lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MITSUBISHI METAL CORPORATION
AND ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioners,

- versus - C.T.A. CASE NO. 2801

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

D E C I S I O N 4/18/80

In this suit for recovery of alleged erroneously paid withholding tax at source, the question presented is whether interest income derived from loans extended to petitioner Atlas Consolidated Mining & Development Corporation by the Mitsubishi Metal Corporation obtained by the latter 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 is exempt from withholding tax pursuant to Section 29(b)(7) of the National Internal Revenue Code.

When this case was called for hearing on April 6, 1977, after the issues were joined with the filing of the answer to the petition for review, counsel for respondent manifested in open court that the claim of petitioners Mitsubishi Metal Corporation and Atlas Consolidated Mining & Development Corporation for tax credit of ₱1,971,595.01 representing alleged erroneous payment of 15% withholding tax on interest on loans payable to the Export-Import Bank of Japan in 1974 and 1975, subject matter of this appeal, was then still being processed by the Appellate Division of the Bureau of Internal Revenue. (Minutes of the session of the Court held on April 6, 1977, p. 16, CTA Records.) The Court therefore ordered that the case be reset for hearing in the next calendar of the Court.

The records of the Bureau of Internal Revenue bearing on the case (BIR Records) disclose that on September 9, 1976 the Agriculture & Natural Resources Division of said Bureau had already investigated and verified the claim of petitioners, and recommended to respondent, through the Appellate Division, that it be approved. (Exhs. "O" & "O-1", pp. 55-57, BIR Records.) And on November 16, 1976, the Appellate Division of the Bureau of Internal Revenue, with the concurrence of the Revenue Service Chief (Legal), recommended to the Commissioner of Internal Revenue that the total amount of ₱1,971,595.01 as erroneously paid withholding tax at source in 1973 and 1974, be credited in favor of Atlas Consolidated Mining & Development Corporation pursuant to the then Section 309 of the National Internal Revenue Code. (Exh. "O-2", pp. 143-146, BIR Records.)

Before respondent Commissioner of Internal Revenue could act on the claim of petitioners, however, the case was scheduled for hearing by this Court on September 30, 1977, and during the trial thereof, petitioners presented their evidence, oral and documentary. After petitioners have marked and offered their exhibits, which were all admitted by the Court, counsel for respondent submitted his case on the basis of the Bureau of Internal Revenue records (BIR Records) and the pleadings, without offering proof as to the truth of his own allegations found in his answer. (Minutes of the session of the Court held on September 30, 1977, p. 21, CTA Records.)

Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), the following allegations of fact of petitioners in their petition for review may therefore be considered beyond dispute:

> 1. THAT Mitsubishi Metal Corp., hereinafter referred to as Mitsubishi, is a foreign corporation existing under and by virtue of the laws of Japan, and registered with the

Securities and Exchange Commission to engage in business in the Philippines.

Atlas Consolidated Mining & Development Corp., hereinafter referred to as Atlas, is a domestic corporation existing under and by virtue of the laws of the Philippines and engaged in the business of mining. It has its offices in A. Soriano Building.

Mitsubishi and Atlas may both be served with all legal writs and processes through counsel;

2. That before January 1974, Atlas, through the agency of Mitsubishi, secured loans from the Export-Import Bank of Japan and a consortium of private banks in Japan;

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;

4. That under the terms of the 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 Bureau of Internal Revenue, out of its own funds, the withholding tax due on these interest payments, as follows:

<u>1974</u>

Paid April 25, per CBP O.R. No.	1325096 ₱	320,451.73
" July 25, " " " "	1325364	200,000.00

Paid Oct.25, per CBP O.R. No.	1488101	₱	101,731.60
" " " "	958779		291,091.82
" Jan.25/75" " " "	958973		280,491.72
		₱	1,193,766.87

<u>1975</u>

Paid April 25,per CBP O.R.No.	2223123	₱	277,432.84
" July 25, " " " "	2223394		244,362.53
" " " "	4289814		256,032.14
		₱	777,828.14
Total for 1974 and 1975		₱	1,971,595.01

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 March 5, 1976, petitioners filed a claim for tax credit and requested that the sum of ₱1,971,595.01 be applied against existing and future tax liabilities of Atlas;

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

At any rate, the records of the Bureau of Internal Revenue, on the basis of which respondent, aside from the pleadings, submitted this case for decision, disclose that: (Exh. "O-2", pp. 143-146, BIR Records).

1. Mitsubishi Metal Corporation is a Japanese Corporation duly licensed to engage in business in the Philippines with office address at 15th Floor, Citibank Center, Makati, Rizal. Atlas Consolidated Mining & Development Corporation is engaged in the development of copper and other mineral deposits in Toledo City, Cebu.

2. On April 17, 1970 a contract was entered into with Mitsubishi, whereby, the latter would loan $20,000,000.00 to Atlas, to install a new concentrator

in the Biga property for the purpose of expanding the productive capacity of the Toledo Mines, and for the latter to sell to Mitsubishi the entire production of copper concentrates for a term of 15 years. Of the said loan $9,000,000.00 will be used for the purchase of the concentrator machinery from Japan. (Exh. "G",pp. 51-54, BIR Records)

3. Thereafter, Mitsubishi made arrangements and applied for a loan with the Export-Import Bank of Japan to accommodate Atlas. On May 26, 1970, its loan application was approved by the Export-Import Bank for the amount of ¥4,320,000.00 under such terms and conditions among other follows: (Exh. "J", pp. 7-9, BIR Records.)

> "Mitsubishi Metal Corporation shall use the amount as a loan to and in consideration for importing copper concentrate from Atlas Consolidated Mining & Development Corporation in the Philippines." (The Fourth additional fund for development of Toledo Mines)
>
> "Expected Date of Release -----May 29,1971
> "Due Date ---------------------September 30,1981
> "Rate of Interest ------------7% per annum
> Terms of Payment ------------Mitsubishi corporation has to pay back the total amount of loan by September 30, 1981 in accordance with the loan contract with Atlas Consolidated x x x"

4. For the years 1974 and 1975 the total interest payments made by Atlas on such loans amounted to ₱13,143,966.79 and the corresponding 15% tax in the sum of ₱1,971,595.01 was withheld pursuant to Section 24(b)(1) and Section 53(b)(2) of the Tax Code, as amended by

Presidential Decree No. 131 effective January 1, 1973 and remitted to the government as follows:

1974	Interest Paid	15% Withholding Tax Paid	Official Receipts of 15% Withholding Tax Paid
1st qtr.	₱2,136,344.87	₱ 320,451.73	CBP O.R. 1325096- 4/25/74
2nd qtr.	2,011,544.00	(200,000.00	CBP O.R. 1325364- 7/25/74
		(101,731.60	CBP O.R. 1488101- 7/25/74
3rd qtr.	1,940,612.13	291,091.82	CBP O.R. 958779-10/25/74
4th qtr.	1,869,944.80	280,491.72	CBP O.R. 958973- 1/24/75
Total	₱7,958,445.80	₱ 1,193,766.87	

1975			
1st qtr.	₱1,849,552.28	₱ 277,432.84	CBP O.R. 2223123- 4/25/75
2nd qtr.	1,629,083.56	244,362.53	CBP O.R. 2223394- 7/25/75
" "	1,706,885.15	(239,437.16	TCM No. 111-75 applied
		(16,595.61	ROR No. F 4289814 - 7/25/75
Total	₱5,185,520.99	₱ 777,828.14	

RESUME

	Interest Paid	15% Withholding Tax Paid
Total for 1974	₱ 7,958,445.80	₱ 1,193,766.87
Total for 1975	5,185,520.99	777,828.14
TOTAL FOR 1974-1975	₱13,143,966.79	₱ 1,971,595.01

5. Actual remittance to the government of the aforesaid payment was certified as correct by the Chief, Withholding Tax Division of the Bureau of Internal Revenue. (Exh. "F", pp. 128-129, BIR Records.)

6. In filing their claim for tax credit the claimants (petitioners herein) alleged 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 is exempt from the withholding tax, pursuant to Section 29(b)(7) of the Tax Code, which provides as follows:

> Sec. 29 - Gross income . x x x
> (b) Exclusions from gross income..The following items shall not be included in the 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, stock, bonds or other domestic securities, or from interest on their deposits in banks in the Philippines by (1) foreign government, (2) financing institutions owned, controlled, or enjoying refinancing from them, and (3) international or regional financing institution established by governments.

7. A certification was issued by Director Kenjo Kadowaki of the Overseas Investment Loan Department of the Export-Import Bank of Japan to the effect that Export and Import Bank of Japan extended a loan of $20 million to Mitsubishi Metal Corporation to finance the expansion project of Atlas Consolidated Mining & Development Corporation, pursuant to the loan and sales contract dated April 17, 1970 between Mitsubishi and Atlas Consolidated Mining & Development Corporation. (p. 118, BIR Records.)

8. The interest paid by Atlas Consolidated Mining & Development Corporation through Mitsubishi on the said loans were remitted in full by Mitsubishi Metal Corporation to the Export-Import Bank of Japan and other members of the consortium of private banks. (Exhs. "N", "N-3", pp.135-

136, BIR Records.)

On August 27, 1976, Mitsubishi Metal Corporation executed a waiver and disclaimer of its interest in the pending claim for tax credit in favor of Atlas Consolidated Mining & Development Corporation inasmuch as under the terms of the contract, Atlas Consolidated will shoulder the tax on interest payable on said loans. (Exh. "M", p. 116, BIR Records.)

Under the foregoing facts, is the interest income derived from the loans extended to Atlas Consolidated Mining & Development Corporation exempt from withholding tax pursuant to Section 29(b)(7)(A) of the National Internal Revenue Code, which reads as follows:

> "SEC. 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:
>
> "(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.)

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) 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 former National Internal Revenue Code. Accordingly, the claim of petitioners Mitsubishi Metal Corporation and Atlas Consolidated Mining & Development

Corporation for tax credit of ₱1,971,595.01 representing erroneous payment of 15% withholding tax on interest payments on the loans payable to the Export-Import Bank of Japan in 1974 and 1975 is meritorious.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Atlas Consolidated Mining & Development Corporation the amount of ₱1,971,595.01. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, April 18, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge