

THIRD DIVISION

[G.R. No. 180043, July 14, 2009]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE AIRLINES, INC., RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner Commissioner of Internal Revenue assails the Decision^[1] of the Court of Tax Appeals (CTA) *En Banc* dated 9 August 2007 in CTA EB No. 221, affirming the Decision^[2] dated 14 June 2006 of the CTA First Division in CTA Case No. 6735, which granted the claim of respondent Philippine Airlines, Inc. (PAL) for the refund of its Overseas Communications Tax (OCT) for the period April to December 2001.

Petitioner, as the Commissioner of the Bureau of Internal Revenue (BIR), is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the 10% Overseas Communications Tax (OCT), imposed by Section 120 of the National Internal Revenue Code (NIRC) of 1997, which reads:

SEC. 120. *Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.* -

(A) *Persons Liable*--There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment service, a tax of ten percent (10%) on the amount paid of [the transaction involving overseas dispatch, message or conversation] such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

On the other hand, respondent is a domestic corporation organized under the corporate laws of the Republic of the Philippines; declared the national flag carrier of the country; and the grantee under Presidential Decree No. 1590^[3] of a franchise to establish, operate, and maintain transport services for the carriage of passengers, mail, and property by air, in and between any and all points and places throughout the Philippines, and between the Philippines and other countries.^[4]

For the period January to December 2001, the Philippine Long Distance Telephone Company (PLDT) collected from respondent the 10% OCT on the amount paid by the latter for overseas telephone calls it had made through the former. In all, PLDT

collected from respondent the amount of P202,471.18 as OCT for 2001, summarized as follows^[5]:

<u>PERIOD</u>	<u>AMOUNT</u>
January to March 2001	P 75,332.26
April to June 2001	50,271.43
July to September 2001	43,313.96
October to December 2001	<u>33,553.53</u>
Total	P 202,471.18

On 8 April 2003, respondent filed with the BIR an administrative claim for refund of the P202,471.18 OCT it alleged to have erroneously paid in 2001. In a letter^[6] dated 4 April 2003, addressed to petitioner, Ma. Stella L. Diaz (Diaz), the Assistant Vice-President for Financial Planning & Analysis of respondent, explained that the claim for refund of respondent was based on its franchise, Section 13 of Presidential Decree No. 1590, which granted it (1) the option to pay either the basic corporate income tax on its annual net taxable income or the two percent franchise tax on its gross revenues, whichever was lower; and (2) the exemption from all other taxes, duties, royalties, registration, license and other fees and charges imposed by any municipal, city, provincial or national authority or government agency, now or in the future, except only real property tax. Also invoking BIR Ruling No. 97-94^[7] dated 13 April 1994, Diaz maintained that, other than being liable for basic corporate income tax or the franchise tax, whichever was lower, respondent was clearly exempted from all other taxes, including OCT, by virtue of the "in lieu of all taxes" clause in Section 13 of Presidential Decree No. 1590.

Petitioner failed to act on the request for refund of respondent, which prompted respondent to file on 4 June 2003, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6735. Respondent sought the refund of the amount P127,138.92, representing OCT, which PLDT erroneously collected from respondent for the second, third and fourth quarters of 2001.^[8] The claim of respondent for the refund of the OCT for the first quarter of 2001, amounting to P75,323.26, had already prescribed after the passing of more than two years since said amount was paid.

Respondent alleged in its Petition that per its computation, reflected in its annual income tax return, it incurred a net loss in 2001 resulting in zero basic corporate income tax liability, which was necessarily lower than the franchise tax due on its gross revenues. Respondent argued that in opting for the basic corporate income tax, regardless of whether or not it actually paid any amount as tax, it was already entitled to the exemption from all other taxes granted to it by Section 13 of Presidential Decree No. 1590.^[9]

After a hearing on the merits, the CTA First Division rendered a Decision^[10] dated 14 June 2006, the dispositive part of which reads:

WHEREFORE, the Petition for Review is hereby **GRANTED**. Respondent is **ORDERED** to refund to the petitioner the substantiated amount of

P126,243.80 representing the erroneously collected 10% Overseas Communications Tax for the period April to December 2001.

The CTA First Division reasoned that under Section 13 of Presidential Decree No. 1590, respondent had the option to choose between two alternatives: the basic corporate income tax and the franchise tax, whichever would result in a lower amount of tax, and this would be in lieu of all other taxes, with the exception only of tax on real property. In the event that respondent incurred a net loss for the taxable year resulting in zero basic corporate income tax liability, respondent could not be required to pay the franchise tax before it could avail itself of the exemption from all other taxes under Section 13 of Presidential Decree No. 1590. The possibility that respondent would incur a net loss for a given taxable period and, thus, have zero liability for basic corporate income tax, was already anticipated by Section 13 of Presidential Decree No. 1590, the very same section granting respondent tax exemption, since it authorized respondent to carry over its excess net loss as a deduction for the next five taxable years.

However, the CTA First Division held that out of the total amount of P127,138.92 respondent sought to refund, only the amount of P126,243.80 was supported by either original or photocopied PLDT billing statements, original office receipts, and original copies of check vouchers of respondent. Respondent was also able to prove, through testimonial evidence, that the OCT collected by PLDT from it was included in the quarterly percentage tax returns of PLDT for the second, third, and fourth quarters of 2001, which were submitted to and received by an authorized agent bank of the BIR.^[11]

Not satisfied with the foregoing Decision dated 14 June 2006, petitioner filed a Motion for Reconsideration, which was denied by the CTA First Division in a Resolution dated 17 October 2006. ^[12]

Petitioner filed an appeal with the CTA *en banc*, docketed as CTA EB No. 221. The latter promulgated its Decision^[13] on 9 August 2007 denying petitioner's appeal. The CTA *En Banc* found that Presidential Decree No. 1590 does not provide that only the actual payment of basic corporate income tax or franchise tax by respondent would entitle it to the tax exemption provided under Section 13 of the latter's franchise. Like the CTA First Division, the CTA *en banc* ruled that by providing for net loss carry-over, Presidential Decree No. 1590 recognized the possibility that respondent would end up with a net loss in the computation of its taxable income, which would mean zero liability for basic corporate income tax. The CTA *En Banc* further cited *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*^[14] (PAL case) to support its conclusions. In the said case, this Court declared that despite the fact that respondent did not pay any basic corporate income tax, given its net loss position for the taxable years concerned, it was still exempted from paying all other taxes, including final withholding tax on interest income, pursuant to Section 13 of Presidential Decree No. 1590. Lastly, the CTA *en banc* sustained the finding of the CTA First Division that respondent was only able to establish its claim for OCT refund in the amount of P126,243.80.

The CTA *En Banc* denied petitioner's Motion for Reconsideration in a Resolution dated 11 October 2007.^[15]

Hence, the present Petition for Review where the petitioner raises the following issues:

I

THE COURT OF TAX APPEALS *EN BANC* ERRED IN HOLDING THAT THE PHRASE "IN LIEU OF ALL OTHER TAXES" IN SECTIONS 13 AND 14 OF PRESIDENTIAL DECREE NO. 1590 DOES NOT CONTEMPLATE THE FULFILLMENT OF A CONDITION BEFORE THE EXEMPTION FROM ALL OTHER TAXES MAY BE APPLIED; AND

II

TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS. AS SUCH, THEY SHOULD BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.^[16]

The present Petition is without merit.

Petitioner argues that the PAL case is not applicable to the case at bar, since the former involves final withholding tax on interest income, while the latter concerns another type of tax, the OCT.^[17]

Petitioner's argument is untenable.

Pertinent portions of Section 13 of Presidential Decree No. 1590 are quoted hereunder:

Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise, whichever of subsections (a) and (b) hereunder will result in a lower tax:

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues, derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or