REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MATEX INTERNATIONAL, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2627
(CTA Case No. 10180)

Present:
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
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RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution is petitioner's Motion for Reconsideration (Re: Decision dated 30 January 2024), filed on February 16, 2024 ("Motion"),[1] together with respondent's Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated February 15, 2024), filed on March 6, 2024.[2]

In its Motion, petitioner advances that the Court *En Banc* erred in denying the former's claim for refund of alleged erroneously paid Final Withholding Taxes on cash dividends amounting to Php10,694,149.20 pursuant to *Section 204 (C) and Section 229 of the National Internal Revenue Code, as amended, (Tax Code)*.

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1 *Rollo*, pp. 232-2525.
2 *Id.*, pp. 258-269.

The Court *En Banc's* denial of the refund claim was due to petitioner's failure to prove that Matex Co., Ltd. is a tax resident of Japan as to warrant the application of preferential tax rate for dividends under the Philippine-Japan Tax Treaty.

Now, in the instant Motion, petitioner raises various arguments, all of which the Court *En Banc* still finds unmeritorious.

ITAD Ruling No. 160-14 finds no application in the instant case; BIR is not estopped to argue against the income recipient's tax residency.

Petitioner insists that it was able to establish that Matex Co., Ltd. is a tax resident of Japan, as this was allegedly already expressly recognized by the Bureau of Internal Revenue (BIR) in *International Tax Affairs Division (ITAD) Ruling No. 160-14*, dated August 18, 2014. There, the BIR ruled on the applicability of the 10% preferential rate on petitioner's 2014 dividend declaration, pursuant to *Article 10 of the Philippines-Japan Tax Treaty*. This was based on the BIR's finding, among others, that Matex Co., Ltd. is a tax resident of Japan.

Petitioner submits that the parties in the ITAD ruling are the same parties to the dividend transaction in the present case. To support this, it presented matrices comparing the details of ITAD ruling *vis à vis* petitioner's General Information Sheet (GIS) for the year 2017,[3] 2017 Certificate of Residency for Tax Treaty Relief (CORTT),[4] 2018 Comparative Audited Financial Statements (AFS),[5] and 2017 Bank Certificate of Outward Remittance.[6] Petitioner now posits that since the dividend income recipient is the same, the BIR should not be allowed to unilaterally change its position to the detriment of the petitioner.

In *Commissioner of Internal Revenue vs. Lucio L. Co, et al.*,[7] the Supreme Court stated that "the primary purpose of a BIR ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer."

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[3] Exhibit "P-18", Docket (CTA Case No. 10180) – Vol. 1, pp. 415-423.
[4] Offered as Exhibit "P-13" but was denied admission due to failure to submit the original or certified true copy; see Resolution dated 27 July 2020, Docket (CTA Case No. 10180) – Vol. 2, pp. 505-506.
[5] Exhibit "P-4", Docket (CTA Case No. 10180) – Vol. 1, pp. 370-395.
[6] Exhibit "P-17", *id.*, p. 414.
[7] G.R. No. 241424, February 26, 2020.

Consistent therewith, *ITAD Ruling No. 160-14* itself propounds that the same is issued on the basis of the facts represented by the parties.

Clearly, a BIR ruling is issued in relation to a *particular* transaction subject of the request for ruling, as it is based on the circumstances provided by the latter on said request. It consequently cannot be generalized to apply to all cases, even ones with some factual similarities.

Thus, the BIR is not estopped and cannot be demanded to adopt the same finding of Matex Co., Ltd's alleged Japan tax residency. The present case involves a 2017 dividend declaration, which is evidently different from the transaction covered by the ITAD ruling. More importantly, the BIR ruling should not, in any way, bind the Court *En Banc*.

The evidence submitted do not prove the alleged Japan tax residency of the dividend income recipient.

For its second argument, petitioner reiterates the adequacy of the documents already submitted, invoking the totality of evidence rule. Specifically, petitioner challenges the Court *En Banc's* finding on the insufficiency of the following documents: (1) petitioner's 2017 GIS; (2) petitioner's 2018 AFS; (3) Certificate of Remittance indicating payment of dividend; (4) Certificate of Inward Remittance covering the crediting of petitioner's account; and (5) Judicial Affidavit of Norio Oshima.

On the 2017 GIS, petitioner claims that the Securities and Exchange Commission (SEC) necessarily gives credence to the information in the GIS and that parties are entitled to rely thereon, specifically on the statement that Matex Co., Ltd, is a Japanese company with residential address at 1-125 Mizukoshi, Yao City, Osaka, Japan.

Meanwhile, as regards the 2018 AFS, petitioner insists that the same are reliable documents for non-financial information or information other than the economic status of the company, and, therefore, should be given probative value.

The Certificate of Remittance and Certificate of Inwards Remittance, on the other hand, is claimed by petitioner as documents prepared by disinterested parties and should thus be given credence.

Finally, for the Judicial Affidavit of Norio Oshima, petitioner insists that such document should be considered corroborating evidence as it states that petitioner is 99.99% owned by Matex Co., Ltd., a non-resident foreign corporation duly organized under the laws of Japan.

We, however, find for the lack of meritorious grounds to reverse Our earlier ruling.

As discussed in the Decision, *Article 4 paragraph 1 of the Philippine-Japan Tax Treaty* defines a tax resident of Japan as any person who, under the laws of Japan, is liable to tax therein. The same provision enumerates various criteria which may be considered as determinants of a person's taxability, i.e., domicile, residence, place of head or main office, place of incorporation, to wit:

> Article 4
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> 1. For the purposes of this Convention, the term "*resident of a Contracting State*" means any person who, under the laws of that Contracting State, is *liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation or any other criterion of a similar nature.* But this term does not include any person who is liable to tax in the Contracting State in respect only of income from sources therein. x x x
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> (Italics supplied.)

From the foregoing, the place of residence and incorporation in Japan are *permitted conditions* to consider a person a tax resident thereof. However, it is ultimately Japan's laws, as applied and interpreted by its tax authorities, which should determine whether a person has met the pertinent criteria in order to be identified as a Japan tax resident.

In all the above-mentioned documents, We recognize that there were mentions of Matex Co., Ltd's residential address or place of incorporation. The Court *En Banc*, however, is not in the position to draw the conclusion that such residential address and/or place of incorporation necessarily translates to the alleged Japan tax residency for the year 2017. As emphasized in the Decision, all these documents were not prepared by any competent authority in Japan who can duly identify and certify Matex Co. Ltd. as a Japan tax resident.

We also note that petitioner cited various cases[8] wherein the Supreme Court has relied on the information stated in the GIS and AFS in its ruling on the key issues involved therein. These, however, are not tax cases involving tax residency in another treaty country; thus, they cannot be applied to the present issue. In any case, assuming that reliance thereon is permitted, it can only be up to the extent of proving actual residential address and place of

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[8] DHY Realty & Development Corporation vs. The Honorable Court of Appeals-Special Sixth Division, et al., G.R. No. 250539, January 11, 2023; Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 144653, August 28, 2001; Philippine National Bank vs. Commissioner of Internal Revenue, G.R. No. 206019, March 18, 2015; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179356, December 14, 2009.

incorporation of Matex Co., Ltd. This does not automatically translate to "tax residency" – a matter which can only be determined by the contracting state's tax authorities.

Petitioner failed to present compelling reasons to relax the application of procedural rules

Lastly, petitioner implores the Court *En Banc* to apply the pertinent procedural rules liberally in its favor. It explains that there was a mere confusion as to where the original or certified true copies of the Certificate of Residence for Tax Treaty Relief ("CORTT") and Tax Residency Certificate ("TRC") were located; hence, there was no bad faith in its failure to submit these documents with its Formal Offer of Evidence, dated June 29, 2020.[9] It thus argues that the subsequent submission of the originals upon filing of its Motion for Partial Reconsideration, on October 6, 2020,[10] must be given credence.

Furthermore, petitioner advances that the authentication of the TRC is not necessary since the same was issued by the Japanese tax authority and bears the seal of Fumiaki Baba, District Director of Yao Tax Office of Yao-city, Osaka, Japan.

The Court *En Banc* is not convinced. We maintain our finding that there are no compelling reasons to ease the application of procedural rules.

As noted in the Decision, petitioner propounded no explanation on its failure to submit the original CORTT form with attached TRC when it filed the Motion for Partial Reconsideration. By belatedly raising that there was only confusion on where the documents were located at the time of initial offer of evidence, the reasoning appears to Us as a mere afterthought.

Moreover, as emphasized in the Decision, assuming due consideration may be given in the CORTT with attached TRC subsequently submitted, We still find the TRC insufficient of probative value due to the lack of authentication.

The seal of Japanese tax authorities signifies the document's being issued in a foreign country, thus, making it subject to the requirements of *Section 24, Rule 132 of the Revised Rules on Evidence.* Contrary to petitioner's claim that such seal should suffice, said rules are clear in requiring an authentication certificate issued by a secretary of the embassy or legation,

[9] Docket (CTA Case No. 10180) – Vol. 1, pp. 328-495, with annexes.
[10] Docket (CTA Case No. 10180) – Vol. 2, pp. 514-517.

consul general, consul, vice consul, or consular agent in the foreign service of the Philippines stationed in Japan.

We reiterate that the CORTT form originally stamped and received by the BIR duly proves its existence, the execution by petitioner and Matex Co. Ltd., and the fact that the same was submitted to the BIR upon availment of the tax treaty benefit. However, the TRC cannot prove the income recipient's Japan tax residency due to non-compliance with *Section 24, Rule 132.*

The Court *En Banc* emphasizes time and again that tax refunds are construed strictly against the taxpayer and liberally in favor of the State. Thus, the law upon which the claim of refund is made, as well as the documents presented to prove such entitlement to the refund are construed *strictissimi juris* against the taxpayer. Accordingly, it is incumbent upon the claimant to establish the factual basis of his or her claim for tax credit or refund. This petitioner failed to do.

ACCORDINGLY, petitioner's Motion for Reconsideration (Re: Decision dated 30 January 2024), is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice