REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE PHILIPPINE GUARANTY CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 694

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue demanding payment by petitioner of the amount of ₱465,037.00 as withholding income taxes for the years 1953 and 1954.

Petitioner Philippine Guaranty Co., Inc. is a domestic insurance company. In pursuance of reinsurance treaties, petitioner, in 1953 and 1954, ceded portions of insurance premiums on risks located in the Philippines, which it originally assured, to various non-resident foreign insurance companies, not engaged in trade or business within the Philippines and not having any office or place of business therein. All these reinsurance treaties, except that entered into with Swiss Reinsurance Company which was executed by both parties in Switzerland, were executed in the Philippines by petitioner and abroad by the reinsurer. The amounts of premiums ceded and remitted under said insurance treaties are itemized as follows:

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1953

Insurance ceded		₱842,466.71
Add: Interest on reserve		7,557.53
Reserve released		366,436.95
Total		₱1,216,461.19
Less:		
Commissions	₱283,107.84	
Reserve retained	427,105.94	
Losses paid	698,024.77	
Insurance premium tax	18,124.96	1,426,363.53
Amount remitted		(₱ 209,902.32)

1954

Insurance ceded		₱721,471.85
Add: Interest on reserve		6,093.83
Reserve released		402,318.31
Expense credit		18.12
Total		₱1,129,902.11
Less:		
Commissions	₱260,876.17	
Reserve retained	360,735.94	
Losses paid	308,035.10	
Insurance premium tax	17,746.42	947393.63
Amount remitted		₱ 182,508.48

(See Stipulation of Facts, pp. 67-80 CTA Rec.)

Upon advice of its accountants and auditors, Sycip, Gorres, Velayo & Company, that a domestic insurance company, which cedes part of premiums on risks located in the Philippines to a non-resident foreign insurance company not engaged in trade or business in the Philippines and not having any office or place of business therein, is not subject to withholding tax under sections 53 and 54 of the Revenue Code on the reinsurance premiums ceded to such foreign insurance company (see Exh. F-2, CTA rec. p. 89), petitioner did not collect and remit to the Commissioner of Internal Revenue the withholding tax on the aggregate sum of premiums ceded by it during the years 1953 and 1954. For the same reason, it did not file the corresponding withholding tax returns. The said advice was given in accordance with the resolution, dated August 18, 1953, of the Board of Tax Appeals in the matter of withholding tax of Franklin Bakers Co., Tax Appeal No. 117, and the rulings, dated October 13, 1953 and December 8, 1953, of the Commissioner of Internal Revenue to the effect that the reinsurance premiums in question are not subject to withholding tax and that the ceding domestic insurance company is not required by law to file a return therefor (See Exhs. B, C, D & E, CTA rec. pp. 91-94).

In a letter dated April 13, 1959, respondent assessed against petitioner the sums of ₱230,673.00 and ₱234,364.00 as withholding income taxes for the years 1953 and 1954, respectively, computed as follows:

1953

Gross premium per investigation..	₱768,580.00
Withholding Tax due thereon at	
24%	184,459.00
25%	46,114.00
Compromise for non-filing of withholding income tax return	100.00
TOTAL AMOUNT DUE & COLLECTIBLE ...	₱230,673.00

1954

Gross premium per investigation..	₱780,880.68
Withholding tax due thereon at	
24%	187,411.00
25% Surcharge	46,853.00
Compromise for non-filing of withholding income tax return	100.00
TOTAL AMOUNT DUE & COLLECTIBLE..	₱234,364.00

(See BIR rec. pp. 78-79)

Petitioner requested for the reconsideration of the assessment (BIR rec. pp. 99-105), which request was denied by respondent (Exh. 5, BIR rec. pp. 106-107). Respondent, however, ordered the reinvestigation of the case for purposes of ascertaining the correct amount of reinsurance premiums ceded to the non-resident foreign insurance companies.

The main issue to be resolved in this case is whether or not the reinsurance premiums on risks located in the Philippines ceded by petitioner in the years 1953 and 1954 to non-resident foreign insurance companies not engaged in trade or business in the Philippines and not having any office or place of business therein, pursuant to reinsurance agreements, which were signed for and behalf of petitioner in the Philippines and by the foreign insurance companies abroad, are subject to withholding tax under Sections 53 and 54 of the National Internal Revenue Code.

Petitioner contends that it had been legally discharged from the duties of withholding and paying the income tax due the Government on the reinsurance premiums in question and filing the returns therefor by reason of the rulings issued by the Commissioner of Internal Revenue on October 13, 1953 and December 8, 1953, in answer to queries of petitioner's accountants and auditors, that "a domestic insurance company which reinsures or cedes part of the risks located in the Philippines to a non-resident foreign insurance company not authorized to do business in the Philippines is not subject to the withholding tax under Sections 53 and 54 of the Tax Code on the re-insurance premiums forwarded to such foreign companies," and that "x x x the non-resident foreign insurance company is not required to file income tax returns on the reinsurance premiums x x x."

A determination by a previous Commissioner of Internal Revenue that an income paid to an individual is not subject to withholding will not discharge a taxpayer of liability therefor if the ruling turns out to be erroneous. For the Government is never estopped from collecting the correct taxes if it is subsequently found out that an error was previously committed in the enforcement of the law (Pineda v. CFI of Tayabas, 52 Phil. 803; Gov't. of P. I. vs. Galarosa, 36 Phil. 338; Canlubang Sugar Estate v. Standard Alcohol Co. (Phil.) Inc., G. R. No. L-10887, April 16, 1958; Cu Unjieng Sons, Inc. v. The Board of Tax Appeals, et al., G. R. No. L-6296, Sept. 29, 1956; Emilio Y. Hilado v. The Collector of Internal Revenue, et al., G. R. No. L-9408, October 31, 1956). Moreover, a mere ruling or circular that is issued on a wrong construction of the law cannot give rise to a vested right (Hilado v. The Collector of Internal Revenue, supra.). The most that said ruling can do is to save the taxpayer from the statutory penalties imposed for failure to comply with the law, as in this case where petitioner, in good faith, relied on the advice of its accountants and auditors and on the rulings issued by the Commissioner of Internal Revenue. Petitioner, therefore, should not be held liable for the payment of surcharge for failure to file the necessary withholding tax return (See Collector of Internal Revenue vs. Batangas Transportation Co., G. R. No. L-9692, January 6, 1958, 54 OG 6724).

Petitioner further maintains that the insurance premiums ceded by it in 1953 and 1954 to non-resident foreign insurance companies not engaged in business in the Philippines were not income from sources within the Philippines and are, therefore, not subject to withholding tax. This view is without merit. The evidence shows that the reinsurance premiums in question were part of the premiums earned by petitioner on risks located in the Philippines. In a similar case, we observed:

> "x x x the reinsurance premiums were taken from the premiums earned by the Commonwealth Insurance Co. from its insurance business conducted in the Philippines, and then ceded to the plaintiffs herein. Hence, the reinsurance premiums were derived from the Philippines." (Alexander Howden & Co., Ltd., et al. v. The Collector of Internal Revenue, Manila CC No. 22848, Nov. 24, 1961)

It is also argued by petitioner that insurance premiums do not fall under any of the classes or items of income enumerated in subsection (b) of Section 53 of the Tax Code as subject to withholding tax. Again, petitioner is in error. Section 53(b) of the Tax Code enumerates "interest, dividends, rents, salaries, wages, premiums, annuities, compensations, renumerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income" as subject to withholding. The word "premiums" is mentioned in the said statutory provision without any qualification. We have equally held that the term "premium" used in Section 53(b) of the Revenue Code includes reinsurance premiums, and therefore, the reinsurance premiums ceded to the various non-resident foreign insurance companies are subject to withholding tax (Alexander Howden & Co., Ltd., et al vs. Collector, supra.).

Similarly, it is suggested that reinsurance premiums, by their very nature, are not fixed and determinable. We do not agree with petitioner. Income is fixed when it is to be paid in amounts definitely predetermined. It is also determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained (Sec. 199, Rev. Reg. No. 2). In the case at bar, the reinsurance contracts are clear and specific as to how much shall be ceded by way of reinsurance. In other words, the reinsurance premiums due the reinsurers were determinable on the basis of the reinsurance agreements.

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It is finally contended by petitioner that the assessment in question is erroneous, illegal and not enforceable against it because during the years 1953 and 1954 it did not pay any amount of insurance premiums which were ceded to foreign insurance corporations. On the concession in *arguendo* that it is liable for withholding tax, petitioner suggests that the amount subject to withholding is not the total premiums ceded but the difference between the total premiums ceded and various deductions such as commissions, retention for reserves, losses paid, tax on insurance premiums, etc. In this connection, it must be noted that Sections 53(b) and 54 of the Tax Code do not provide for deduction from gross income or gross premium before the rate of withholding tax is applied. Be that as it may, we are inclined to hold that the withholding tax should be based on the amount of premiums ceded, without any deduction.

The question of whether or not reinsurance premiums similar to those involved in this case are subject to withholding tax has been a subject of our consideration in two previous cases (Alexander Howden & Co., Ltd., et al. vs. The Collector of Internal Revenue, *supra*; and British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 683, January 30, 1962). The facts in those two cases are similar to those in

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the case at bar. After thoroughly assessing the evidence presented and the argument advanced by both parties, we find no compelling reason to depart from our stand in the previous two cases. We, therefore, hold that petitioner is liable for withholding tax for the years 1953 and 1954 on the insurance premiums it ceded to non-resident foreign insurance companies not engaged in business in the Philippines by way of reinsurance agreements. For the years 1953 and 1954 it ceded the sums of ₱842,466.71 and ₱721,471.85, respectively. The withholding tax thereon (at 24%) amounts to ₱202,192.00 and ₱173,153.00, respectively.

Having acted in good faith, as discussed above, petitioner is relieved from the payment of the 25% surcharge for failure to file withholding tax returns. Similarly, in the absence of an agreement between the parties, petitioner cannot be compelled to pay compromise penalties (Collector of Internal Revenue vs. U.S.T., G.R. Nos. L-11274 & L-11280, November 28, 1958).

IN VIEW OF THE FOREGOING CONSIDERATIONS, petitioner Philippine Guaranty Co., Inc. is hereby ordered to pay to the Commissioner of Internal Revenue the respective sums of ₱202,192.00 and ₱173,153.00 or the total sum of ₱375,345.00 as withholding income taxes for the years 1953 and 1954, plus the statutory delinquency penalties thereon. With costs against petitioner.

SO ORDERED.

Manila, July 6, 1963.

AUGUSTO M. LUCIANO
Associate Judge

I concur solely on the ground that the majority of this Court, as presently constituted, has expressed the view that insurance premiums received by a foreign insurance company not engaged in business in the Philippines on account of reinsurance contracts made abroad covering property situated in the Philippines are subject to the withholding tax (see Alexander Howden v. Com. of Int. Rev., cited in the foregoing opinion), and in view of the fact that said case is now pending appeal in the Supreme Court.

ROMAN M. UMALI
Associate Judge