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put into question the financial capacity of petitioner to operate under a certificate of public convenience. It failed to adduce evidence on this aspect despite all the opportunity afforded it.

Finally, this petition for review was filed late. In fact, this petition was denied by this Court on April 5, 1978. Although in a resolution dated November 3, 1989 this Court reconsidered the denial and gave due course to the petition, such reconsideration was without prejudice to the Court considering the issue of petitioner's alleged tardiness in filing the petition.

WHEREFORE, the petition is *DENIED* with costs against petitioner.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and *Medialdea, JJ.*, concur.

SECOND DIVISION

[G.R. No. 54908. January 22, 1990]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MITSUBISHI METAL CORPORATION, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and the COURT OF TAX APPEALS,** *respondents.*

[G.R. No. 80041. January 22, 1990]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MITSUBISHI METAL CORPORATION, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and the COURT OF TAX APPEALS,** *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF COURT OF TAX APPEALS, RESPECTED; EXCEPTION.** — We have ruled that findings of fact of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on appeal if they are not supported by substantial evidence or if there is a showing of gross error or abuse on the part of the tax court.

2. **ID.; ID.; ID.; CASE AT BAR.** — Ordinarily, we could give due consideration to the holding of respondent court that Mitsubishi is a mere agent of Eximbank. Compelling circumstances obtaining and proven in these cases, however, warrant a departure from said general rule, since we are convinced that there is a misapprehension of facts on the part of the tax court to the extent that its conclusions are speculative in nature.

3. **TAXATION; TAX EXEMPTIONS; EXEMPTION FROM TAX; STRICTLY CONSTRUED.** — 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* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.

4. **ID.; ID.; WITHHOLDING TAX; SECTION 29(b) (7) (4) OF THE TAX CODE; CASE AT BAR, NOT COVERED.** — The principal issue in both petitions is whether or not the interest income from the loans extended to Atlas by Mitsubishi is excludible from gross income taxation pursuant to Section 29 (b) (7) (A) of the tax code and, therefore, exempt from withholding tax. Apropos thereto, the focal question is whether or not Mitsubishi is a mere conduit of Eximbank which will then be considered as the creditor whose investments in the Philippines on loans are exempt from taxes under the code. 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

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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 application 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. Such an innocuous statement of purpose could not have been intended for, nor could it legally consitute, 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. Respondents postulate that Mitsubishi had to be a conduit because Eximbank's charter prevents it from making loans except to Japanese individuals and corporations. 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 reasons subject only of surmise, said financing institution would deliberately circumvent its own charter to accommodate an alien borrower through a manipulated subterfuge, but with it as a principal and the real obligee. 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 governmental operations suffer due to diminution of much 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.

APPEARANCES OF COUNSEL

Gadioma Law Offices for respondents.

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DECISION

REGALADO, *J.*:

These cases, involving the same issue being contested by the same parties and having originated from the same factual antecedents generating the claims for tax credit of private respondents, the same were consolidated by resolution of this Court dated May 31,1989 and are jointly decided herein.

The records reflect that on April 17,1970, Atlas Consolidated Mining and Development Corporation (hereinafter, Atlas) entered into a Loan and Sales Contract with Mitsubishi Metal Corporation (Mitsubishi, for brevity), a Japanese corporation licensed to engage in business in the Philippines, for purposes of the projected expansion of the productive capacity of the former's mines in Toledo, Cebu. Under said contract, Mitsubishi agreed to extend a loan to Atlas in the amount of $20,000,000.00, United States currency, for the installation of a new concentrator for copper production. Atlas, in turn, undertook to sell to Mitsubishi all the copper concentrates produced from said machine for a period of fifteen (15) years. It was contemplated that $9,000,000.00 of said loan was to be used for the purchase of the concentrator machinery from Japan.[1]

Mitsubishi thereafter applied for a loan with the Export-Import Bank of Japan (Eximbank, for short) obviously for purposes of its obligation under said contract. Its loan application was approved on May 26, 1970 in the sum of ¥4,320,000,000.00, at about the same time as the approval of its loan for ¥2,880,000,000.00 from a consortium of Japanese banks. The total amount of both loans is equivalent to $20,000,000.00 in United States currency at the then prevailing exchange rate. The records in the Bureau of Internal Revenue show that the approval of the loan by Eximbank to Mitsubishi was subject to the condition that Mitsubishi would use the amount as a loan to Atlas and as a consideration for importing copper concentrates from Atlas,

[1] *Rollo*, G.R. No. 54908, 21; G.R. No. 80041, 14.

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and that Mitsubishi had to pay back the total amount of loan by September 30, 1981.[2]

Pursuant to the contract between Atlas and Mitsubishi, interest payments were made by the former to the latter totalling ₱13,143,966.79 for the years 1974 and 1975. The corresponding 15% tax thereon in the amount of ₱1,971,595.01 was withheld pursuant to Section 24 (b) (1) and Section 53 (b) (2) of the National Internal Revenue Code, as amended by Presidential Decree No. 131, and duly remitted to the Government.[3]

On March 5, 1976, private respondents filed a claim for tax credit requesting that the sum of ₱1,971,595.01 be applied against their existing and future tax liabilities. Parenthetically, it was later noted by respondent Court of Tax Appeals in its decision that on August 27, 1976, Mitsubishi executed a waiver and disclaimer of its interest in the claim for tax credit in favor of Atlas.[4]

The petitioner not having acted on the claim for tax credit, on April 23, 1976 private respondents filed a petition for review with respondent court, docketed therein as CTA Case No. 2801.[5] The petition was grounded on the claim that Mitsubishi was a mere agent of Eximbank, which is a financing institution owned, controlled and financed by the Japanese Government. Such governmental status of Eximbank, if it may be so called, is the basis for private respondents' claim for exemption from paying the tax on the interest payments on the loan as earlier stated. It was further claimed that the interest payments on the loan from the consortium of Japanese banks were likewise exempt because said loan supposedly came from or were financed by Eximbank. The provision of the National Internal Revenue Code relied upon is Section 29 (b) (7) (A),[6] which excludes from gross income:

[2] *Ibid.*, G.R. No. 80041, 15, 49.

[3] *Ibid.*, G.R. No. 54908, 45-46.

[4] *Ibid., id.*, 33-39.

[5] *Ibid., id.*, 48.

[6] Now, Sec. 28 (b) (8) (A).

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"(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."

Petitioner filed an answer on July 9, 1976. The case was set for hearing on April 16, 1977 but was later reset upon manifestation of petitioner that the claim for tax credit of the alleged erroneous payment was still being reviewed by the Appellate Division of the Bureau of Internal Revenue. The records show that on November 16, 1976, the said division recommended to petitioner the approval of private respondent's claim. However, before action could be taken thereon, respondent court scheduled the case for hearing on September 30, 1977, during which trial private respondents presented their evidence while petitioner submitted his case on the basis of the records of the Bureau of Internal Revenue and the pleadings.[7]

On April 18, 1980, respondent court promulgated its decision ordering petitioner to grant a tax credit in favor of Atlas in the amount of ₱1,971,595.01. Interestingly, the tax court held that petitioner admitted the material averments of private respondents when he supposedly prayed "for judgment on the pleadings without offering proof as to the truth of his allegations."[8] Furthermore, the court declared that all papers and documents pertaining to the loan of ¥4,320,000,000.00 obtained by Mitsubishi from Eximbank show that this was the same amount given to Atlas. It also observed that the money for the loans from the consortium of private Japanese banks in the sum of ¥2,880,000,000.00 "originated" from Eximbank. From these, respondent court concluded that the ultimate creditor of Atlas was Eximbank with Mitsubishi acting as a mere "arranger or conduit through which the loans flowed from the creditor Export-

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[7] *Rollo*, G.R. No. 54908, 41-42.

[8] *Ibid., id.*, 42.

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Import Bank of Japan to the debtor Atlas Consolidated Mining & Development Corporation."[9]

A motion for reconsideration having been denied on August 20, 1980, petitioner interposed an appeal to this Court, docketed herein as G.R. No. 54908.

While CTA Case No. 2801 was still pending before the tax court, the corresponding 15% tax in the amount of ₱439,167.95 on the ₱2,927,789.06 interest payments for the years 1977 and 1978 was withheld and remitted to the Government. Atlas again filed a claim for tax credit with the petitioner, repeating the same basis for exemption.

On June 25, 1979, Mitsubishi and Atlas filed a petition for review with the Court of Tax Appeals docketed as CTA Case No. 3015. Petitioner filed his answer thereto on August 14, 1979, and, in a letter to private respondents dated November 12, 1979, denied said claim for tax credit for lack of factual or legal basis.[10]

On January 15, 1981, relying on its prior ruling in CTA Case No. 2801, respondent court rendered judgment ordering the petitioner to credit Atlas the aforesaid amount of tax paid. A motion for reconsideration, filed on March 10, 1981, was denied by respondent court in a resolution dated September 7, 1987. A notice of appeal was filed on September 22, 1987 by petitioner with respondent court and a petition for review was filed with this Court on December 19, 1987. Said later case is now before us as G.R. No. 80041 and is consolidated with G.R. No. 54908.

The principal issue in both petitions is whether or not the interest income from the loans extended to Atlas by Mitsubishi is excludible from gross income taxation pursuant to Section 29 (b) (7) (A) of the tax code and, therefore, exempt from withholding tax. Apropos thereto, the focal question is whether or not Mitsubishi is a mere conduit of Eximbank which will

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[9] *Ibid., id.*, 51-52.

[10] *Ibid.*, G.R. No. 80041, 17.

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then be considered as the creditor whose investments in the Philippines on loans are exempt from taxes under the code.

Prefatorily, it must be noted that respondent court erred in holding in CTA Case No. 2801 that petitioner should be deemed to have admitted the allegations of the private respondents when it submitted the case on the basis of the pleadings and records of the bureau. There is nothing to indicate such admission on the part of petitioner nor can we accept respondent court's pronouncement that petitioner did not offer to prove the truth of its allegations. The records of the Bureau of Internal Revenue relevant to the case were duly submitted and admitted as petitioner's supporting evidence. Additionally, a hearing was conducted, with presentation of evidence, and the findings of respondent court were based not only on the pleadings but on the evidence adduced by the parties. There could, therefore, not have been a judgment on the pleadings, with the theorized admissions imputed to petitioner, as mistakenly held by respondent court.

Time and again, we have ruled that findings of fact of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on appeal if they are not supported by substantial evidence or if there is a showing of gross error or abuse on the part of the tax court.[11] Thus, ordinarily, we could give due consideration to the holding of respondent court that Mitsubishi is a mere agent of Eximbank. Compelling circumstances obtaining and proven in these cases, however, warrant a departure from said general rule, since we are convinced that there is a misapprehension of facts on the part of the tax court to the extent that its conclusions are speculative in nature.

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

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[11] *Nasiad, et al. vs. Court of Tax Appeals*, 61 SCRA 238 (1974); *Raymundo vs. de Joya, et al.*, 101 SCRA 495 (1980); *Commissioner of Internal Revenue vs. Arnoldus Carpentry Shop, Inc., et al.*, 159 SCRA 199 (1988).

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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 application 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 consitute, 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 MITSUBISHI, 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 of Japan.

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[12] *Rollo*, G.R. 80041, 15.

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"When MITSUBISHI therefore secured such loans, 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 is 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 MITSUBISHI 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. x x x"[13]

To repeat, the contract between Eximbank and Mitsubishi is entirely different. It is complete in itself, does not appear to

[13] *Ibid.*, G.R. No. 54908. 23-25.

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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 Mitsubishi and Atlas was entered into on April 17, 1970. It is true that under the contract of loan with Eximbank, Mitsubishi agreed to use the amount as a 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 repayment. There is nothing wrong with 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 corporations. 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 reasons subject only of surmise, said financing institution would deliberately circumvent 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's 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

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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* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests 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. Significantly, private respondents 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 governmental operations suffer due to diminution of much 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, the decisions of the Court of Tax Appeals in CTA Cases Nos. 2801 and 3015, dated April 18, 1980 and January 15, 1981, respectively, are hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and *Sarmiento, JJ.,* concur.

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[14] *Ibid.*, G.R. No. 80041, 15, 27.