REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FUJITSU TEN CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 5276

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAR 05 1998

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DECISION

This is a judicial claim for refund and/or tax credit of overpaid withholding taxes on interest income for the period covering July, 1993 to May, 1995.

Petitioner is a domestic corporation engaged mainly in the manufacture and assembly of car-audio products, sub-assemblies and related components. Its office address is at 100 South Science Avenue, Laguna Technopark, Brgy. Don Jose, Sta. Rosa, Laguna.

The facts are simple.

On June 1, 1993, petitioner bought on installment basis several equipment, devices and fixtures worth ¥455,875,540.00 *plus* interest amounting to ¥85,336,343.00 for a total sum of ¥541,211,883.00, from FUJITSU TEN LIMITED ("FTL of Japan" for brevity), a non-resident Japanese corporation. (Exhs. "A" to "A-20"; Exh. "H" to "H-23")

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On various dates during the said period of July, 1993 to May, 1995, petitioner withheld and remitted to respondent's Bureau the total amount of ₱2,472,254.71, representing the 20% final tax on its interest payments to FTL of Japan (Exhs. "B" to "B-45"; "C"), broken down as follows:

Period Covered	
July, 1993 to December, 1993	₱ 710.495.51
January, 1994 to December, 1994	1,266,403.34
January, 1995 to May, 1995	495,355.86
TOTAL	₱2,472,254.71

On August 4, 1995, petitioner filed a written claim for refund and/or tax credit with the respondent (Exh. "D") on the ground that the amount of 20% final withholding tax on interest payments it had remitted to the respondent was erroneous and in excess of the withholding tax rate prescribed under Article 11(2) of the RP-Japan Tax Treaty which sets a maximum of 15% tax rate on interest income derived from the Philippines and paid to a resident of Japan. Based on a 15% tax rate, petitioner allegedly overwithheld the amount of ₱618,063.64.

On August 10, 1995, however, petitioner instituted the present petition for review in view allegedly of the inaction of the respondent on its written claim for

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refund and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund as provided in Section 230 of the Tax Code, as amended.

At bar, petitioner reiterates its stance *a quo*. On the other hand, respondent stated, *inter alia*, the following special and affirmative defense in her Answer, to wit:

> 8. The petition states no cause of action for failure to allege that the petitioner is the beneficial owner of the alleged overwithheld interest pursuant to Article 11(2) of the RP-Japan Tax Treaty;

Trial proceedings were conducted and involved mainly the presentation and identification of exhibits and their formal offer. Both parties submitted their memoranda. Petitioner echoed its prior assertions while respondent continued with her defiance to grant herein claim for refund despite her failure to present any clear controverting argument, except for the invocation of the usual but unexplained presumption of law defenses, namely, that tax refunds are to be strictly construed for they are in the nature of tax exemptions and that correspondingly, tax exemptions must be shown indubitably to exist. (**Manila Electric Co. vs. Tobias, 67 SCRA 451**)

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The facts of the case present a singular issue for discussion, that is:

> Whether or not petitioner is entitled to its claim for refund of alleged excessively remitted final taxes on interest income in the total amount of ₱618,063.64 pursuant to the provisions of the RP-Japan Tax Treaty.

After a careful scrutiny of the attending facts, the issue involved, the asseverations of the parties and the applicable laws and jurisprudence in point, this Court rules in favor of the petitioner.

For a better understanding of the discussion of herein issue, the pertinent provisions of the RP-Japan Tax Treaty are hereby reproduced, to wit:

> Article 11
>
> (1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
>
> (2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:
>
> > (a) 10 per cent of the gross amount of the interest if the interest is paid in respect of Government securities, or bonds or debentures;

(b) 15 per cent of the gross amount of the interest in all other cases.

x x x

Petitioner has fully satisfied the above provision of the RP-Japan Tax Treaty. The interest payments arising from the installment sale of various equipment, tools, devices and fixtures were paid and remitted by the petitioner, a domestic corporation, to FTL of Japan which is the recipient and beneficial owner of such interest payments. Consequently, petitioner is subject only to a tax rate of 15% on its interest payments to FTL of Japan.

Respondent's argument in her Answer that petitioner should prove it's being the beneficial owner of the interest payments is incorrect. The recipient and beneficial owner of the interest payments in this case is FTL of Japan and not the petitioner. As the absolute seller of the goods bought by the petitioner, FTL of Japan is necessarily the recipient and beneficial owner of the interest payments. The latter being a part of the total consideration of the consummated sale between the parties.

As regards documentary proof on its claim for refund, petitioner has duly supported the same with copies of its machine validated monthly remittance return of income taxes withheld (BIR Form No. 1743W) together

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with the corresponding schedules of withholding taxes payable for each month showing FTL of Japan as one of the payees (Exhs. "B" to "B-45"; Exh. "C"). Petitioner has also submitted copies of its journal vouchers, remittance advices and approved application for telegraphic transfer/debit memos of interest payments to FTL of Japan, as well as a certification of FTL of Japan attesting to the fact of receipt of the remittances, inclusive of interest payments made by the petitioner. (Exhs. "F" to "F-91" and "G" to "G-2").

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in the amount of **P618,063.64** to the petitioner immediately. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that the above decision was reached after due consideration with 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

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