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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DEVELOPMENT COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 1573

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

4/30/80

D E C I S I O N

For failure to comply with the provisions of Section 54 of the National Internal Revenue Code, in relation to Section 53 thereof, respondent Commissioner of Internal Revenue assessed petitioner National Development Company for the years 1960, 1961 and 1962 withholding income tax, including surcharge, deficiency interest and compromise penalty, on the interest payments remitted by the latter to Japanese shipbuilders in Japan on the unpaid balance of the purchase price of twelve ocean-going vessels acquired from them, computed as follows:

1960

Interests remitted abroad	₱2,611,839.81
Tax due thereon	₱ 783,551.00
Add: 25% surcharge	195,887.75
1/2% monthly interest from April 18, 1961 to April 18, 1964	141,039.18
Compromise for non-filing of return	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	₱1,120,777.93

1961

Interests remitted abroad	₱4,964,809.56
Tax due thereon	₱1,489,442.00

Add: 25% surcharge	----------------	₱ 372,360.50
1/2% monthly interest from April 17, 1962 to May 18, 1964	-	186,420.48
Compromise for non-filing of return	-	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	- - - - -	₱2,048,522.98

1962

Interest remitted abroad	----------------	₱4,931,299.20
Tax due thereon	----------------	1,479,388.00
Add: 25% surcharge	----------------	369,847.00
1/2% monthly interest from April 17, 1963 to May 18, 1964	-	96,398.83
Compromise for non-filing of return	-	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	- - - - -	₱1,945,933.83

The following are the pertinent facts stipulated and submitted by the parties:

1. That petitioner is a government-owned and controlled corporation, duly organized and existing under and by virtue of the laws of the Philippines, authorized under Republic Act No. 1407 to acquire ocean-going vessels for the purpose of resale, lease or charter to persons, associations or corporations organized under the laws of the Philippines, at least 60% of the capital of which is owned by citizens of the Philippines, with its principal office at Pureza St., Manila;

2. That respondent is a public officer, entrusted with the proper collection of internal revenue taxes;

3. That pursuant to the provisions of Republic Act No. 1407, the petitioner on May 30 and 31, 1959 entered into contracts with the following Japanese shipbuilders to wit:

(a) Kure Shipbuilding and Engineering Co., Ltd.
(b) Uraga Dock Co., Ltd.
(c) Hitachi Shipbuilding and Engineering Co.
(d) Mitsubishi Heavy Industries Reorganized, Ltd.
(e) Mitsubishi Nippon Heavy Industries, Ltd., and

(f) Mitsubishi Shipbuilding and Engineering Co., Ltd. for the construction by said Japanese shipbuilders of twelve (12) ocean-going vessels for the sum of $43,200,000.00;

4. That the twelve (12) contracts were signed by the representatives of the petitioner and the Japanese shipbuilders in Tokyo, Japan, each contract covering each of the twelve (12) vessels;

5. That the stipulations, terms and conditions of the said contracts are all the same, except that the subject matter of each contract is identified by the hull number of the vessels, and the place of delivery thereof are in the respective shipyards of the shipbuilders; that a representative copy of the said contracts is hereto attached as Exhibit "A" for the petitioner and made an integral part hereof;

6. That the Hull numbers of the twelve (12) vessels and the dates of execution of their corresponding covering contracts are as follows:

Hull No.	Date of Execution of Contracts
835	May 30, 1959
906	-ditto-
1523	-ditoo-
44	May 31, 1959
764	-ditto-
765	-ditto-
766	-ditto-
767	-ditto-
768	-ditto-
769	-ditto-
3889	-ditto-
3890	-ditto-

7. That the said twelve (12) ocean-going vessels were all constructed in Japan by the Japanese shipbuilders and were delivered to the petitioner at the Builder's yards, all located in Japan;

8. That the money used by the petitioner for the acquisition of said vessels came from

funds realized from the sale of bonds issued by the Central Bank of the Republic of the Philippines, appropriated for that purpose by Section 3 of Republic Act No. 1407;

9. That on various dates, the National Treasurer of the Philippines remitted to the petitioner, out of the National Treasury and coming from the proceeds of the sale of said bonds, the necessary money corresponding to the installments due on the contract price of the vessels. Said remittances made by the National Treasurer to the petitioner are evidenced by the attached copies of the Official Receipts therefor, which are marked Exhibits "B", "B-1" to "B-37";

10. That the first installment of 7.5% of the contract price payable within three (3) weeks after the signing of the contracts, were paid in cash at Tokyo, while the second installment, payable to the builders upon the delivery of the vessels, were made by the issuance of irrevocable letters of credit established in favor of the builders and payable at Tokyo, Japan;

11. That the balance of the contract price then remaining after the payment of the two aforesaid installments were secured by 14 promissory notes for each vessel, each note succesively maturing every six (6) months with the last note maturing in seven (7) years;

12. That during the negotiations prior to the execution of the said contracts, the Japanese shipbuilders required of the petitioner that an opinion of the Secretary of Justice be secured on the authority of the Secretary of Finance to guarantee the payment by the Philippine Government of the negotiable promissory notes to be issued by the petitioner in connection with its acquisition of the twelve (12) ocean-going vessels; that on April 10, 1959, then Secretary of Justice Jesus G. Barrera rendered the required opinion, copy of which is hereto attached as Exhibit "C" and made integral part hereof;

13. That in 1960, the petitioner remitted to the Japanese shipbuilders the sum of $870,613.27 as interest on the unpaid balance of the purchase price of the aforesaid vessels, p. 3, BIR rec. Vol. II;

14. That in 1961, petitioner remitted to the Japanese shipbuilders the sum of $1,654,936.52 as interest of the unpaid balance of the purchase price of the aforesaid vessels, p. 2, BIR rec. Vol. II;

15. That in 1962, the petitioner remitted to the Japanese shipbuilders the sum of $1,541,031.00 as interest on the unpaid balance of the purchase price of the said vessels, p. 2, BIR rec. Vol. II;

16. That on June 17, 1964, petitioner received a letter from the respondent, dated May 18, 1964, assessing the petitioner the sum of ₱5,115,234.74 as withholding income tax, surcharge, compromise and interests allegedly due on the said interests remittances made by petitioner to the Japanese shipbuilders for the years 1960, 1961 and 1962;

17. That in the 5th Indorsement dated June 3, 1965 of Mr. J.M. Panganiban, the then General Manager of the National Development Company, addressed to the respondent, petitioner requested reconsideration of the aforesaid withholding tax assessment (pp. 248-249, BIR, rec. Vol. II);

18. That respondent issued, and petitioner was served on January 18, 1965, a warrant of distraint and levy to distraint the goods, chattels or effects and other personal properties, of whatever character and to levy upon the real property of the petitioner, in order to enforce the collection of the aforementioned withholding taxes (p. 254, BIR rec. Vol. II) claimed by respondent as due from the petitioner.

The parties are not in dispute on the computations of the amounts of the withholding income tax, surcharge and interest assessed by respondent against petitioner for the years 1960, 1961 and 1962 should the latter be found liable thereto.

Is petitioner National Development Company liable for the withholding income tax, including surcharge, interest and compromise penalty, assessed by respondent on the interest remittances made by petitioner to the Japanese shipbuilders in Japan for the years 1960, 1961 and 1962?

In contending that the interest income involved herein has its situs outside the Philippines and is therefore not subject to Philippine income tax, petitioner argues that:

> The interests income of the Japanese shipbuilders upon which the respondent assessed withholding income tax was realized from the act or activity of the Japanese shipbuilders of constructing and selling the twelve ocean-going vessels to the petitioner. The source of the said income is that activity of the Japanese shipbuilders which was performed outside the territorial limits of the Philippines. As pointed out herein before, the Japanese shipbuilders signed the contracts with the petitioner in Tokyo, Japan; they constructed the vessels in Japan; and they delivered the vessels to the petitioner in their respective shipyards in Japan. The Japanese shipbuilders therefore did not perform any act in the Philippines. Hence, the source of the interests income in question is outside the Philippines since the activity or the labor and the sale from which the income flowed had its situs in Japan. (pp. 136-137, CTA Records.)

Petitioner misses the point. Foreign corporations not doing business in the Philippines, like the Japanese shipbuilders involved herein, are taxable on income from all sources within the Philippines, as <u>interest</u>, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits and income, and capital gains. The tax then was

30% of such gross income. (Section 24(b)(1), National Internal Revenue Code.) And interest is income from sources within the Philippines if it is derived or earned from sources within the Philippines, or interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise. (Section 37(a)(1), National Internal Revenue Code; Section 153, Revenue Regulations No. 2.)

It is quite apparent, under the terms of the law, that the Government's right to levy and collect income tax on interest received by foreign corporations not engaged in trade or business within the Philippines is not planted upon the condition that "the activity or labor and the sale from which the (interest) income flowed had its situs" in the Philippines. The law specifies: "Interest derived from sources within the Philippines, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." Nothing there speaks of the "act or activity" of non-resident corporations in the Philippines, or place where the contract is signed. The residence of the obligor who pays the interest, rather than the physical location of the securities, bonds or notes or the place of payment, is the determining factor of the source of interest income. (Mertens, Law of Federal Income Taxation, Vol. 8, p. 128, citing A.C. Monk & Co. Inc., 10 T.C. 77; Sumitomo Bank, Ltd., 19 BTA 480; Estate of L. E. Mckinnon, 6 BTA 412; Standard Marine Ins. Co., Ltd., 4 BTA 853; Marine Ins. Co. Ltd., 4 BTA 867.) Accordingly, if the obligor is a resident of the Philippines, the interest payment paid by him can have no other source than within the Philippines. The interest is paid not by the bond, note or other interest-bearing obligations, but by the obligor. (See Mertens, Id., Vol. 8, p. 124.)

Here in the case at bar, petitioner National Development Company, a corporation duly organized and existing under the laws of the Republic of the Philippines, with address and principal office at Calle Pureza, Sta. Mesa, Manila, Philippines, unconditionally promised to pay the Japanese shipbuilders, as obligor in fourteen (14) promissory notes for each vessel, the balance of the contract price of the twelve (12) ocean-going vessels purchased and acquired by it from the Japanese corporations, including the interest on the principal sum at the rate of five per cent (5%) per annum. (See Exhs. "D", "D-1" to "D-13", pp. 100-113, CTA Records; par. 11, Partial Stipulation of Facts.) And pursuant to the terms and conditions of these promissory notes, which were duly signed by its Vice Chairman and General Manager, petitioner remitted to the Japanese shipbuilders in Japan during the years 1960, 1961 and 1962 the sum of $830,613.17, $1,654,936.52 and $1,541,031.00, respectively, as interest on the unpaid balance of the purchase price of the aforesaid vessels. (pars. 13, 14 & 15, Partial Stipulation of Facts.)

The law is clear. Our plain duty is to apply it as written. The residence of the obligor which paid the interest under consideration, petitioner herein, is Calle Pureza, Sta. Mesa, Manila, Philippines; and as a corporation duly organized and existing under the laws of the Philippines, it is a domestic corporation, resident of the Philippines. (Sec. 84(c), National Internal Revenue Code.) The interest paid by petitioner, which is admittedly a resident of the Philippines, is on the promissory notes issued by it. Clearly, therefore, the interest remitted to the Japanese shipbuilders in Japan in 1960, 1961 and 1962 on the unpaid balance of the purchase price of the vessels acquired by petitioner is interest derived from sources within the Philippines subject to income tax under the then Section 24(b)(1) of the National Internal Revenue Code.

Nonetheless, petitioner would present a thesis that since the promissory notes were executed by it as administrator of the funds appropriated by the Government under Republic Act No. 1407, by authority of which petitioner can acquire ocean-going vessels for resale, lease or charter to persons or corporations, such notes are government securities. As a matter of fact, it is pointed out, the Government even guaranteed the payment of both the principal and interest thereof. Consequently, petitioner argues that the interest remitted by it to the Japanese shipbuilders on the unpaid balance of the purchase price of the vessels covered by the promissory notes is exempt from income tax pursuant to Section 29(b)(4) of the National Internal Revenue Code, which reads as follows:

> SEC. 29. Gross income.- x x x
>
> x x x x x x x
>
> (b) Exclusions from gross income.- The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> x x x x x x x
>
> (4) Interest on Government Securities.- Interest upon the obligations of the Government of the Republic of the Philippines or any political subdivision thereof, but in the case of such obligations issued after the approval of this Code, only to the extent provided in the act authorizing the issue thereof. (As amended by Section 6, Republic Act No. 82)
>
> x x x x x x x

It has been held that the borrowing power of the state or its public agencies is so essential to the state that the interest paid upon bonds issued by them should be immune from taxation. The bond issuing function "was one thought to be essential to the maintenance of the government" and that to tax income received by a private investor on state bonds would "threaten impairment of the borrowing power of the state." (See Helvering vs. Gerhardt, 304 U.S. 405, 82 L. Ed. 1427, citing Pollock vs. Farmers Loan & Trust Co., 157 U.S. 429, 39 L. Ed. 759; see also Hale vs. Iowa State Board of Assessment & Review, 302 U.S. 95, 82 L. Ed. 72.) However, worthwhile noting in this case is that the promissory notes in question (See Exhs. "D", "D-1" to "D-13", supra) are not bonds or certificates of indebtedness which are instruments having the character of investment securities issued by the Government of the Republic of the Philipines or any political subdivision thereof, but merely instruments evidencing debts arising in ordinary business transactions between petitioner National Development Company and the Japanese shipbuilders. While the National Development Company may be an agency of the Government, it does not exercise governmental or sovereign powers but merely an entity for the performance of purely corporate, proprietary or business functions as is apparent from its organic act - Commonwealth Act No. 182, as amended by Commonwealth Act No. 311. Pursuant to Section 3 thereof, it "shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent" with the provisions of said Commonwealth Act "and shall have the general powers mentioned in said" Corporation Law, and hence, "may engage in commercial, industrial, mining, agricultural, and other enterprises which may be necessary or contributory to the economic development of the country, or important to public interest," as well as "perform any and all acts which a corporation or natural person is authorized to perform under the laws now existing or which may be enacted hereafter." Pursuant to Republic Act No. 104, petitioner is therefore liable, like all corporations, agencies or instrumentalities owned or controlled by the Government, for such duties, taxes, fees and other charges upon its transactions, business, industry, sale or income as are imposed by laws upon private persons engaged in business.

Nevertheless, assuming arguendo that the promissory notes executed by petitioner are government securities within the purview of the law, Section 29(b)(4) of the National Internal Revenue Code expressly provides that interest on obligations issued by the Government of the Republic of the Philippines after the approval of said Code on June 15, 1939 shall be exempt from tax only to the extent provided in the law authorizing the issue thereof. Petitioner has not even shown under what law were the promissory notes in question issued, and whether such law authorizing it to execute promissory notes provides for exemption from taxation of the interest payable thereon, and the extent of the exemption provided therein.

It bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

The net result is that the promissory notes executed by petitioner as security for the payment of the unpaid balance of the purchase price of the vessels acquired from the Japanese shipbuilders are not government securities within the meaning of Section 24(b)(4) of the National Internal Revenue Code, and the interest payments thereon are not therefore exempt from income tax under the said section of the law.

It appearing that the Japanese shipbuilders referred to in this case are foreign corporations not engaged in trade or business within the Philippines and not having any office or place of business in the Philippines; and having reached the conclusion that:

(a) The interest payments on the purchase price of the twelve ocean-going vessels remitted by petitioner to the aforesaid Japanese shipbuilders in Japan from 1960 to 1962 are income to the said shipbuilders from sources within the Philippines under Section 37 of the National Internal Revenue Code, and therefore, subject to Philippine income tax pursuant to Section 24(b) of the said Code, as amended;

(b) The interest on the purchase price of the twelve ocean-going vessels remitted by petitioner to the Japanese shipbuilders in Japan is not exempt from income tax under Section 29(b)(4) of the National Internal Revenue Code;

The interest payments on the purchase price of the twelve ocean-going vessels remitted by petitioner to the aforesaid Japanese shipbuilders in Japan from 1960 to 1962 are fixed and determinable income, and therefore, the income tax due thereon should be withheld in accordance with Section 54, in relation to Section 53, of the National Internal Revenue Code.

The law requires that every individual, person or corporation, in whatever capacity acting, having the control, custody, disposal or payment of compensation or other fixed or determinable annual or periodical or casual gains, profits and income of foreign corporations subject to income tax not engaged in trade or business within the Philippines, to deduct and withhold from such income the tax due thereon, file the requisite with-holding return and pay the tax withheld to the Bureau of Internal Revenue. (Secs. 53, 54, Tax Code; Sec. 205, Rev. Regs. No. 2). We quote the pertinent portions of law:

> "Sec. 54.- Payment of corporation income tax at source.- In the case of foreign corporations

subject to taxation under this Title not engaged in trade or business within the Philippines and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in section fifty-three a tax equal to thirty per centum thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: x x x."

"Sec. 53(b).- Nonresident aliens.- All persons, corporations and general co-partnerships (companias colectivas), in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, fiduciaries, employers, and all officers and employees of the Government of the Philippines having the control, receipt, custody, disposal or payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income of any nonresident alien individual, not engaged in trade or business within the Philippines and not having any office or place of business therein, shall (except in the cases provided for in subsection (a) of this Section) deduct and withhold from such annual or periodical gains, profits and income a tax equal to twenty (now 30%) per centum thereof: Provided, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the Philippines and (2) more than eighty-five per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the Philippines as determined by the provisions of section thirty-seven: Provided, further, That the Commissioner of Internal Revenue may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent."

As a matter of fact, Section 53(c) of the Tax Code makes the withholding agent personally liable for the income tax withheld under Section 54 of the same Code. Said section provides:

> "Sec. 53(c).- Return and payment.- Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any persons for the amount of any payments made in accordance with the provisions of this section. (As amended by Section 9, Republic Act No. 2343.)

In this connection, the Supreme Court said and we quote:

> The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold, whereas, the Commissioner of Internal Revenue and his deputies are not made liable by law.

x x x x

'In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding the withholding agent may thereupon remit the amount of tax withheld.' (2nd par., Sec. 200, Income Tax Regulations)

"The section above-quoted (Sec. 200, Income Tax Regulations) relaxes the application of the stringent provisions of Section 53 of the Tax Code. Accordingly, it grants exemption from tax liability, and in so doing, it lays down steps to be taken by the withholding agent, namely: (1) that he withholds the tax due; (2) that he promptly addresses a query to the Commissioner of Internal Revenue for determination whether or not the income paid to an individual is subject to withholding; and (3) that the Commissioner of Internal Revenue decides that such income is not subject to withholding. Strict observance of said steps is required of a withholding agent before he could be released from liability. Generally, the law frowns upon exemption from taxation, hence, an exempting provision should be construed strictissimi juris." (RESOLUTION, The Philippine Guaranty Co. vs. The Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. L-22074, September 6, 1965; 15 SCRA 1).

What then is the rationale of the withholding of the corresponding income tax at source of the income required under Sections 53 and 54 of the Revenue Code? This is important because, as made explicit by the Supreme Court in the case of British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, G.R. No. L-20501, April 30, 1965, 13 SCRA 719:

> "The taxability of a foreign corporation's income depends upon the locus of the activity, property or service giving rise thereto. x x x x Stated otherwise, the flow of wealth proceeded from, and occurred within, Philippine territory, enjoying therein the protection accorded by our Government. Such flow of wealth should, in consideration for the protection, share the burden of supporting the Government. x x x Precisely, our legislators adopted the administrative device in Sections 53 and 54 - withholding of the corresponding income tax at source of the income - to insure collection of whatever tax may be due on income earned in the Philippines by those who are not doing business in the Philippines and have no office or agent here. The fact that a foreign corporation does not engage in business here and had no office or agent is the very reason why its income is subject to withholding tax. (Sec. 54, National Internal Revenue Code) (British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, G.R. No. L-20501, April 30, 1965, 13 SCRA 719).

Petitioner being the withholding agent for the above-mentioned Japanese shipbuilders in connection with the interest payments remitted to the latter in Japan by the former on account of its purchase of twelve ocean-going vessels, pursuant to Section 54 in relation to Section 53 of the Revenue Code, the withholding income tax in question in the aggregate amount of ₱5,115,234.74, inclusive of the 25% surcharge and 1/2% monthly interest computed from April 18, 1961 to April 18, 1964 for 1960, 1961 and 1962,except the compromise penalty, was assessed in accordance with law. The compromise penalty for non-filing of return in the sum of ₱300.00 for each year, or a total of ₱900.00, suggested by respondent in his assessment should not be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27856, June 30, 1975, 64 SCRA 555; See also Collector of Internal Revenue vs. University of Santo Tomas, L-11274 & 11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, L-12928 & 12932, March 31, 1962, 4 SCRA 174.)

In line with the foregoing, the decision appealed from is modified and petitioner is liable to pay to respondent the amount of ₱5,114,334.74, computed as follows:

1 9 6 0

Interest remitted abroad	₱2,611,839.81
Tax due thereon	783,551.00
Add: 25% surcharge	195,887.75
½% monthly interest from April 18, 1961 to May 18, 1964. .	141,039.18
TOTAL AMOUNT DUE & COLLECTIBLE	₱1,120,477.93

1 9 6 1

Interest remitted abroad	₱4,964,809.56
Tax due thereon	1,489,442.00
Add: 25% surcharge	372,360.50
½% monthly interest from April 17, 1962 to May 18, 1964. .	186,420.48
TOTAL AMOUNT DUE & COLLECTIBLE	₱2,048,222.98

1 9 6 2

Interest remitted abroad	₱4,931,299.20
Tax due thereon	1,479,388.00
Add: 25% surcharge	369,847.00
½% monthly interest from April 17, 1963 to May 18, 1964. . .	96,398.83
TOTAL AMOUNT DUE & COLLECTIBLE	₱1,945,633.83

Accordingly, petitioner National Development Company is hereby ordered to pay to respondent Commissioner of Internal Revenue the total amount of ₱5,114,334.74 as deficiency withholding income tax for the years 1960, 1961 and 1962,inclusive, plus the surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 30, 1980.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge