Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

CHINA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4676

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 13 1995

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D E C I S I O N

This case involves a claim for overpaid withholding tax on cash dividend in the amount of ₱29,900.20.

As borne out by the records, petitioner is a commercial banking corporation duly organized and existing under the laws of the Philippines.

Petitioner has foreign or non-resident stockholders, one of which is Fortron Services Limited, a non-resident foreign corporation based in Hongkong.

Pursuant to Article 9 of the Tax Treaty entered into between the Philippines and Great Britain, petitioner deducted a 25% withholding tax in the amount of ₱74,750.00 from the dividends paid to Fortron Services Limited on October 9, 1989. On October 17, 1989, petitioner remitted the same to the Bureau of

Internal Revenue together with other withheld amounts from its non-resident stockholders amounting to ₱288,346.30.

Under Article 9 of the Tax Treaty in relation to Article 2(b) thereof, dividends derived from a company resident of the Philippines by a company resident of the United Kingdom is subject to 25% tax to be withheld as provided in Section 50(a) of the Tax Code.

Later, Fortron Services Limited sought reimbursement from petitioner the amount allegedly overwithheld applying Section 25(b)(B) of the Tax Code and BIR Ruling nos. 275-88, 045-85 and 123-82. Petitioner alleged that with respect to non-resident foreign corporation domiciled in Hongkong, the applicable tax rate is 15% thus, claiming an overpayment in the amount of ₱29,900.20 which is broken down as follows:

Dividend due to Fortron	-	₱ 299,002.20
Amount erroneously withheld (25%)	-	74,850.50
Correct amount to be withheld (15%)	-	44,[illegible]50.30
Amount to be refunded/credited		₱ 29,900.20

On 16 August 1991, petitioner filed with the Central Bank an application to Purchase Foreign Exchange including the U.S. dollar equivalent of ₱29,900.20 alleged overwithheld tax from Fortron.

On 15 August 1991, petitioner filed with respondent a written claim for refund.

Subsequently, on 13 September 1991 and 21 November 1991, petitioner made follow-up letters reiterating its request for refund, but to no avail the same remains unacted upon.

Hence this appeal.

Respondent on the other hand alleged that: petitioner failed to state any cause of action in accordance with Section 204 of the Tax Code; it failed to show that the tax was erroneously or illegally collected; tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption; in an action for refund the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to do so is fatal to the action for refund; and that the claim for refund is still under investigation.

The sole issue to be resolved in this case is whether or not petitioner is entitled to a refund of the amount of ₱29,900.20 representing overpaid withholding tax on cash dividend.

We find for the petitioner.

As shown by the evidence, the applicable law is Section 25(b)(5)(B) of the Tax Code as amended, previously Section 24(b)(1)(iii). The applicable tax rates on tax dividends due and payable to non-resident foreign corporations is 15%.

Section 24(b)(5)(B) of the National Internal Revenue Code is herein quoted for reference:

> (B) On dividends received from a domestic corporation liable to the tax under this Chapter the tax shall be 15% of the dividends received which shall be collected and paid as provided in Section 51(a) of the National Internal Revenue Code as amended, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this sub-paragraph.

From the aforecited provision of the law it can be deduced therefrom that dividends received by a non-resident foreign corporation from a domestic corporation shall be subject to tax at the rate of 15% provided that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 20% (the difference between the regular 35% tax and the 15% tax on dividends).

No less than the Bureau of Internal Revenue had ruled that Hongkong does not impose tax on dividends received by corporations domiciled therein from foreign sources, dividends received by non-resident corporations based in Hongkong from domestic corporations shall be subject to 15% tax.

BIR Ruling Nos. 275-85, 045-85, 123-82, is herein reproduced to wit:

"RULING NO.275
June 28, 1988

Gentleman:

This refers to your letter dated March 25, 1988 requesting a ruling on the rate of withholding tax on cash dividend declared by you to your stockholders on record as of May 15, 1988 payable on or before May 31, 1988.

It is represented that your stockholders are as follows:

(A) x x x

(B) Corporations

1. Domestic

2. Foreign

a. Resident foreign.

b. Non-resident foreign based in the United States of America, Canada, Hongkong, Australia, Columbia, Japan, England, China and India.

In reply thereto, I have the honor to inform you as follows:

x x x x

E. Pursuant to Section 24(b)(5)(B) of the Tax Code, as amended on dividends received from a domestic corporation by non-resident foreign corporation in which the Philippines has not concluded a tax treaty like Hongkong, China, India and Columbia the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 50(a) of the Tax Code, as amended, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation is domiciled shall allow credit against the tax due from the non-resident foreign corporations, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) and the tax (15%) on dividends x x x.

Very truly yours,"

BIENVENIDO A. TAN, JR.
Commissioner

"024-(b) 080-80 123-82

April 16, 1982

Jardine-Manila Finance, Inc.
Jardine Davies Bldg.
222 Buendia Avenue
Makati, Metro Manila

Attn.: Mr. Jesus P. Lukban
Corporate Secretary

Gentleman:

In reply to your letter dated November 10, 1978, I have the honor to inform you that it having been established that Hongkong does not impose any tax on dividends received by corporations domiciled therein from foreign sources, the dividends to be remitted by Jardine-Manila Finance, Inc. to Jardine-Barclays, Ltd. a non-resident foreign corporation domiciled in Hongkong are subject only to the 15% withholding tax, prescribed by Section 24(b)(I)(ii) of the Tax Code, as amended.

Very truly yours,"
(Sgd)
RUBEN B. ANCHETA
Acting Commissioner

"24-b 126-83 045-85

March 22, 1985

Hongkong and Shanghai
Banking Corporation
Manila Office
P.O. Box 1299 Commercial Centre
Makati, Metro Manila, Philippines

Attention: Mr. A.R. Servinio
Manager Securities

Dear Sir:

This refers to your letter dated January 25, 1985 requesting for a confirmation that the cash dividends issued by a Philippine corporation in favor of your client, Drexel Burnham Lambert, Inc. is subject to the reduced 15% withholding tax pursuant to Section 24(b)(I)(iii) of the Tax Code.

It is represented that Drexel Burnham Lambert, Inc. is a Hongkong based company and that it derives dividends from San Miguel Corporation, a Philippine corporation.

Considering that it has been established that Hongkong does not impose tax on dividend received by Drexel Burnham Lambert, Inc. from San Miguel Corporation shall be subject to 15% tax pursuant to Section 24(b)(I)(iii) of the Tax Code.

Very truly yours,"
(Sgd.)
RUBEN B. ANCHETA

Evidently, from the foregoing rulings it is well established that as Hongkong does not impose tax on dividend income received by corporations domiciled therein from foreign sources, the dividends received by Hongkong Corporations from the Philippines shall be subject to 15% tax pursuant to Section 25(b)(5)(B) of the Tax Code, as amended, previously Section 24(b)(I)(iii).

The applicable law above cited is too plain to be missed and too categorical to be misunderstood. Moreover, "tax statutes are to be construed strictly against the government for tax, being burdens are to be presumed beyond what the applicable statute expressly and clearly declares."(Republic vs. Intermediate Appellate Court, 196 SCRA 335)

Records show that respondent counsel's attitude shows laxity in the discharge of her duties as manifested by his frequent non-appearance during Court hearings. Likewise, no memorandum was filed in this court inorder to lay his arguments. Moreover, the kind of defense offered by the same counsel is anchored on a shallow basis which is equivalent to not having put up a good defense at all which is, very well exhibited in his answer. It is likewise observed, that when it was his turn to present evidence, counsel failed to appear which in effect is a waiver on his part to present evidence. Counsel for the respondent lacks diligence and zeal in the performance of his duty being an officer of the Court. In the absence of material evidence on the part of the respondent and the observations mentioned, this Court has no recourse but to afford relief to the petitioner.

WHEREFORE, in view of all the foregoing, the respondent is hereby ordered to refund in favor of China Banking Corporation the amount of ₱29,900.20 representing overpaid withholding tax on cash dividend.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals