Supreme Court E-Library

THIRD DIVISION

[G.R. No. 76573. September 14, 1989]

MARUBENI CORPORATION (formerly Marubeni — Iida, Co., Ltd.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX ON CORPORATIONS; RESIDENT FOREIGN CORPORATION, DEFINED. — Under the Tax Code, a resident foreign corporation is one that is "engaged in trade or business" within the Philippines.

2. ID.; ID.; ID.; A SINGLE CORPORATION CANNOT BE BOTH A RESIDENT AND NON-RESIDENT CORPORATION. — A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.

3. ID.; ID.; ID.; EACH TAX HAS A DIFFERENT TAX BASIS; CASE AT BAR. — But while public respondents correctly concluded that the dividends in dispute were neither subject to the 15% profit remittance tax nor to the 10% intercorporate dividend tax, the recipient being a non-resident stockholder, they grossly erred in holding that no refund was forthcoming to the petitioner because the taxes thus withheld totalled the 25% rate imposed by the Philippine-Japan Tax Convention pursuant to Article 10 (2) (b). To simply add the two taxes to arrive at the 25% tax rate is to disregard a basic rule in taxation that each tax has a different tax basis. While the tax on dividends is directly levied on the dividends received, "the tax base upon which the 15%

Supreme Court E-Library

branch profit remittance tax is imposed is the profit actually remitted abroad."

4. **ID.; ID.; ID.; PHILIPPINE-JAPAN TAX TREATY; 25% MAXIMUM RATE, IMPOSABLE ONLY WHEN THE LOCAL TAX EXCEEDS THE SAME.** — Public respondents likewise erred in automatically imposing the 25% rate under Article 10 (2) (b) of the Tax Treaty as if this were a flat rate. A closer look at the Treaty reveals that the tax rates fixed by Article 10 are the maximum rates as reflected in the phrase "shall not exceed." This means that any tax imposable by the contracting state concerned should not exceed the 25% limitation and that said rate would apply only if the tax imposed by our laws exceeds the same. In other words, by reason of our bilateral negotiations with Japan, we have agreed to have our right to tax limited to a certain extent to attain the goals set forth in the Treaty.

5. **ID.; ID.; ID.; ID.; NON-RESIDENT CORPORATION IS TAXED 35% OF ITS GROSS INCOME FROM ALL SOURCES WITHIN THE PHILIPPINES.** — Petitioner, being a non-resident foreign corporation with respect to the transaction in question, the applicable provision of the Tax Code is Section 24 (b) (1) (iii) in conjunction with the Philippine-Japan Treaty of 1980. Proceeding to apply the above section to the case at bar, petitioner, being a non-resident foreign corporation, as a general rule, is taxed 35% of its gross income from all sources within the Philippines.

6. **ID.; ID.; ID.; ID.; ID.; DISCOUNTED RATE OF 15% GRANTED WHERE A TAX CREDIT OF NOT LESS THAN 20% OF THE DIVIDENDS RECEIVED IS EXTENDED TO OUR DOMESTIC CORPORATION.** — A discounted rate of 15% is given to petitioner on dividends received from a domestic corporation (AG&P) on the condition that its domicile state (Japan) extends in favor of petitioner, a tax credit of not less than 20% of the dividends received. This 20% represents the difference between the regular tax of 35% on non-resident foreign corporations which petitioner would have ordinarily paid, and the 15% special rate on dividends received from a domestic corporation.

7. **ID.; ID.; ID.; ID.; ID.; TAX REFUND PROPER WHERE A FOREIGN NON-RESIDENT CORPORATION PAID INCOME TAX ON BRANCH PROFIT REMITTANCE WITHIN THE MAXIMUM CEILING RATE DECREED IN THE TAX TREATY.** — Petitioner

Supreme Court E-Library

is entitled to a refund on the transaction in question. It is readily apparent that the 15% tax rate imposed on the dividends received by a foreign non-resident stockholder from a domestic corporation under Section 24 (b) (1) (iii) is easily within the maximum ceiling of 25% of the gross amount of the dividends as decreed in Article 10 (2) (b) of the Tax Treaty.

8. REMEDIAL LAW; BATAS PAMBANSA BLG. 129; DOES NOT INCLUDE REORGANIZATION OF THE COURT OF TAX APPEALS. — BP Blg. 129 does not include the Court of Tax Appeals which has been created by virtue of a special law, Republic Act No. 1125. Respondent court is not among those courts specifically mentioned in Section 2 of BP Blg. 129 as falling within its scope.

9. ID.; REPUBLIC ACT NO. 1125; COURT OF TAX APPEALS; THIRTY (30) DAY PERIOD TO APPEAL FROM NOTICE; PERIOD BEGINS AGAIN FROM NOTICE OF DENIAL OF MOTION FOR RECONSIDERATION; CASE AT BAR. — Under Section 18 of Republic Act No. 1125, a party adversely affected by an order, ruling or decision of the Court of Tax Appeals is given thirty (30) days from notice to appeal therefrom. Otherwise, said order, ruling, or decision shall become final. Records show that petitioner received notice of the Court of Tax Appeal's decision denying its claim for refund on April 15, 1986. On the 30th day, or on May 15, 1986 (the last day for appeal), petitioner filed a motion for reconsideration which respondent court subsequently denied on November 17, 1986, and notice of which was received by petitioner on November 26, 1986. Two days later, or on November 28, 1986, petitioner simultaneously filed a notice of appeal with the Court of Tax Appeals and a petition for review with the Supreme Court. From the foregoing, it is evident that the instant appeal was perfected well within the 30-day period provided under R.A. No. 1125, the whole 30-day period to appeal having begun to run again from notice of the denial of petitioner's motion for reconsideration.

APPEARANCES OF COUNSEL

Melquiades C. Gutierrez for petitioner.
The Solicitor General for respondents.

Supreme Court E-Library

DECISION

FERNAN, *C.J.*:

Petitioner, Marubeni Corporation, representing itself as a foreign corporation duly organized and existing under the laws of Japan and duly licensed to engage in business under Philippine laws with branch office at the 4th Floor, FEEMI Building, Aduana Street, Intramuros, Manila seeks the reversal of the decision of the Court of Tax Appeals[1] dated February 12, 1986 denying its claim for refund or tax credit in the amount of ₱229,424.40 representing alleged overpayment of branch profit remittance tax withheld from dividends by Atlantic Gulf and Pacific Co. of Manila (AG&P).

The following facts are undisputed: Marubeni Corporation of Japan has equity investments in AG&P of Manila. For the first quarter of 1981 ending March 31, AG&P declared and paid cash dividends to petitioner in the amount of ₱849,720 and withheld the corresponding 10% final dividend tax thereon. Similarly, for the third quarter of 1981 ending September 30, AG&P declared and paid ₱849,720 as cash dividends to petitioner and withheld the corresponding 10% final dividend tax thereon.[2]

AG&P directly remitted the cash dividends to petitioner's head office in Tokyo, Japan, net not only of the 10% final dividend tax in the amounts of ₱764,748 for the first and third quarters of 1981, but also of the withheld 15% profit remittance tax based on the remittable amount after deducting the final withholding tax of 10%. A schedule of dividends declared and paid by AG&P to its stockholder Marubeni Corporation of Japan, the 10% final intercorporate dividend tax and the 15% branch profit remittance tax paid thereon, is shown below:

---

[1] Penned by Amante Filler, Presiding Judge and concurred in by Constante Roaquin and Alex Reyes, Associate Judges.

[2] *Rollo*, p. 37.

Supreme Court E-Library

1981	FIRST QUARTER (three months ended 3.31.81)	THIRD QUARTER (three months ended 9.30.81)	TOTAL OF FIRST and Third quarters
		(In Pesos)	
Cash Dividends Paid	849,720.44	849,720.00	1,699,440.00

1981	FIRST QUARTER (three months ended 3.31.81)	THIRD QUARTER (three months ended 9.30.81)	TOTAL OF FIRST and Third quarters
		(In Pesos)	
10% Dividend Tax Withheld	84,972.00	84,972.00	169,944.00
Cash Dividend net of 10% Dividend Tax Withheld	764,748.00	764,748.00	1,529,496.00
15% Branch Profit Remittance Tax Withheld	114,712.20	114,712.20	229,424.40[3]
Net Amount Remitted to Petitioner	650,035.80	650,035.80	1,300,071.60

The 10% final dividend tax of ₱84,972 and the 15% branch profit remittance tax of ₱114,712.20 for the first quarter of 1981 were paid to the Bureau of Internal Revenue by AG&P on April 20, 1981 under Central Bank Receipt No. 6757880. Likewise, the 10% final dividend tax of ₱84,972 and the 15% branch profit remittance tax of ₱114,712 for the third quarter of 1981 were paid to the Bureau of Internal Revenue by AG&P

[3] Amount sought to be refunded. See *Rollo*, p. 38.

Supreme Court E-Library

on August 4, 1981 under Central Bank Confirmation Receipt No. 7905930.[4]

Thus, for the first and third quarters of 1981, AG&P as withholding agent paid 15% branch profit remittance on cash dividends declared and remitted to petitioner at its head office in Tokyo in the total amount of ₱229,424.40 on April 20 and August 4, 1981.[5]

In a letter dated January 29, 1981, petitioner, through the accounting firm Sycip, Gorres, Velayo and Company, sought a ruling from the Bureau of Internal Revenue on whether or not the dividends petitioner received from AG&P are effectively connected with its conduct or business in the Philippines as to be considered branch profits subject to the 15% profit remittance tax imposed under Section 24 (b) (2) of the National Internal Revenue Code as amended by Presidential Decrees Nos. 1705 and 1773.

In reply to petitioner's query, Acting Commissioner Ruben Ancheta ruled:

"Pursuant to Section 24 (b) (2) of the Tax Code, as amended, only profits remitted abroad by a branch office to its head office which are effectively connected with its trade or business in the Philippines are subject to the 15% profit remittance tax. To be 'effectively connected' it is not necessary that the income be derived from the actual operation of taxpayer-corporation's trade or business; it is sufficient that the income arises from the business activity in which the corporation is engaged. For example, if a resident foreign corporation is engaged in the buying and selling of machineries in the Philippines and invests in some shares of stock on which dividends are subsequently received, the dividends thus earned are not considered 'effectively connected' with its trade or business in this country. (Revenue Memorandum Circular No. 55-80).

In the instant case, the dividends received by Marubeni from AG&P are not income arising from the business activity in which Marubeni is engaged. Accordingly, said dividends if remitted abroad are not considered branch profits for purposes of the 15%

---

[4] *Rollo*, pp. 38-39.

[5] *Rollo*, p. 39.

Supreme Court E-Library

profit remittance tax imposed by Section 24 (b) (2) of the Tax Code, as amended x x x ."[6]

Consequently, in a letter dated September 21, 1981 and filed with the Commissioner of Internal Revenue on September 24, 1981, petitioner claimed for the refund or issuance of a tax credit of ₱229,424.40 "representing profit tax remittance erroneously paid on the dividends remitted by Atlantic Gulf and Pacific Co. of Manila (AG&P) on April 20 and August 4, 1981 to x x x head office in Tokyo."[7]

On June 14, 1982, respondent Commissioner of Internal Revenue denied petitioner's claim for refund/credit of ₱229,424.40 on the following grounds:

"While it is true that said dividends remitted were not subject to the 15% profit remittance tax as the same were not income earned by a Philippine Branch of Marubeni Corporation of Japan; and neither is it subject to the 10% intercorporate dividend tax, the recipient of the dividends, being a non-resident stockholder, nevertheless, said dividend income is subject to the 25% tax pursuant to Article 10 (2) (b) of the Tax Treaty dated February 13, 1980 between the Philippines and Japan.

Inasmuch as the cash dividends remitted by AG&P to Marubeni Corporation, Japan is subject to 25% tax, and that the taxes withheld of 10% as intercorporate dividend tax and 15% as profit remittance tax totals (sic) 25%, the amount refundable offsets the liability, hence, nothing is left to be refunded."[8]

Petitioner appealed to the Court of Tax Appeals which affirmed the denial of the refund by the Commissioner of Internal Revenue in its assailed judgment of February 12, 1986.[9]

In support of its rejection of petitioner's claimed refund, respondent Tax Court explained:

---

[6] Annex C, Ruling No. 157-81, Original Record, pp. 11-12.

[7] Original B.I.R. Record, p. 8.

[8] Annex E, Original Record, p. 15.

[9] Original Record, p. 122.

Supreme Court E-Library

"Whatever the dialectics employed, no amount of sophistry can ignore the fact that the dividends in question are income taxable to the Marubeni Corporation of Tokyo, Japan. The said dividends were distributions made by the Atlantic, Gulf and Pacific Company of Manila to its shareholder out of its profits on the investments of the Marubeni Corporation of Japan, a non-resident foreign corporation. The investments in the Atlantic Gulf & Pacific Company of the Marubeni Corporation of Japan were directly made by it and the dividends on the investments were likewise directly remitted to and received by the Marubeni Corporation of Japan. Petitioner Marubeni Corporation Philippine Branch has no participation or intervention, directly or indirectly, in the investments and in the receipt of the dividends. And it appears that the funds invested in the Atlantic Gulf & Pacific Company did not come out of the funds invested by the Marubeni Corporation of Japan to the Marubeni Corporation Philippine Branch. As a matter of fact, the Central Bank of the Philippines, in authorizing the remittance of the foreign exchange equivalent of (sic) the dividends in question, treated the Marubeni Corporation of Japan as a non-resident stockholder of the Atlantic Gulf & Pacific Company based on the supporting documents submitted to it.

"Subject to certain exceptions not pertinent hereto, income is taxable to the person who earned it. Admittedly, the dividends under consideration were earned by the Marubeni Corporation of Japan, and hence, taxable to the said corporation. While it is true that the Marubeni Corporation Philippine Branch is duly licensed to engage in business under Philippine laws, such dividends are not the income of the Philippine Branch and are not taxable to the said Philippine branch. We see no significance thereto in the identity concept or principal-agent relationship theory of petitioner because such dividends are the income of and taxable to the Japanese corporation in Japan and not to the Philippine branch."[10]

Hence, the instant petition for review.

It is the argument of petitioner corporation that following the principal-agent relationship theory, Marubeni, Japan is likewise a resident foreign corporation subject only to the 10% intercorporate final tax on dividends received from a domestic

---

[10] Original Record, pp. 119-121.

Supreme Court E-Library

corporation in accordance with Section 24 (c) (1) of the Tax Code of 1977 which states:

"Dividends received by a domestic or resident foreign corporation liable to tax under this Code — (1) Shall be subject to a final tax of 10% on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code x x x."

Public respondents, however, are of the contrary view that Marubeni, Japan, being a non-resident foreign corporation and not engaged in trade or business in the Philippines, is subject to tax on income earned from Philippine sources at the rate of 35% of its gross income under Section 24 (b) (1) of the same Code which reads:

"(b) Tax on foreign corporations — (1) Nonresident corporations. — A foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five per cent of the gross income received during each taxable year from all sources within the Philippines as x x x dividends x x x."

but expressly made subject to the special rate of 25% under Article 10 (2) (b) of the Tax Treaty of 1980 concluded between the Philippines and Japan.[11] Thus:

"Article 10 (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other 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) xxx

"(b) 25 per cent of the gross amount of the dividends in all other cases."

---

[11] Convention between the Republic of the Philippines and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.

Supreme Court E-Library

Central to the issue of Marubeni, Japan's tax liability on its dividend income from Philippine sources is therefore the determination of whether it is a resident or a non-resident foreign corporation under Philippine laws.

Under the Tax Code, a resident foreign corporation is one that is "engaged in trade or business" within the Philippines. Petitioner contends that precisely because it is engaged in business in the Philippines through its Philippine branch that it must be considered as a resident foreign corporation. Petitioner reasons that since the Philippine branch and the Tokyo head office are one and the same entity, whoever made the investment in AG&P, Manila does not matter at all. A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.

The Solicitor General has adequately refuted petitioner's arguments in this wise:

"The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.

"Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation."[12]

---

[12] Memorandum, p. 142, *Rollo*.

Supreme Court E-Library

In other words, the alleged overpaid taxes were incurred for the remittance of dividend income to the head office in Japan which is a separate and distinct income taxpayer from the branch in the Philippines. There can be no other logical conclusion considering the undisputed fact that the investment (totalling 283.260 shares including that of nominee) was made for purposes peculiarly germane to the conduct of the corporate affairs of Marubeni, Japan, but certainly not of the branch in the Philippines. It is thus clear that petitioner, having made this independent investment attributable only to the head office, cannot now claim the increments as ordinary consequences of its trade or business in the Philippines and avail itself of the lower tax rate of 10%.

But while public respondents correctly concluded that the dividends in dispute were neither subject to the 15% profit remittance tax nor to the 10% intercorporate dividend tax, the recipient being a non-resident stockholder, they grossly erred in holding that no refund was forthcoming to the petitioner because the taxes thus withheld totalled the 25% rate imposed by the Philippine-Japan Tax Convention pursuant to Article 10 (2) (b).

To simply add the two taxes to arrive at the 25% tax rate is to disregard a basic rule in taxation that each tax has a different tax basis. While the tax on dividends is directly levied on the dividends received, "the tax base upon which the 15% branch profit remittance tax is imposed is the profit actually remitted abroad."[13]

Public respondents likewise erred in automatically imposing the 25% rate under Article 10 (2) (b) of the Tax Treaty as if this were a flat rate. A closer look at the Treaty reveals that the tax rates fixed by Article 10 are the maximum rates as reflected in the phrase "shall not exceed." This means that any tax imposable by the contracting state concerned should not exceed the 25% limitation and that said rate would apply

---

[13] *Commissioner of Internal Revenue vs. Burroughs, Limited*, G.R. No. 66653, June 19, 1986, 142 SCRA 324.

Supreme Court E-Library

only if the tax imposed by our laws exceeds the same. In other words, by reason of our bilateral negotiations with Japan, we have agreed to have our right to tax limited to a certain extent to attain the goals set forth in the Treaty.

Petitioner, being a non-resident foreign corporation with respect to the transaction in question, the applicable provision of the Tax Code is Section 24 (b) (1) (iii) in conjunction with the Philippine-Japan Treaty of 1980. Said section provides:

"(b) *Tax on foreign corporations.* — (1) Nonresident corporations — x x x (iii) On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 53 (d) of this Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this Section; x x x."

Proceeding to apply the above section to the case at bar, petitioner, being a non-resident foreign corporation, as a general rule, is taxed 35% of its gross income from all sources within the Philippines. [Section 24 (b) (1)].

However, a discounted rate of 15% is given to petitioner on dividends received from a domestic corporation (AG&P) on the condition that its domicile state (Japan) extends in favor of petitioner, a tax credit of not less than 20% of the dividends received. This 20% represents the difference between the regular tax of 35% on non-resident foreign corporations which petitioner would have ordinarily paid, and the 15% special rate on dividends received from a domestic corporation.

Consequently, petitioner is entitled to a refund on the transaction in question to be computed as follows:

Total cash dividend paid	₱ 1,699,440.00
less 15% under Sec. 24 (b) (1) (iii)	254,916.00

Supreme Court E-Library

Cash dividend net of 15% tax due petitioner	₱ 1,444.524.00
less net amount actually remitted	1,300,071.60
Amount to be refunded to petitioner representing overpayment of taxes on dividends remitted	₱ 144.452.40

It is readily apparent that the 15% tax rate imposed on the dividends received by a foreign non-resident stockholder from a domestic corporation under Section 24 (b) (1) (iii) is easily within the maximum ceiling of 25% of the gross amount of the dividends as decreed in Article 10 (2) (b) of the Tax Treaty.

There is one final point that must be settled. Respondent Commissioner of Internal Revenue is laboring under the impression that the Court of Tax Appeals is covered by Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980. He alleges that the instant petition for review was not perfected in accordance with Batas Pambansa Blg. 129 which provides that "the period of appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment or decision appealed from x x x."

This is completely untenable. The cited BP Blg. 129 does not include the Court of Tax Appeals which has been created by virtue of a special law, Republic Act No. 1125. Respondent court is not among those courts specifically mentioned in Section 2 of BP Blg. 129 as falling within its scope.

Thus, under Section 18 of Republic Act No. 1125, a party adversely affected by an order, ruling or decision of the Court of Tax Appeals is given thirty (30) days from notice to appeal therefrom. Otherwise, said order, ruling, or decision shall become final.

Records show that petitioner received notice of the Court of Tax Appeals' decision denying its claim for refund on April 15, 1986. On the 30th day, or on May 15, 1986 (the last day

Supreme Court E-Library

for appeal), petitioner filed a motion for reconsideration which respondent court subsequently denied on November 17, 1986, and notice of which was received by petitioner on November 26, 1986. Two days later, or on November 28, 1986, petitioner simultaneously filed a notice of appeal with the Court of Tax Appeals and a petition for review with the Supreme Court.[14] From the foregoing, it is evident that the instant appeal was perfected well within the 30-day period provided under R.A. No. 1125, the whole 30-day period to appeal having begun to run again from notice of the denial of petitioner's motion for reconsideration.

WHEREFORE, the questioned decision of respondent Court of Tax Appeals dated February 12, 1986 which affirmed the denial by respondent Commissioner of Internal Revenue of petitioner Marubeni Corporation's claim for refund is hereby *REVERSED*. The Commissioner of Internal Revenue is ordered to refund or grant as tax credit in favor of petitioner the amount of ₱144,452.40 representing overpayment of taxes on dividends received. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, and *Cortés, JJ.*, concur.

Feliciano, J., on leave.

---

[14] *Rollo*, p. 2; Original Record, p. 170.