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Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, and *Cortes, JJ.*, concur.

Teehankee, C.J., reserves the filing of a separate opinion.

Paras, J., no part; senior partner of counsel for private respondent is a close relative.

EN BANC

[G.R. No. L-53961. June 30, 1987]

NATIONAL DEVELOPMENT COMPANY, *petitioner*, *vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

SYLLABUS

1. TAXATION; TAXABLE INCOME; INCOME FROM SOURCES WITHIN THE PHILIPPINES; THE LAW DOES NOT SPEAK OF ACTIVITY BUT THE SOURCE; CASE AT BAR.— The petitioner argues that the Japanese shipbuilders were not subject to tax under the above provision because all the related activities — the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC — were done in Tokyo. The law, however, does not speak of activity but of "source," which in this case is the NDC. This is a domestic and resident corporation with principal offices in Manila. As the Tax Court put it: "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

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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.

2. **ID.; ID.; INCLUDES INTEREST REMITTED TO FOREIGN CORPORATION; CASE AT BAR.**— "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. 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."

3. **ID.; ID.; INTEREST ON GOVERNMENT SECURITIES; NOT EXEMPT FROM TAXES.**— The law invoked by the petitioner as authorizing the issuance of securities is R.A. No. 1407, which in fact is silent on this matter. C.A. No. 182 as amended by C.A. No. 311 does carry such authorization but, like R.A. No. 1407, does not exempt from taxes the interests on such securities.

4. **ID.; TAX EXEMPTION; CANNOT BE MERELY IMPLIED BUT MUST BE CATEGORICALLY AND UNMISTAKABLY EXPRESSED.**— It is also incorrect to suggest that the Republic of the Philippines could not collect taxes on the interest remitted because of the undertaking signed by the Secretary of Finance in each of the promissory notes that: "Upon authority of the President of the Republic of the Philippines, the undersigned, for value received, hereby absolutely and unconditionally guarantee (*sic*), on behalf of the Republic of the Philippines, the due and punctual payment of both principal and interest of the above note." There is nothing in the above undertaking

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exempting the interests from taxes. Petitioner has not established a clear waiver therein of the right to tax interests. Tax exemptions cannot be merely implied but must be categorically and unmistakably expressed. Any doubt concerning this question must be resolved in favor of the taxing power.

5. ID.; DEFICIENCY TAX; MAY BE IMPOSED AS A PENALTY FOR FAILURE TO WITHHOLD THE TAX DUE FROM FOREIGN CORPORATION.— In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus: "Section 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 of 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 person for the amount of any payments made in accordance with the provisions of this section.

6. ID.; ID.; DUTY OF WITHHOLDING AGENT.— In *Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*,[13] the Court quoted with approval the following regulation of the BIR on the responsibilities of withholding agents: "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 remmit the amount of tax withheld." (2nd par., Sec. 200, Income Tax Regulations). "Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed *strictissimi juris*."

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DECISION

CRUZ, *J.*:

We are asked to reverse the decision of the Court of Tax Appeals on the ground that it is erroneous, We have carefully studied it and find it is not; on the contrary, it is supported by law and doctrine. So finding, we affirm.

Reduced to simplest terms, the background facts are as follows.

The National Development Company entered into contracts in Tokyo with several Japanese shipbuilding companies for the construction of twelve ocean-going vessels.[1] The purchase price was to come from the proceeds of bonds issued by the Central Bank.[2] Initial payments were made in cash and through irrevocable letters of credit.[3] Fourteen promissory notes were signed for the balance by the NDC and, as required by the shipbuilders, guaranteed by the Republic of the Philippines.[4] Pursuant thereto, the remaining payments and the interests thereon were remitted in due time by the NDC to Tokyo. The vessels were eventually completed and delivered to the NDC in Tokyo.[5]

The NDC remitted to the shipbuilders in Tokyo the total amount of US$4,066,580.70 as interest on the balance of the purchase price. No tax was withheld. The Commissioner then held the NDC liable on such tax in the total sum of ₱5,115,234.74. Negotiations followed but failed. The BIR thereupon served on the NDC a warrant of distraint and levy to enforce collection of the claimed amount.[6] The NDC went to the Court of Tax Appeals.

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[1] Partial Stipulation of Facts, pars. 3-4.

[2] *Ibid.*, par. 8.

[3] *Id.*, par 10.

[4] *Id.*, par. 11, Exhs. "D", "D-1" to "D-13".

[5] Partial Stipulation of Facts, pars. 7, 13-15.

[6] Decision, pp. 1, 4-5.

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The BIR was sustained by the CTA except for a slight reduction of the tax deficiency in the sum of ₱900.00, representing the compromise penalty.[7] The NDC then came to this Court in a petition for *certiorari*.

The petition must fail for the following reasons.

The Japanese shipbuilders were liable to tax on the interest remitted to them under Section 37 of the Tax Code, thus:

"SEC. 37. *Income from sources within the Philippines.* — (a) Gross income from sources within the Philippines. — The following items of gross income shall be treated as gross income from sources within the Philippines:

(1) *Interest.* — Interest derived from sources within the Philippines, and interest on bonds, notes, or *other interest-bearing obligations of residents, corporate or otherwise*;

x x x x x x x x x."

The petitioner argues that the Japanese shipbuilders were not subject to tax under the above provision because all the related activities — the signing of the contract, the construction of the vessels, the payment of the stipulated price, and their delivery to the NDC — were done in Tokyo.[8] The law, however, does not speak of activity but of "source," which in this case is the NDC. This is a domestic and resident corporation with principal offices in Manila.

As the Tax Court put it:

"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.'

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[7] *Ibid.*, pp. 19-21.

[8] *Rollo*, pp. 12-13.

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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 are 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

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subject to income tax under the then Section 24(b)(1) of the National Internal Revenue Code."[9]

There is no basis for saying that the interest payments were obligations of the Republic of the Philippines and that the promissory notes of the NDC were government securities exempt from taxation under Section 29(b)[4] of the Tax Code, reading as follows:

"SEC. 29. *Gross Income.* — x x 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 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 approval of this Code, only to the extent provided in the act authorizing the issue thereof.* (As amended by Section 6, R.A. No. 82; italics supplied).

The law invoked by the petitioner as authorizing the issuance of securities is R.A. No. 1407, which in fact is silent on this matter. C.A. No. 182 as amended by C.A. No. 311 does carry such authorization but, like R.A. No. 1407, does not exempt from taxes the interests on such securities.

It is also incorrect to suggest that the Republic of the Philippines could not collect taxes on the interest remitted because of the undertaking signed by the Secretary of Finance in each of the promissory notes that:

"Upon authority of the President of the Republic of the Philippines, the undersigned, for value received, hereby absolutely and unconditionally guarantee (*sic*), on behalf of the Republic of the Philippines, the due and punctual payment of both principal and interest of the above note."[10]

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[9] Decision, pp. 7-9.

[10] Exhs. "D", "D-1" to "D-13".

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There is nothing in the above undertaking exempting the interests from taxes. Petitioner has not established a clear waiver therein of the right to tax interests. Tax exemptions cannot be merely implied but must be categorically and unmistakably expressed.[11] Any doubt concerning this question must be resolved in favor of the taxing power.[12]

Nowhere in the said undertaking do we find any inhibition against the collection of the disputed taxes. In fact, such undertaking was made by the government in consonance with and certainly not against the following provisions of the Tax Code:

"Sec. 53(b). *Nonresident aliens.* — All persons, corporations and general co-partnerships (companies colectivas), in whatever capacity acting, including lessees or mortgagors of real or personal capacity, executors, administrators, receivers, conservators, fiduciaries, employers, and all officers and employees of the Government of the Philippines having control, receipt, custody; disposal or payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or categorical 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: x x x."

"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

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[11] *Asiatic Petroleum Co. v. Llanes*, 49 Phil. 466, 471; *Union Garment Co., Inc. v. CTA*, 4 SCRA 304; *Phil. Acetylene Co., Inc. v. Comm. of Internal Revenue*, 20 SCRA 1056; *Republic Flour Mills, Inc. v. Comm. of Internal Revenue*, 31 SCRA 520; *Comm. of Customs v. Phil. Acetylene Co., Inc.*, 39 SCRA 71; *Davao Light and Power Co., Inc. v. Comm. of Customs*, 44 SCRA 122.

[12] *Asiatic Petroleum Co. v. Llanes, supra*; *Meralco v. Comm. of Internal Revenue*, 67 SCRA 351.

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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 (now 35%) *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."

Manifestly, the said undertaking of the Republic of the Philippines merely guaranteed the obligations of the NDC but without diminution of its taxing power under existing laws.

In suggesting that the NDC is merely an administrator of the funds of the Republic of the Philippines, the petitioner closes its eyes to the nature of this entity as a corporation. As such, it is governed in its proprietary activities not only by its charter but also by the Corporation Code and other pertinent laws.

The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.

In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus:

"Section 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 of 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 person for the amount of any payments made in accordance with the provisions of this section. (As amended by Section 9, R.A. No. 2343.)"

In *Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*,[13] the Court

[13] 15 SCRA 1.

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quoted with approval the following regulation of the BIR on the responsibilities of withholding agents:

"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 remmit the amount of tax withheld." (2nd par., Sec. 200, Income Tax Regulations).

"Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed *strictissimi juris*."[14]

The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

WHEREFORE, the appealed decision is AFFIRMED, without any pronouncement as to costs. It is so ordered.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and *Cortes, JJ.*, concur.

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[14] *Ibid. La Carlota Sugar Central v. Jimenez*, 2 SCRA 295.