

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
MALAYAN INSURANCE COMPANY, INC., RESPONDENT.***G.R. No. L-21913. November 18, 1967*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/353602af8200/>**REYES, J.B.L., J.,**

This is a petition for review of the decision of the Court of Tax Appeals (in CTA Case No. 1018), ordering the refund to Malayan Insurance Company, Inc., of the sum of P958.00 which was allegedly paid erroneously, and the dismissal of the counterclaim of the Commissioner of Internal Revenue for payment of the withholding tax for P15,416.96.

Malayan Insurance Company, Inc. (hereafter referred to as MALAYAN), a domestic corporation which has reinsurance contract with Orion Insurance Company, Ltd. of London (hereafter referred to as ORION) a nonresident foreign corporation, without previous authorization, filed the latter's income tax return for 1958 and paid the tax due thereon, in the sum of P958.00. Finding later that ORION had commissioned another domestic entity, Filipinas Compañía de Seguros (to be referred hereafter as FILIPINAS) to file the income tax return on its behalf, and that the said agent paid the sum of P778.00 as corresponding income tax for the same year (1958), MALAYAN requested the Commissioner of Internal Revenue for the refund of the P958.00 it had paid. When no action was taken thereon, MALAYAN filed a petition in the Court of Tax Appeals for the same purpose.

In his amended answer to the petition, the Commissioner of Internal Revenue alleged, inter alia, that in 1958, petitioner had ceded to ORION reinsurance premiums covering risks located in the Philippines amounting to P64,327.36; that this amount is subject to withholding tax in the sum of P15,416.96; that demand for payment of the withholding tax was made upon petitioner on February 16, 1962; and that even if petitioner is to be credited with the sum of P958.00, there would still be due from the latter the sum of P14,458.96. Respondent, therefore, asked the Court that the petition be dismissed and petitioner be ordered to pay P14,458.96, with the penalties incident to late payment.

The parties submitted the case for decision on the pleadings. On July 16, 1963, the Tax Court decided for therein petitioner and ordered the refund of the sum of P958.00 it had erroneously paid as income tax of ORION for 1958. And for the reason that FILIPINAS is the duly authorized representative of ORION, respondent's counterclaim for P15,416.96 was dismissed without prejudice. The Commissioner of Internal Revenue interposed this appeal.

In the present proceeding, petitioner Commissioner of Internal Revenue reiterates the allegation that in 1958, MALAYAN had ceded to ORION reinsurance premiums^[1] amounting to P 64,327.36, on which amount MALAYAN should have paid withholding tax of P15,416.96. Petitioner does not dispute that FILIPINAS was commissioned by ORION to file its income tax return for 1958, in a communication that reads as follows:

"Dear Sirs,

"Income Tax

Return of Annual Net Income

"With reference to your letter dated 26th December 1958, addressed to Alexr. Howden & Co., Ltd., we would like to accept your offer to act on our behalf and appoint you our Agents for the purposes of filing the Return of Annual Net Income as required by Section 46 of Commonwealth Act 496.

"It is understood and agreed that neither the Appoint-ment nor the filing of the Return is to be taken as an indication of the Company's acceptance of liability to pay Income Tax, and the Company retains the right to appeal for a refund of Tax whether this be Income Tax or withholding Tax"., (p. 26, B.I.R. Record)

and that said agent, accordingly, had paid the sum of P778.00 as tax supposedly on the entire taxable income of ORION for 1958.

In assailing the correctness of the ruling of the Court of Tax Appeals, however, the petitioner Commissioner of Internal Revenue contends that the payment by FILIPINAS of the supposed tax on the incomes derived by ORION from Philippine sources did not relieve MALAYAN of its obligation to withhold and pay the withholding tax on the reinsurance premiums it had ceded to ORION. The contention is meritorious.

Section 53(b) of the National Internal Revenue Code,[2] provides:

"SEC. 53. Withholding of tax at source. --

xxx xxx xxx

"(b) Nonresident aliens. -- All persons, corporations, and general copartnerships (compañías 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 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 sixteen per centum thereof: x x x." (Underscoring supplied.)

It may be noted that the abovequoted provision is not only broad and all-embracing -- covering the receipt, control, custody, etc. by any person, natural or juridical, for a foreign corporation not doing business in the Philippines, of practically all forms of income as long as they are fixed or determinable and are received with regularity;^[3] but also, the Obligation imposed thereunder upon the withholding agent is compulsory. This is evident from paragraph (c) of the same Section 53 of the Tax Code, which makes the withholding agent personally liable for payment of the tax treated there-in. And this has to be so, for it must be realized that the withhold-ing provision of Section 53 (b) is a device without which the Phil-ippine Government may not be able to collect the proper and correct tax on incomes, derived from sources in the Philippines, by aliens who are outside of the taxing jurisdiction of this country. It is for this reason that the withholding provision is not being applied if the income is to be remitted to Filipino citizens, or resident aliens, or to nonresident aliens but conducting business and maintaining office or place of business in the Philippines.^[4] In this connection, this Court has already held^[5] that reinsurance premiums ceded by domestic entities to nonresident foreign corporations are determinable, periodical income of those foreign corporations from sources within the Philippines and, therefore, are subject to withholding tax.^[6]

The Court of Tax Appeals, nevertheless, dismissed the Government's claim for withholding tax against the withholding agent, on the ground that the authorized representative of the taxpayer is FILIPINAS - an indirect

way of saying that the demand, if at all, should be made on the latter.

This is error. The cause of action of the Commissioner against MALAYAN is not for collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code - the compliance with which obligation is imposed on the withholding agent, not upon the taxpayer.[7] Whether or not the taxpayer, ORION, has a duly authorized representative in this country is, consequently, beside the point. There is no showing that any of the reinsurance premiums ceded by MALAYAN to ORION ever passed to the hands of FILIPINAS, the representative of ORION.

There is no evidence here that MALAYAN withheld a certain percentage of the reinsurance premiums transmitted to ORION and that it (MALAYAN) had filed a return thereon, as required by Section 53 (c) of the Tax Code. What is actually material is whether that obligation of the withholding agent is affected by the payment by FILIPINAS of the income tax of ORION for 1958.

We have to rule that the payment by FILIPINAS of the alleged tax on the incomes of ORION did not relieve the withholding agent of its legal duty. Firstly, the filing of the tax return and payment of the amount of P778.00 as income tax cannot be considered in this case as final. Not only is there no proof that the return made by FILIPINAS for ORION included the reinsurance premiums ceded by MALAYAN, but the great difference between the amount paid and that which should have been withheld and transmitted to the Philippine Government, to take care of the taxes that may be due on that income (P15,416.96), is sufficient to put one in expectancy of further proceedings on that return. In fact, an investigation of the tax return filed by FILIPINAS was already conducted, and in April, 1962, the examiners recommended the assessment against the taxpayer of deficiency income tax in the sum of P6,442.00 (p. 67, B.I.R. Record).

In the second place, this is as appropriate an instance as any for the operation of the provision of Section 53 (b). Because, in the event the taxpayer is finally found liable for deficiency tax on its incomes from the Philippines in 1958, the Government would have no way of collecting what is still due from said taxpayer, which is a foreign corporation not engaged in trade or business and without office or place of business in the Philippines. FILIPINAS cannot be considered the authorized agent through which any deficiency tax against ORION may be collectible. As specified from the letter of appointment of FILIPINAS, herein before quoted, the filing of the tax return by the agent, which was therein authorized, would not even bind the principal to pay the tax based thereon. The right to appeal or claim for refund is also withheld from the agent. In the circumstances, the importance of the withholding under Section 53 is clearly underscored.

For the foregoing considerations, the decision appealed from is modified; the ruling of the Court of Tax Appeals is reversed, insofar as it dismissed the counterclaim of the Commissioner of Internal Revenue. In the collection of the withholding tax (and penalties incident to late payment) upon the reinsurance premiums ceded by respondent MALAYAN to ORION in 1958, said respondent should be credited with the sum of P958.00 it had erroneously paid as income tax of that foreign corporation. No costs.

SO ORDERED.

Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] With the approval of Republic Act 3825 on June 22, 1963, reinsurance premiums were excluded from the term "premiums" used in Section 53 (b) of the Tax Code.

[2] As amended by Republic Act 590.

[3] Under Republic Act 3841, approved on June 22, 1963, even casual gains, profits and income of nonresident aliens are subject to income tax.

[4] Section 200, B.I.R. Revised Regulations No. 2.

[5] *Alexander Howden & Co., Ltd. vs. Collector of Internal Revenue*, L-19392, April 14, 1965.

[6] *British Traders Insurance Co., Ltd. vs. Commissioner of Internal Revenue*, L-20501, April 30, 1965; *Alexander Howden & Co. vs. Collector*, *supra*.

[7] *Jai Alai Corp. vs. Republic*, L-17462, May 29, 1967; 1967B PHILD 460.

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