

## THIRD DIVISION

[ G.R. No. 182045, September 19, 2012 ]

**GULF AIR COMPANY, PHILIPPINE BRANCH (GF), PETITIONER,  
VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the January 30, 2008 Decision<sup>[1]</sup> and the March 12, 2008 Resolution<sup>[2]</sup> of the Court of Tax Appeals (CTA) En Bane in C.T.A. E.B. No. 302 (C.T.A. Case No. 7030) entitled "*Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*."

#### The Facts

Petitioner Gulf Air Company Philippine Branch (GF) is a branch of Gulf Air Company, a foreign corporation duly organized in accordance with the laws of the Kingdom of Bahrain.<sup>[3]</sup>

On October 25, 2001, GF availed of the Voluntary Assessment Program of the Bureau of Internal Revenue (BIR) under Revenue Regulations 8-2001 for its 1999 and 2000 Income Tax and Documentary Stamp Tax and its Percentage Tax for the third quarter of 2000, paying a total of P11,964,648.00.<sup>[4]</sup>

GF also made a claim for refund of percentage taxes for the first, second and fourth quarters of 2000. In connection with this, a letter of authority was issued by the BIR authorizing its revenue officers to examine GF's books of accounts and other records to verify its claim.<sup>[5]</sup>

After its submission of several documents and an informal conference with BIR representatives, GF received its Preliminary Assessment Notice on November 4, 2003 for deficiency percentage tax amounting to P32,745,141.93. On the same day, GF also received a letter denying its claim for tax credit or refund of excess percentage tax remittance for the first, second and fourth quarters of 2000, and requesting the immediate settlement of the deficiency tax assessment.<sup>[6]</sup>

GF then received the Formal Letter of Demand, dated December 10, 2003, for the payment of the total amount of P33,864,186.62. In response, it filed a letter on December 29, 2003 to protest the assessment and to reiterate its request for reconsideration on the denial of its claim for refund.<sup>[7]</sup>

On June 30, 2004, the Deputy Commissioner, Officer-in-Charge of the Large

Taxpayers Service of the BIR, denied GF's written protest for lack of factual and legal basis and requested the immediate payment of the .33,864,186.62 deficiency percentage tax assessment.<sup>[8]</sup>

Aggrieved, GF filed a petition for review with the CTA.<sup>[9]</sup> On March 21, 2007, the Second Division of the CTA dismissed the petition, finding that Revenue Regulations No. 6-66 was the applicable rule providing that gross receipts should be computed based on the cost of the single one-way fare as approved by the Civil Aeronautics Board (CAB). In addition, it noted that GF failed to include in its gross receipts the special commissions on passengers and cargo. Finally, it ruled that Revenue Regulations No. 15- 2002, allowing the use of the net net rate in determining the gross receipts, could not be given any or a retroactive effect. Thus, the CTA affirmed the decision of the BIR and ordered the payment of P41,117,734.01 plus 20% delinquency interest.<sup>[10]</sup>

GF elevated the case to the CTA *En Banc* which promulgated its Decision on January 30, 2008 dismissing the petition and affirming the decision of the CTA in Division. It found that Revenue Regulations No. 6- 66 was the applicable rule because the period involved in the assessment covered the first, second and fourth quarters of 2000 and the amended percentage tax returns were filed on October 25, 2001. Revenue Regulations No. 15-2002, which took effect on October 26, 2002, could not be given retroactive effect because it was declarative of a new right as it provided a different rule in determining gross receipts.<sup>[11]</sup>

GF subsequently filed a motion for reconsideration but the same was denied by the CTA *En Banc* in its March 12, 2008 Resolution. Hence, this petition.

### **The Issue**

GF relies upon the following grounds for the allowance of its petition:

**The honorable CTA En Banc erred in affirming the ruling of the Court in Division summarized on pages 8 to 9 of the January 30, 2008 decision, as follows:**

- 1. That the correct basis of the 3% Percentage Tax imposed under Section 118(A) of the 1997 NIRC on the quarterly gross receipts of international air carriers doing business in the Philippines is the fare approved by the CAB pursuant to Revenue Regulations 6-66; that Revenue Regulations 6-66 is the applicable implementing regulation and it is clearly provided therein that gross receipt shall be computed on the cost of the single one way fare as approved by the CAB on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo including mail, as reflected on the plane manifest of the carrier; and**
- 2. That the respondent was correct in adding back the special commissions on passengers and cargo to the gross receipt**

**per return of petitioner in order to come up with the gross receipts subject to tax under Section 118(A) of the 1997 NIRC.**<sup>[12]</sup>

The sole issue to be resolved by the Court, as identified by the tax court, is whether the definition of "gross receipts," for purposes of computing the 3% Percentage Tax under Section 118(A) of the 1997 National Internal Revenue Code (*NIRC*), should include special commissions on passengers and special commissions on cargo based on the rates approved by the CAB.<sup>[13]</sup>

### **The Court's Ruling**

The petition has no merit.

GF questions the validity of Revenue Regulations No. 6-66, claiming that it is not a correct interpretation of Section 118(A) of the NIRC, and insisting that the gross receipts should be based on the "net net" amount – the amount actually received, derived, collected, and realized by the petitioner from passengers, cargo and excess baggage. It further argues that the CAB approved fares are merely notional and not reflective of the actual revenue or receipts derived by it from its business as an international air carrier.<sup>[14]</sup> GF also insists that its construction of "gross receipts" to mean the "net net" amount actually received, rather than the CAB approved rates as mandated by Revenue Regulations No. 6-66, has been validated by the issuance of Revenue Regulations No. 15-2002 which expressly superseded the former.

Finally, GF contends that because the definition of gross receipts under the questioned regulations is contrary to that given under the other sections of the NIRC on value-added tax and percentage taxes, the legislative intention was to collect the percentage tax based solely on the actual receipts derived and collected by the taxpayer. Given that Revenue Regulations No. 6-66 allegedly conflicts with Section 118 of the NIRC as well as with the other sections on percentage tax, GF concludes that the former was effectively repealed, amended or modified by the NIRC.<sup>[15]</sup>

Section 118(A) of the NIRC states that:

Sec. 118. Percentage Tax on International Carriers. –

(A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.

Pursuant to this, the Secretary of Finance promulgated Revenue Regulations No. 15-2002, which prescribes that "gross receipts" for the purpose of determining Common Carrier's Tax shall be the same as the tax base for calculating Gross Philippine Billings Tax.<sup>[16]</sup> Section 5 of the same provides for the computation of "Gross Philippine Billings":

Sec. 5. Determination of Gross Philippine Billings. –

(a) In computing for "Gross Philippine Billings," there shall be included the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents.

**The gross revenue for passengers whose tickets are sold in the Philippines shall be the actual amount derived for transportation services, for a first class, business class or economy class passage, as the case may be, on its continuous and uninterrupted flight from any port or point in the Philippines to its final destination in any port or point of a foreign country, as reflected in the remittance area of the tax coupon forming an integral part of the plane ticket. For this purpose, the Gross Philippine Billings shall be determined by computing the monthly average net fare of all the tax coupons of plane tickets issued for the month per point of final destination, per class of passage (i.e., first class, business class, or economy class) and per classification of passenger (i.e., adult, child or infant) and multiplied by the corresponding total number of passengers flown for the month as declared in the flight manifest.**

For tickets sold outside the Philippines, the gross revenue for passengers for first class, business class or economy class passage, as the case may be, on a continuous and uninterrupted flight from any port or point in the Philippines to final destination in any port or point of a foreign country shall be determined using the locally available net fares applicable to such flight taking into consideration the seasonal fare rate established at the time of the flight, the class of passage (whether first class, business class, economy class or non-revenue), the classification of passenger (whether adult, child or infant), the date of embarkation, and the place of final destination. Correspondingly, the Gross Philippine Billing for tickets sold outside the Philippines shall be determined in the manner as provided in the preceding paragraph.

Passage documents revalidated, exchanged and/or endorsed to another on-line international airline shall be included in the taxable base of the carrying airline and shall be subject to Gross Philippine Billings tax if the passenger is lifted/boarded on an aircraft from any port or point in the Philippines towards a foreign destination.

The gross revenue on excess baggage which originated from any port or point in the Philippines and destined to any part of a foreign country shall be computed based on the actual revenue derived as appearing on the official receipt or any similar document for the said transaction.

The gross revenue for freight or cargo and mail shall be determined based on the revenue realized from the carriage thereof. The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting therefrom the amount of discounts granted which shall be validated using the monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS) for airway bills issued through their cargo agents or the monthly reports prepared