REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUMITOMO CORPORATION & FIRST PHILIPPINE INDUSTRIAL PARK, INC.,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6364

Promulgated:

OCT 17 2002

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DECISION

This is a claim for refund or issuance of a tax credit certificate in the amount of P1,368,000.00, allegedly representing overpaid withholding tax on dividends based on RP-Japan Tax Treaty.

The facts of the case are as follows:

Petitioner Sumitomo Corporation (hereinafter referred to as *Sumitomo*) is a corporation duly organized and existing under and by virtue of the laws of Japan, with principal office at Harumi Triton Square Office Tower Y 1-8-11, Harumi, Chuo-Ku, Tokyo, 104-8610 Japan *(paragraph 1, Stipulation of Facts)*.

Co-petitioner First Philippine Industrial Park, Incorporated (hereinafter referred to as *FPIP*) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with address at Unit 703-704, Taipan Place, Emerald Avenue, Ortigas Center, Pasig City *(paragraph 2, Stipulation of Facts)*. In this petition for review, petitioner FPIP alleged that it is a proper party to these proceedings considering that under Revenue Regulations 1-2000 (*should be Revenue Memorandum Order 1-2000*), a tax credit on overpaid withholding tax on dividends should be issued in its name, as withholding agent, for the account of the payee of the dividends.

Based on the Secretary's Certificate dated March 8, 2000 issued by Rodolfo Waga, Jr., Assistant Corporate Secretary of FPIP (*Annex F, Petition for Review*), Sumitomo acquired shareholdings from FPIP totalling 6,207,425 consisting of common and preferred redeemable shares on the following dates:

Number of shares	**Date of acquisition**
1,446,425 (Common)	November 15, 1996
2,025,000 (Common)	August 10, 1997
2,736,000 (Preferred redeemable)	August 4, 1998

Likewise, per certification issued by the same Assistant Corporate Secretary on February 3, 2000, an Annual Stockholder's Meeting of the FPIP was held on October 25, 1999 whereby the stockholders of the corporation approved and confirmed the Board of Directors' declaration of cash dividend of P91,200,000.00, which shall be taken out of the corporation's earned surplus as of June 30, 1999, in favor of all stockholders of record as of the date of the declaration proportionate to their shareholdings in the corporation's preferred shares, payable on November 29, 1999. The percentage of Sumitomo's shareholdings was certified to be thirty per cent (30 %) of the total subscribed shares of FPIP *(Annex B, Petition for Review).*

Sumitomo's share in the P91,200,000.00 total cash dividends declared by FPIP amounted to P27,360,000.00 representing 30% of the total cash dividends declared. On December 10, 1999, FPIP remitted to the Bureau of Internal Revenue the amount of P4,104,000.00, representing the withholding tax on dividends paid to Sumitomo, which tax was computed at the rate of 15% *(paragraph 5, Supplement to the Joint Stipulation of Facts and Issues dated March 15, 2002).*

On February 21, 2000, petitioner FPIP filed before the Bureau of Internal Revenue (BIR) a request for a ruling on the applicable tax treaty rate on dividends received by Sumitomo-Tokyo from FPIP. It invoked the provisions of the RP-Japan Tax Treaty as well as the decision of the Supreme Court in the case of *Marubeni vs. Commissioner of Internal Revenue, 177 SCRA 500 (Annex G, Petition for Review).*

On June 16, 2000, respondent issued ITAD Ruling 75-00 declaring that the dividend remittance to Sumitomo-Tokyo is subject only to the preferential tax treaty rate of 10% under the provisions of Article 10 of the RP-Japan Tax Treaty (*paragraph 9, Stipulation of Facts, Annex H, Petition for Review*).

On June 27, 2000, on the basis on the above-mentioned ITAD Ruling, petitioner Sumitomo, through counsel, filed an administrative claim for tax credit with the International Tax Affairs Division of the BIR, for the amount of P1,368,000.00 representing the overpayment of withholding tax on dividends withheld by petitioner FPIP *(Annex I, Petition for Review).*

As the two-year prescriptive period was about to expire and the administrative claim remained unresolved, petitioner elevated the case to this court on December 7, 2001 through a Petition for Review.

The issues we are tasked to resolve have been stipulated by the parties to be as follows:

> 1. Whether or not the dividends paid by FPIP to Sumitomo is subject to the preferential rate of 10% in accordance with ITAD Ruling No. 75-00, interpreting Article 10(2)(a) of the RP Japan Tax Treaty.
>
> 2. Whether or not there was an overpayment of withholding tax on dividends in the amount of P1,368,000.00.
>
> 3. Whether or not Petitioners are entitled to a refund/tax credit in the name of FPIP for the account of Sumitomo in accordance with Revenue Regulations 1-2000 (*should be Revenue Memorandum Order No. 1-2000*) in the amount of P1,368,000.00 representing overpayment of withholding tax on dividends paid by FPIP last November 1999.

At the outset, it must be pointed out that during the hearing of this case on May 6, 2002, counsel for the petitioners manifested that after the approval of the Joint Stipulation of Facts and Issues, he is willing to submit his case for decision provided that the parties be given fifteen (15) days from the said date to file an addendum to their Joint Stipulation of Facts and Issues to thresh out the remaining issue, that is, whether or not respondent received the payment of the withholding taxes. On May 10, 2002, the parties submitted a Supplement to Joint Stipulation of Facts and Issues dated March 15, 2002, confirming that on December 10, 1999, FPIP remitted to the BIR the amount of P4,104,000.00, representing the withholding tax on dividends paid to Sumitomo, which tax was computed at the rate of 15%. The confirmation was based on the certification issued by the Chief of the Revenue Accounting Division of the BIR, verifying the collection by the latter of the amount of P4,104,000.00 from petitioner FPIP on December 10, 1999 as withholding tax. On July 12, 2002, this case was submitted for decision without the submission of the parties' Formal Offer of Evidence.

We believe that the Joint Stipulation of Facts and Issues by the parties is sufficient and conclusive upon the parties. In *Music Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5670, dated January 6, 2000*, this court ruled in this wise:

> "In the case at bar, the written judicial admissions made by respondent in his answer and in the Joint Stipulation of Facts need not be proven, as this is crystal clear in Section 4 of Rule 129 of the Revised Rules of Court, which states, to wit:
>
> > Section 4. Judicial Admissions. — An admission, verbal or written, made by a party in the course of the proceeding in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
>
> Throughout the trial of the instant case, respondent never withdrew its admissions for any reason whatsoever, thus these admissions stand as the best proof of petitioner's case. Stated otherwise, there being no allegation of a palpable mistake that would relieve respondent from the stipulation of facts, the admissions in the Joint Stipulation of Facts above-quoted are conclusive upon the parties."

We will now discuss on the interrelated and jointly stipulated issues.

Anent the first issue, we rule in the affirmative.

It is explicitly provided in Article 10(2)(a) of the RP-Japan Tax Treaty that dividends paid to a company which holds directly at least 25 % either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends shall be subject to dividend tax equivalent to 10% of its gross amount. The aforementioned law is hereunder reproduced for easy reference :

Article 10

(1.) Dividends paid by a company which is a resident of a Contracting State may be taxed in that other Contracting State.

(2.) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) <u>10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends</u>; (emphasis supplied)

Considering that Sumitomo owned 6,207,425 representing 30% of the subscribed shares of FPIP, the dividends issued to it by the latter should, therefore, be subject only to 10% withholding tax on dividends.

Likewise, the BIR itself, through Lilian Hefti, OIC, Deputy Commissioner of the Legal and Inspection Group, issued ITAD Ruling No. 75-00 on June 16, 2000, confirming that the dividend remittance to Sumitomo Tokyo is subject to the preferential tax treaty rate of 10%. Pertinent portion of the said ruling provides:

> "In view of the foregoing, and since **Sumitomo Tokyo** holds thirty percent (30%) of the total subscribed shares of **FPIP**, the dividend remittance to **Sumitomo Tokyo** is subject to the preferential tax treaty rate of ten percent (10%) notwithstanding the fact that **Sumitomo Tokyo** has a branch in the Philippines since the investment in FPIP was made independently by **Sumitomo Tokyo** and not through the Philippine branch. This being the case, the dividend income cannot be attributed as an ordinary consequence of Sumitomo Tokyo's trade or business in the Philippines *(Marubeni Corporation vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 76573, September 14, 1989, 177 SCRA 500; ITAD Ruling 9-00 dated January 13, 2000).*

Well-settled is the rule that the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. Nevertheless, courts will not hesitate to set aside an executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader without need for interpretation or construction *(Republic vs. Sandiganbayan, 293 SCRA 440).* In the case at bar, we have no reason to disregard the interpretation made by the Deputy Commissioner of the Bureau of Internal Revenue. It is clearly within the meaning of Article 10 (2)(a) of the RP-Japan Tax Treaty.

Whether or not there was an overpayment of withholding tax on dividends in the amount of P1,368,000.00, we rule in the affirmative. The records indeed show that Sumitomo through its withholding agent, FPIP, paid dividend tax of P4,104,000.00, or

15% of P27,360,000.00 *(pages 156 & 157, CTA Records)*. Petitioner also submitted to the court the Monthly Remittance Return of Income Tax Withheld by FPIP, which shows on its face the machine validation of the amount paid and the date of payment (*Annex C, Petition for Review*). As mentioned earlier, petitioners and respondent even stipulated and confirmed that on December 10, 1999, FPIP remitted to the BIR the amount of P4,104,000.00, representing the withholding tax on dividends paid to Sumitomo, which tax was computed at the rate of 15%. Considering that Sumitomo is liable only for the lower dividend tax of 10% of the gross amount of dividend income, there was clearly an overpayment.

Finally, on the issue of whether or not petitioners are entitled to a refund/tax credit in the amount of P1,368,000.00, we also rule in the affirmative. In the light of the provisions of Article 10 (2)(a) of the RP-Japan Tax Treaty, ITAD Ruling No. 75-00 and taking into account that there are conclusive proofs of withholding and payment to the Bureau of Internal Revenue, petitioners are legally entitled to the relief prayed for. Moreover, petitioner has complied with the two (2) -year statutory period for filing a claim for refund as provided in Section 229 of the Tax Code. Both the administrative claim filed on June 27, 2000 with the respondent and the Petition for Review filed on December 7, 2001 are well within the reglementary period reckoned from the date of payment of the tax on December 10, 1999.

WHEREFORE, in the light of the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED** to

REFUND, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P1,368,000.00, computed as follows:

Cash Dividends Received	P27,360,000.00
Multiply by Final Rate Applied	15%
Final Tax Paid and Remitted	P 4,104,000.00
Less: Should be Final Tax	
(P27,360,000.00 x 10%)	2,736,000.00
Amount Refundable	**P 1,368,000.00**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

I CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge