REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 3112

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

5/17/91

D E C I S I O N

This case involves petitioner's claim for tax credit on the withholding tax on the interest payment made by Mitsubishi Metal Corporation and Atlas Consolidated Mining And Development Corporation to the respondent Commissioner of Internal Revenue covering the months and years from July 1978 up to July 1980 in the total amount of P512,443.14 *(See pars. 5,6, and 7 of Petition for review, pp. 2, CTA rec; Exh A, p. 16, CTA rec.)*. Considering that no decision was rendered by respondent on petitioner's claim for tax credit, the latter interposed its appeal to this court on July 3, 1980.

The record of this case shows that after the issues were joined with the filing of respondent's answer to the petition for review, petitioner presented documentary evidence which have been mark and admitted by the court on the hearing of this case on August 12, 1981. *(See Minutes of the session of the Court held on February 10, 1981, p. 15, CTA rec.).*

Likewise, on the hearing of this case on August 12, 1987 petitioner submitted this case on the basis of its evidence and records as well as the records of the case in CTA Case No. 2801, and the said case was considered by this court submitted for decision. *(See Minutes of the session of the court held on August 12, 1987, p.38, CTA rec.).* However, scrutiny of the record shows that respondent did not present evidence in support of his stand in the case, but instead merely relied on the outcome of the appealed case to the Supreme Court entitled ***Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation and Atlas Consolidated Mining and Development Corporation and the Court of Tax Appeals**, G.R. Nos. L-54908 and L-80041,* involving the same parties and similar set of facts and issues. *(See Resolution of this court dated June 22, 1989, p.44, CTA rec.)*

The following allegation of fact of petitioner's in their petition for review may therefore be considered as impliedly admitted by respondent are as follows:

> "2. That in 1970, Atlas, through the efforts of Mitsubishi, secured loans from the Export-Import Bank of Japan and a consortium of private banks in Japan;
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> 3. That the Export-Import Bank of Japan is a financing institution owned, controlled and financed by the Government of Japan, while the loans made to Atlas by the private banks who are members of the consortium were financed by the government of Japan either directly or through the Export-Import Bank of Japan;
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> 4. That under the terms of contract of loan, Atlas was to pay interest on the loans at the rates determined, said interest to be forwarded by Mitsubishi to the Export-Import Bank and the members of the consortium;
>
> 5. That Mitsubishi accordingly received the determined interest from Atlas and remitted the entire amount to the Export-Import Bank of Japan and to the other members of the consortium, without retaining any portion thereof as its income;
>
> 6. That Atlas paid the BIR, out of its own funds, the withholding tax due on these interest payment, as follows:

CB RTR #	34582650	dated	7/ 6/78	P108,158.93
CB RTR #	36329812	dated	10/ 3/78	98,120.22
CB Confirm No.	A0152165	dated	1/ 3/79	87,414.85
RTR #	A0531617	dated	1/ 3/79	
CB Confirm No.	A2533409	dated	4/ 6/79	70,700.16
RTR #	A1912665	dated	4/ 6/79	
CB Confirm No.	A2843079	dated	7/10/79	56,680.10
RTR #	A2315164	dated	7/10/79	
CB Confirm No.	A0124232	dated	10/ 2/79	42,803.54
RTR #	2641953	dated	10/ 2/79	

CB Confirm No.	A33378079	dated	1/ 3/80	29,632.13
RTR #	A2B62070	dated	1/ 3/80	
CB Confirm No.	A4911567	dated	4/10/80	16,750.23
RTR #	A4057970	dated	4/10/80	
CB Confirm No.	A4997152	dated	6/18/80	2,182.98
RTR #	A4637924	dated	6/18/80	
				P512,443.14

7. That Mitsubishi assigned its right to the claim to Atlas and joins Atlas herein as the legal taxpayer under the Tax Code;

8. That on July 1, 1980, petitioner filed a claim for tax credit and requested that the sum of P512,443.14 be applied against existing and future tax liabilities of Atlas;

9. That respondent has not yet acted on the claim.

Respondent in his Answer to the petition for review raised the following SPECIAL AND AFFIRMATIVE DEFENSES as follows:

"5. It is incumbent upon petitioner to show that it is exempt from the payment of withholding tax based on Section 29 (b)(8)(A) of the 1977 Tax Code which grants tax exemption to income received from financing institutions owned, controlled or enjoying refinancing from foreign government;

6. Taxes are presumed to have been collected in accordance with law;

7. The alleged payment of P512,443,14 as withholding tax was collected in accordance with law and therefore cannot be granted as tax credit;

8. In an action for refund or tax credit, the burden of proof rest upon the taxpayer to show that the taxes paid were erroneously or illegally collected and failure to sustain said burden is fatal to the action for refund or tax credit;

9. It is incumbent upon petitioners to established that they have complied with the provisions of Sections 292 and 295 of the Internal Revenue Code of 1977;

10. As a claim for tax credit is equivalent to exemption, it is a cardinal rule of taxation, firmly embedded and adhered to in our jurisprudence, that tax exemptions are not favored and are never presumed; that they are construed *strictissimi juris* against the individual and liberally in favor of the tax authority; that tax exemption cannot be made by inference or implication but must be beyond reasonable doubt and in case of doubt, the same shall be resolved against the exemption. A claim for exemption to prosper must be premised on the clearest grant of organic or statutory law. *(Govt. of **P.I. vs. Monte de Piedad**, 35 Phil. 466; **House vs. Posadas**, 53 Phil. 338; **Philippine Telephone and Telegraph Co. v. Collector of Internal Revenue**, 58 Phil. 639; **Manila Jockey Club vs. Collector of Internal Revenue**, 98 Phil. 670; **Philippine Guaranty vs. Commissioner of Internal Revenue**, G.R. No. L-22074, Sept. 6, 1965, 15 SCRA 1; **Abad vs. Court of Tax Appeals**, G.R. No. L-20834 and 20903, Oct. 19, 1968, 18 SCRA 374; **Commissioner of Internal Revenue vs. A.D. Guerrero, etc.**, G.R. No. L-20812, Sept. 22, 1967, 21 SCRA 180)*

Wherefore, it is respectfullly prayed that the instant petition for review be dismissed, with costs against petitioner."

The only issue posed on this appeal is whether or not interest income derived from the loans extended to Atlas Consolidated Mining & Development Corporation are exempt from withholding tax pursuant to Section 29(b)(7)(A) of the National Internal Revenue Code.

This issue in no longer one of first impression. In the analogous case of ***Commissioner of Internal Revenue v. Mitsubishi Metal Corporation, Atlas Consolidated Mining and Development Corporation and Court of Tax Appeals***, *G.R. No. 54908* ***and*** *G.R. No. 80041 dated January 22, 1990*, the Supreme Court said and we quote:

> The loan and sales contract between Mitsubishi and Atlas does not contain any direct or inferential reference to Eximbank whatsoever. The agreement is strictly between Mitsubishi as creditor in the contract of loan and Atlas as the seller of the copper concentrates. From the categorical language used in the document, one prestation was in consideration of the other. The specific terms and the reciprocal nature of their obligations make it implausible, if not vacuous, to give credit to the cavalier assertion that Mitsubishi was a mere agent in said transaction.
>
> Surely, Eximbank had nothing to do with the sale of the copper concentrates since all that Mitsubishi stated in its loan appplication with the former was that the amount being procured would be used as a loan to and in consideration for importing copper concentrates from Atlas.[12] Such an innocuous statement of purpose could not have been intended for, nor could it legally constitute, a contract of agency. If that had been the purpose, as respondent court believes,

said corporations would have specifically so stated, especially considering their experience and expertise in financial transactions not to speak of the amount involved and its purchasing value in 1970.

A thorough analysis of the factual and legal ambience of these cases impels us to give weight to the following arguments of petitioner:

> "The nature of the above contract shows that the same is not just a simple contract of loan. It is not a mere creditor-debtor relationship. It is more of a reciprocal obligation between ATLAS and MITSUBISHI where the latter shall provide the funds in the installation of a new concentrator at the former's Toledo mines in Cebu, while ATLAS in consideration of which, shall sell to MITSUBHISHI, for a term of 15 years, the entire copper concentrate that will be produced by the installed concentrator.
>
> "Suffice it to say, the selling of the copper concentrate to MITSUBISHI within the specified term was the consideration of the granting of the amount of $20 million to ATLAS. MITSUBISHI, in order to fulfill its part of the contract, had to obtain funds. Hence, it had to secure a loan or loans from other sources. And from what sources, it is immaterial as far as ATLAS is concerned. In this case, MITSUBISHI obtained the $20 million from the EXIMBANK of Japan and the consortium of Japanese banks financed through the EXIMBANK Japan.

"When MITSUBISHI therefore secured such loan, it was in its own independent capacity as a private entity and not as a conduit of the consortium of Japanese banks or the EXIMBANK of Japan. While the loans were secured by MITSUBISHI primarily as a loan to and in consideration for importing copper concentrates from ATLAS, the fact remains that it was a loan by EXIMBANK of Japan to MITSUBISHI and not to ATLAS.

"Thus, the transaction between MITSUBISHI and EXIMBANK of Japan was a distinct and separate contract from that entered into by MITSUBISHI and ATLAS. Surely, in the latter contract, it is not EXIMBANK that was intended to be benefited. It is MITSUBISHI which stood to profit. Besides, the Loan and Sales Contract cannot be any clearer. The only signatories to the same were MITSUBISHI and ATLAS. Nowhere in the contract can it be inferred that MITSUBISHI acted for and in behalf of EXIMBANK of Japan nor of any entity, private or public, for that matter.

"Corollary to this, it may well be stated that in this jurisdiction, well-settled in the rule that when a contract of loan is completed, the money ceases to be the property of the former owner and becomes the sole property of the obligor *(Tolentino and Manio vs. Gonzales Sy, 50 Phil. 558)*.

"In the case at bar, when MITSUBISHI obtained the loan of $20 million from EXIMBANK of Japan, said amount ceased to be the property of the bank and became the property of MITSUBISHI.

"The conclusion is indubitable: MITSUBISHI, and NOT EXIMBANK, is the sole creditor of ATLAS, the former being the owner of the $20 million upon completion of its loan contract with EXIMBANK of Japan.

"The interest income of the loan paid by ATLAS to MITSUBHISHI is therefore entirely different from the interest income paid by MITSUBISHI to EXIMBANK of Japan. What was the subject of the 15% withholding tax is not the interest income paid by MITSUBISHI to EXIMBANK but the interest income earned by MITSUBISHI from the loan to ATLAS. xxx"13/

To repeat, the contract between Eximbank, and Mitsubishi is entirely different. It is complete in itself, does not appear to be suppletory or collateral to another contract and is, therefore, not to be distorted by other considerations aliunde. The application for the loan was approved on May 20, 1970, or more than a month after the contract between Mitsubhishi and Atlas was entered into on April 17, 1970. It is true that under the contract of loan with Eximbank, Mitsubishi agreed to used the amount as the loan to and in consideration for importing copper concentrates from Atlas, but all that this proves is the justification for the loan as represented by Mitsubishi, a standard banking practice for evaluating the prospects of due payment. There is nothing wrong with it such stipulation as the parties in a contract are free to agree on such lawful terms and conditions as they see fit. Limiting the disbursement of the amount borrowed to a certain person or to a certain purpose is not unusual, especially in the case of Eximbank which, aside from protecting its financial exposure, must see to it that the same are in line with the provisions and objectives of its charter.

Respondents postulate that Mitsubishi had to be a conduit because Eximbank's charter prevents it from making loans except to Japanese individuals and corporation. We are not impressed. Not only is there a failure to establish such submission by adequate evidence but it posits the unfair and unexplained imputation that, for reason subject only of surmise, said financing institution would deliberately circumbent its own charter to accommodate an alien borrower through a manipulated subterfuge, but with it as a principal and the real obligee.

The allegation that the interest paid by Atlas was remitted in full by Mitsubishi to Eximbank, assuming the truth thereof, is too tenuous and conjectural to support the proposition that Mitsubishi is a mere conduit. Furthermore, the remittance of the interest payments may also be logically viewed as an arrangement in paying Mitsubishi's obligation to Eximbank. Whatever arrangement was agreed upon by Eximbank and Mitsubishi as to the manner or procedure for the payment of the latter's obligation is their own concern. It should also be noted that Eximbank' loan to Mitsubishi imposes interest at the rate of 75% per annum, while Mitsubishi's contract with Atlas merely states that the interest on the amount of the loan shall be the actual cost beginning from and including other dates of releases against loan."14/

It is too settled a rule in this jurisdiction, as to dispense with the need for citations, that laws granting exemption from tax are construed *strictissimi juris* agaisnt the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rest upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed, which onus petitioners have failed to discharge. Significally, private respondent are not even among the entities which, under Section 29(b)(7)(A) of the tax code, are entitled to exemption and which should indispensably be the party in interest in this case.

Definitely, the taxability of a party cannot be blandly glossed over on the basis of a supposed "broad, pragmatic analysis" alone without substantial supportive evidence, lest needed funds. Nor can we close this discussion without taking cognizance of petitioner's warning, of pervasive relevance at this time, that while international comity is invoked in this case on the nebulous representation that the funds involved in the loans are those of a foreign government, scrupulous care must be taken to avoid opening the floodgates to the violation of our tax laws. Otherwise, the mere expedient of having a Philippine corporation enter into a contract for loans or other domestic securities with private foreign entities, which in turn will negotiate independently with their governments, could be availed of to take advantage of the tax exemption law under discussion.

WHEREFORE, petitioner's claim for Tax Credit on the interest income paid by it in the total amount of P512,443.14 is hereby DENIED. With cost against petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 17, 1991

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals