REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MADRIGAL SHIPPING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3389

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

5/31/89

D E C I S I O N

This appeal involves liabilities for deficiency withholding tax at source due on interest on foreign loans, insurance premiums paid to foreign insurance corporation, contractor's tax for the lease of personal properties and tax on gross receipts from insurance premiums.

The facts before Us are briefly recounted as follows:

Petitioner, Madrigal Shipping Co., Inc., a domestic corporation is engaged in international and coastwise shipping and operates launches and lighters.

In the years under investigation petitioner operated two of its vessels, namely, "Slidre" and

TSS "V. Madrigal", on international trade aside from the coastwise vessels and launches and lighters. Both vessels on overseas traffic are on time charter to foreign entities. Remittances on the hire of the TSS "V. Madrigal" were made directly to petitioner's San Francisco, Califronia, Office.

As thus disclosed, petitioner acquired a tanker from Mobil Tanker Ltd., Bermuda, at a cost of $3,500,000.00 which was partially paid and the balance of $750,000.00 on installment payment for a period of six (6) years. In 1975 petitioner secured another foreign loan for $755,193.80 from Wells Fargo Bank, San Francisco, for use in the drydocking of the tanker. Per data gathered from the Central Bank of the Philippines and the petitioner's 1974 books and records, remittances of interests to Mobil Tankers Ltd. were as follows:

Date of Payment	Amount of Interest
April 23, 1973	$81,250.00
October 29, 1973	89,375.00
April 29, 1974	97,500.00

Petitioner's interest payments to Wells Fargo Bank, San Francisco, were subject to withholding tax at source, nevertheless, it failed to withhold the income tax due on the abovestated interest remittances to Mobil Tankers Ltd., Bermuda, in violation of Sections 53 and 54 of the Tax Code, as amended.

Likewise, it was determined that petitioner insured its ocean-going vessels with the Steamship Mutual Underwriting Association Ltd. of London with Gilman and Company HK, as foreign insurance agency for "Protection and Indemnity" (P&I) risks and for "Tankers Owners Agreement Concerning Liability For Oil Pollution" (TAVALOP), and with the Pioneer Insurance Corporation HK branch for "Hull and Machinery" risks. Confirmation with the Pioneer Insurance Corporation, Manila, disclosed that the premiums paid directly to its Hongkong branch were paid the corresponding Philippines internal revenue taxes. With respect, however, to the foreign insurance company which has no known Philippine branch or agent, and the Hongkong agency which also has no local sub-agent, petitioner paid the premiums to the said insurer without withholding and remitting the tax required under Section 53 and 54 in relation to Section 24(b)(1), all of the Tax Code, as amended. For the years 1974 and 1975 petitioner paid insurance premiums amounting to $19,488.14 and $23,153.20, respectively.

Analysis of the "Miscellaneous Income" account of petitioner further disclosed that it leased out its forklift adn crane, and which activity is well within the scope of contracting subject to percentage tax under Section 191 of the Tax Code as well as the required privilege tax receipt (pp. 300-303, BIR recs.).

On April 12, 1980, petitioner was assessed the amount of P1,233,929.59 representing deficiency withholding tax-at-source due on interests paid on foreign loans from the 1st quarter of 1971 to the 2nd quarter of 1974, inclusive, and on insurance premiums paid to foreign insurance corporation for 1974 to 1975 in accordance with Sections 53 and 54 of the Tax Code. (pp. 345-348, BIR recs.). Likewise, petitioner was assessed the amount of P26,247.90 as deficiency privilege tax receipt as contractor, percentage tax on the gross receipt as a contractor and premium tax due on the gross receipts from insurance premiums. (pp. 323-325, BIR recs.).

Petitioner protested the twin assessments on April 22, 1980 (pp. 352-354, BIR recs.), and the said protest was denied by the respondent Commissioner on August 31, 1981 (Annex "C", Petition).

Hence, this instant petition raising the following issues:

1. Whether or not the assesement of P1,233,929.59 as deficiency withholding tax due on interest and insurance premiums, paid to foreign corporation is valid and legal;

2. Whether or not the assessment of P26,247.90 as deficiency privilege and percentage taxes as contractor, and premium tax, is valid and legal;

3. Whether or not the twin assessments are covered by tax amnesties under Presidential Decrees Nos. 23, 157, 370 and 631; and

4. Whether or not the assessments have prescribed.

By and large petitioner posits the propositions this wise:

Actually no foreign loan was obtained by the petitioner from a foreign company. The so-called interest was included in the pre-determined purchased price of the oil tanker (vessel) that was purchased by the petitioner from Mobil Tanker, Ltd.

of New York City (U.S.A.). The transaction that transpired is clearly one of sales and not acquisition of foreign loans as contemplated by the respondent upon which the so-called interests were based.

Assuming that the said sale of an oil tanker from Mobil Tankers Ltd. to the petitioner has a character of that of foreign loan upon which an interest is automatically attached when being paid, still, the petitioner is not duty bound under the law to withhold the corresponding tax on any interests to a loan paid to a foreign company based on the following reasons. First, the subject sale of the vessel was transacted in San Francisco, U.S.A., a foreign country wherein the said vessel was then located (T.S.N., Nov. 22, 1985, pp. 8-9). Second, the seller Mobil Tankers, Ltd. has its office in New York City, a non-resident foreign corporation not engaged in trade or business in the Philippines. Third, the purchase price of the said vessel was paid by the petitioner's foreign agent to the vendor Mobil Tanker, Ltd. of New York City at the place outside of the Philippines. Fourth, there was no dollar remittances coursed through the local banking system like that of foreign loans, and if any interests were paid to the said foreign company (Mobil), the same were earned in the foreign country outside of the Philippines tax system.

Likewise, the books of accounts of the petitioner had been fully verified and investigated by the agents of the BIR sometime in 1975 for withholding tax at source purposes (Exh. "E"). And on August 25, 1975 the then Commissioner of Internal Revenue had issued a clearance letter (Exh. "E-1") with the information that no discrepancy has been found for 1974 and prior years and the case is considered closed and terminated. (Underscoring petitioner's). It further avers that if at all, only taxes after the year 1974 may be subject to further assessment or investigation.

Granting *arguendo* that it is indeed liable for withholding tax at source on the interests paid on the alleged foreign loans, the same should not be charged by 35% withholding tax at source as erroneously assessed by the respondent, but only 15% for the law is clear and explicit on the matter, thus:

> "**Sec. 53** (National Internal Revenue Code ... (2) *Non-resident foreign corporations*.- In case of foreign corporations subject to tax under this Title, not engaged in trade or business within the Philippines, there shall be deducted and withheld at source in the same manner and upon the same items as provided in subsection (b)(1) of this section, as well as on renumeration for technical services or otherwise, a tax equal to thirty-five *per centum* (35%) thereof: *Provided*, That interest on foreign loans shall be subject to withholding tax of fifteen *per centum* (15%)." (Underscoring supplied)

With respect to the payment of insurance premium to foreign insurance company from the 1st quarter of 1974 to the 4th quarter of 1975 inclusive, the said payment has been made and transacted in a foreign country for risk not found in the Philippines, by a foreign agent (Gilman & Co., Hongkong) of the petitioner to the foreign insurance company not engaged in trade or business in the Philippires. Besides the said subject vessel insured was not then located and operating in the Philippine water, thus, Section 258 of the National Internal Revenue Code is not applicable.

In taking an unvarying assertion, however, to the legality of the assessment of P1,233,929.59 as deficiency withholding tax on interest on foreign loans and insurance premium payments to foreign corporations the respondent Commissioner of Internal Revenue maintains that said payments are income subject to tax under Section 24(b)(1) of the Tax Code, which pertinent parts states -

> "**Sec. 24.** *Rates of tax on corporations.* - (a) x x x
>
> (b) *Tax on foreign corporations.* (1) *Non-resident corporations.*- A foreign corporation not engaged in trade or business in the Philippines including a foreign life insurance company not engaged in the life insurance business in the Philippines shall pay a tax equal to thirty-five (35%) per cent of the gross income received during each taxable year from all sources within the Philippines as interest premiums x x x. *Provided, however,* That premiums shall not include re-insurance premiums."

And, Sections 53 and 54 (now Secs. 51 and 52) of the Tax Code provide that the tax due on the interest an premium payments made to a non-resident foreign corporation not engaged in trade and business in the Philippines has to be withheld by the payor Madrigal Shipping Co. and remitted to the Commissioner of Internal Revenue, thus -

> "**Sec. 53.** *Withholding tax at source.*- (a) x x x
>
> (e) *Non-resident aliens and foreign corporations corporations.*- (1) x x x

> (2) *Non-resident foreign corporations.*- In the case of foreign corporations subject to tax under this Title not engaged in trade or business within the Philippines, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in sub-section (b) (1) of this section, x x x a tax equal to thirty-five *per centum* (35%) thereof. This tax shall be returned and paid in the same manner and subject to the same conditions as provided in Section 54. x x x. This deduction and withholding shall not be required in the case of reinsurance premiums ceded to foreign insurance corporations not engaged in trade or business in the Philippines."

In the instant case in spite of the clear mandate of the afore-quoted laws, Madrigal Shipping Company failed to subject the income payments under the coverage of the withholding tax-at-source (Secs. 53 and 54).

In the case at bar We find nothing ambiguous nor obscure in the language of Section 24(b)(1) taken in relation to Section 53(b)(2), above-quoted, insofar as the same are brought to bear upon the circumstances obtaining. Thus shown the bases for the respondent's assessment are not short of specific support in terms of tractable data openly laid and fully disclosed, as such deserve the credence normally accorded in the absence of contrary evidence. Except for the reduced rate of 15% tax on interest on foreign loans (PD 131 effective January 1, 1973) as correctly interposed by the petitioner We do not think any different conclusion ought to be reached.

Petitioner next argues that it is not liable for the contractor's tax on the lease of forklift and crane being chiefly engaged in the shipping business and not in the leasing of equipment. Moreover, the equipment were simply lent to companies which shoulder the actual operating costs. As to the premium tax prescribed in Section 258 of the Tax Code the same is not applicable for the reason that the insured vessel is not located in the Philippines and the insurer thereof is a foreign corporation not engaged in trade or business in the Philippines. Thus negating altogether any liability for deficiency privilege and percentage taxes as contractor and premium tax, aggregating P26,247.90.

A "consummation devoutedly to be wished" perhaps but that's not what the law contemplates. Petitioner stumbles on its own premise. By the facts obtaining, petitioner did lease the equipment for consideration and insured its vessel directly with foreign insurer. Such activities come within the statutory intendment and scope of Sections 191 (now Sec. 170) and 258 (now Sec. 226) of the Tax code, respectively, thus -

> **Sec. 191.** *Contractors, proprietors or operators of dockyards, and others.*- A contractor's tax of three percent of the gross receipts is hereby imposed on the following:
>
> xxx xxx xxx
>
> (17) Lessors of personal property.

And,

> **Sec. 258.** *Tax due from agents of foreign insurance companies.* x x x. In all cases where owners of property obtain insurance directly with foreign insurance companies, it shall be the duty of said owners to report to the Insurance Commission and to the Commissioner of Internal Revenue each case where insurance has been so effected, and shall pay the tax of five per centum on premiums paid, in the manner required by Section 255 of insurance companies, and shall be subject to the same penalty for failure to do so.

Petitioner's attempt to carve exceptions out of the aforesaid provisions' pervasive coverage must be rejected.

Finally, petitioner concludes, "assuming for the sake of arguments, but without admitting, that herein petitioner is liable to all of the aforesaid so-called tax assessments made by the respondent, still, it is respectfully submitted, the Bureau of Internal Revenue (BIR) could no longer legally enforce the said tax assessments against the petitioner for the simple reason that it is not only barred by the Statute of Limitations (lapsed thru prescription), but the petitioner had already availed of several tax amnesties then issued by the deposed President F. Marcos (T.S.N., pp. 15-18, November 22, 1985)."

The assessment of P26,247.90 representing deficiency business tax covers the period from 1974 to 1975, hence, beyond the coverage of Presidential Decrees Nos. 23, 157, 370 and 631, which apply to untaxed income and/or wealth earned, received or acquired in 1973 and prior years. Moreover, the availment of tax amnesty provisions specifically exclude "Tax liabilities, with or without assessments, on withholding tax at source provided in Sections 53 and 54 of the National Internal Revenue Code, as amended." (P.D.'s 370 and 631 as implemented by Revenue Regulations No. 1-75 dated January 9, 1975).

An insight and a sense of the basic aspect of the exception is thus stressed, "The exclusion of this withholding tax at source liability from the coverage of the amnesty decrees is logical. The tax is due not against the payor, Madrigal Shipping Co., but against the payee and/or the recipient of the income, i.e., the non-resident foreign corporation not engaged in trade or business in the Philippines. Indeed, the income and/or premium paid and remitted to the foreign corporation is not the untaxed income and/or wealth of Madrigal Shipping Co. which is contemplated under the coverage of the Amnesty Decrees."

The tax amnesty simply does not hold one way or another on the problem before this Court and therefore petitioner's reliance thereon is misplaced.

As to the alleged prescription to legally enforce the assessment let it suffice that petitioner failed to withhold and file the return required under Sections 53 and 54 of the Tax Code as amended, *supra*, hence, Section 332, *ibid.* applies, to wit:

> **Sec. 332.** *Exception as to the period of limitations of asessment and collection of taxes.*- (a) In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time within ten years after discovery of the falsity, fraud or omission. x x x" (Undersocring supplied)

Pursuant to the cited provisions the Government's right to assess prescribes in ten years from the date of discovery of the omission to file a return, i.e., July 28, 1977 per report of the BIR examiners (pp. 300-303, BIR recs.). And, the assessments dated April 12, 1980 are well within the ten year reglementary period. It needs neither argument nor citation of authorities to establish the validity of the respondent's assessments.

FOR ALL THE FOREGOING, We hold petitioner liable for deficiency withholding tax at source for 1971 to 1975; deficiency fixed, percentage and premium taxes for 1974 and 1975 in accordance with the respondent's assessments, qualified however as to the applicable rate of 15% on interest on

foreign loans as earlier noted, which are hereby affirmed and the petition dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals