of Japan is a financing institution owned and controlled by the Japanese Government; and that the consortium of private banks are financing institutions and the loans extended by them to Atlas Consolidated Mining & Development Corporation originated from the Export-Import Bank of Japan. In other words, the consortium of private Japanese banks enjoy the use of funds of the Export-Import Bank of Japan for their loans to Atlas

Consolidated Mining & Development Corporation. The collision occurs, however, at the participation of Mitsubishi Metal Corporation in the loan transactions.

Respondent contends, citing paragraph 4 of the loan and sales contract entered into on April 17, 1970 by and between Mitsubishi Metal Corporation (formerly Mitsubishi Metal Mining Co., Ltd.) and Atlas Consolidated Mining & Development Corporation (Exh. G, pp. 34-54, BIR Records) which reads:

> AND WHEREAS, the parties have entered provisionally into a long term Loan and Sales Contract dated November 7, 1969, and Letter Agreement dated October 23, 1969, under which ATLAS shall borrow from MITSUBISHI the sum of TWENTY MILLION DOLLARS ($20,000,000.00) in United States Currency to install a new concentrator in the ATLAS Biga Area for the purpose of expanding the productive capacity of the Toledo Mine, and shall sell to MITSUBISHI the entire production of copper concentrates produced from the said concentrator for a term of FIFTEEN (15) years. (Par. 4, p. 53, BIR Records).

that Mitsubishi Metal Corporation is the creditor. And as creditor, it is not a (1) financing institution owned, controlled, or enjoying refinancing from foreign governments; (2) international or regional financing institution established by governments; much less (3) a foreign government, as contemplated under Section 29 (b) (7) of the National Internal Revenue Code, whose income received from their investments in the Philippines should be excluded from gross income, and therefore, exempt from Philippine income tax. Accordingly, respondent argues that since Mitsubishi Metal Corporation does not fall within the scope of the provision of Section 29 (b) (7) of the Old Revenue Code, it is liable to tax and therefore the interest payments made by Atlas Consolidated Mining & Development Corporation on the loans obtained from Mitsubishi Metal Corporation are subject to withholding tax at source.

It bears emphasis that petitioners do not base their claim for tax credit on the premise that the loans were made by Mitsubishi Metal Corporation or directly by the consortium of private Japanese banks; rather, they anchor their claim on the fact that the loans were actually and ultimately made by the Export-Import Bank of Japan. And in the light of the facts adduced during the trial which were never contradicted by respondent; the records of the case, specially the records of the Bureau of Internal Revenue; and the allegations in the petition for review, the truth of which has not been disputed but deemed admitted by respondent, as already discussed above, it seems clear beyond any doubt that the ultimate creditor is the Export-Import Bank of Japan. All the papers and documents pertaining to the loan of ¥4,320,000,000.00 through Mitsubishi Metal Corporation conclusively show that the identity of the money loaned by the Export-Import Bank of Japan was to Atlas Consolidated Mining & Development Corporation. And with respect to the loans through the consortium of private Japanese banks in the sum of ¥2,880,000,000.00 to Atlas Consolidated Mining & Development Corporation, the records reveal that they originated from the Export-Import Bank of Japan as evidenced by the sworn certification executed by Yasunori Sakai, manager, Manila Office of Mitsubishi Metal Corporation. (Exh. J, pp. 7-9, BIR Records). In other words, the actual and ultimate creditor is the Export-Import Bank of Japan, the borrower is Atlas Consolidated Mining & Development Corporation, the interest paid on the loans by the latter was received by the former, and Mitsubishi Metal Corporation, as well as the consortium of private banks, was merely the arranger or conduit through which the loans flowed from the creditor Export-Import Bank of Japan to the debtor Atlas Consolidated Mining & Development Corporation.

Parenthetically, it may be stated that the total loan of ¥7,200,000,000.00 (¥4,320,000,000.00 plus ¥2,880,000,000.00) is equal to U.S. $20,000,000.00. This $20 million loan is the amount referred to in all the documents secured from the Export-Import Bank of Japan and from the Tokyo head office of Mitsubishi Metal Corporation, together with the documents of certifications executed by Yasunori Sakai (Exh. J, supra).

> Since the interest income involved herein is the fruit of a loan (or loans) attributed to the Export-Import Bank of Japan from which it grew, and not to the Mitsubishi Metal Corporation or the consortium of banks, and income is taxable to the person who earned it despite anticipatory arrangements, such interest income would clearly be taxable to the Export-Import Bank of Japan. However, as already shown above, the Export-Import Bank of Japan is a financing institution owned or controlled by the Japanese Government exempt from income tax under Section 29 (b) (7) of the National Internal Revenue Code. (Underlining Supplied).

Accordingly, in line with and on the strength of our previous decision in CTA Case No. 2801, the claim of petitioners Mitsubishi and Atlas for tax credit in the amount of ₱439,167.91 is granted.

WHEREFORE, respondent is hereby ordered to credit petitioner Atlas Consolidated Mining & Development Corporation in the total amount of ₱439,167.91, representing quarterly income tax erroneously withheld at source and paid upon interest income earned in the years 1977 and 1978 by the Export-Import Bank of Japan.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, January 15, 1981.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge