

THIRD DIVISION

[G.R. No. 180356, February 16, 2010]

SOUTH AFRICAN AIRWAYS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks the reversal of the July 19, 2007 Decision^[1] and October 30, 2007 Resolution^[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. Case No. 210, entitled *South African Airways v. Commissioner of Internal Revenue*. The assailed decision affirmed the Decision dated May 10, 2006^[3] and Resolution dated August 11, 2006^[4] rendered by the CTA First Division.

The Facts

Petitioner South African Airways is a foreign corporation organized and existing under and by virtue of the laws of the Republic of South Africa. Its principal office is located at Airways Park, Jones Road, Johannesburg International Airport, South Africa. In the Philippines, it is an internal air carrier having no landing rights in the country. Petitioner has a general sales agent in the Philippines, Aerotel Limited Corporation (Aerotel). Aerotel sells passage documents for compensation or commission for petitioner's off-line flights for the carriage of passengers and cargo between ports or points outside the territorial jurisdiction of the Philippines. Petitioner is not registered with the Securities and Exchange Commission as a corporation, branch office, or partnership. It is not licensed to do business in the Philippines.

For the taxable year 2000, petitioner filed separate quarterly and annual income tax returns for its off-line flights, summarized as follows:

	Period	Date Filed		2.5% Gross Phil. Billings
For Passenger	1 st Quarter	May 30, 2000	PhP	222,531.25
	2 nd Quarter	August 29, 2000		424,046.95
	3 rd Quarter	November 29, 2000		422,466.00
	4 th Quarter	April 16, 2000		453,182.91
	Quarter			

Sub-total			PhP	1,522,227.11
For Cargo	1 st Quarter	May 30, 2000	PhP	81,531.00
	2 nd Quarter	August 29, 2000		50,169.65
	3 rd Quarter	November 29, 2000		36,383.74
	4 th Quarter	April 16, 2000		37,454.88
Sub-total			PhP	205,539.27
TOTAL				1,727,766.38

Thereafter, on February 5, 2003, petitioner filed with the Bureau of Internal Revenue, Revenue District Office No. 47, a claim for the refund of the amount of PhP 1,727,766.38 as erroneously paid tax on Gross Philippine Billings (GPB) for the taxable year 2000. Such claim was unheeded. Thus, on April 14, 2003, petitioner filed a Petition for Review with the CTA for the refund of the abovementioned amount. The case was docketed as CTA Case No. 6656.

On May 10, 2006, the CTA First Division issued a Decision denying the petition for lack of merit. The CTA ruled that petitioner is a resident foreign corporation engaged in trade or business in the Philippines. It further ruled that petitioner was not liable to pay tax on its GPB under Section 28(A)(3)(a) of the National Internal Revenue Code (NIRC) of 1997. The CTA, however, stated that petitioner is liable to pay a tax of 32% on its income derived from the sales of passage documents in the Philippines. On this ground, the CTA denied petitioner's claim for a refund.

Petitioner's Motion for Reconsideration of the above decision was denied by the CTA First Division in a Resolution dated August 11, 2006.

Thus, petitioner filed a Petition for Review before the CTA *En Banc*, reiterating its claim for a refund of its tax payment on its GPB. This was denied by the CTA in its assailed decision. A subsequent Motion for Reconsideration by petitioner was also denied in the assailed resolution of the CTA *En Banc*.

Hence, petitioner went to us.

The Issues

Whether or not petitioner, as an off-line international carrier selling passage documents through an independent sales agent in the Philippines, is engaged in trade or business in the Philippines subject to the 32% income tax imposed by Section 28 (A)(1) of the 1997 NIRC.

Whether or not the income derived by petitioner from the sale of passage documents covering petitioner's off-line flights is Philippine-source income subject to Philippine income tax.

Whether or not petitioner is entitled to a refund or a tax credit of

erroneously paid tax on Gross Philippine Billings for the taxable year 2000 in the amount of P1,727,766.38.^[5]

The Court's Ruling

This petition must be denied.

Petitioner Is Subject to Income Tax at the Rate of 32% of Its Taxable Income

Preliminarily, we emphasize that petitioner is claiming that it is exempted from being taxed for its sale of passage documents in the Philippines. Petitioner, however, failed to sufficiently prove such contention.

In *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*,^[6] we held, "Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly."

Petitioner has failed to overcome such burden.

In essence, petitioner calls upon this Court to determine the legal implication of the amendment to Sec. 28(A)(3)(a) of the 1997 NIRC defining GPB. It is petitioner's contention that, with the new definition of GPB, it is no longer liable under Sec. 28(A)(3)(a). Further, petitioner argues that because the 2 1/2% tax on GPB is inapplicable to it, it is thereby excluded from the imposition of any income tax.

Sec. 28(b)(2) of the 1939 NIRC provided:

(2) Resident Corporations. - A corporation organized, authorized, or existing under the laws of a foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines: *Provided, however,* that international carriers shall pay a tax of two and one-half percent on their gross Philippine billings.

This provision was later amended by Sec. 24(B)(2) of the 1977 NIRC, which defined GPB as follows:

"Gross Philippine billings" include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines.

In the 1986 and 1993 NIRC, the definition of GPB was further changed to read:

"Gross Philippine Billings" means gross revenue realized from uplifts of passengers anywhere in the world and excess baggage, cargo and mail originating from the Philippines, covered by passage documents sold in the Philippines.

Essentially, prior to the 1997 NIRC, GPB referred to revenues from uplifts anywhere in the world, provided that the passage documents were sold in the Philippines. Legislature departed from such concept in the 1997 NIRC where GPB is now defined under Sec. 28(A)(3)(a):

"Gross Philippine Billings" refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and 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 ticket or passage document.

Now, it is the place of sale that is irrelevant; as long as the uplifts of passengers and cargo occur to or from the Philippines, income is included in GPB.

As correctly pointed out by petitioner, inasmuch as it does not maintain flights to or from the Philippines, it is not taxable under Sec. 28(A)(3)(a) of the 1997 NIRC. This much was also found by the CTA. But petitioner further posits the view that due to the non-applicability of Sec. 28(A)(3)(a) to it, it is precluded from paying any other income tax for its sale of passage documents in the Philippines.

Such position is untenable.

In *Commissioner of Internal Revenue v. British Overseas Airways Corporation (British Overseas Airways)*,^[7] which was decided under similar factual circumstances, this Court ruled that off-line air carriers having general sales agents in the Philippines are engaged in or doing business in the Philippines and that their income from sales of passage documents here is income from within the Philippines. Thus, in that case, we held the off-line air carrier liable for the 32% tax on its taxable income.

Petitioner argues, however, that because *British Overseas Airways* was decided under the 1939 NIRC, it does not apply to the instant case, which must be decided under the 1997 NIRC. Petitioner alleges that the 1939 NIRC taxes resident foreign corporations, such as itself, on all income from sources within the Philippines. Petitioner's interpretation of Sec. 28(A)(3)(a) of the 1997 NIRC is that, since it is an international carrier that does not maintain flights to or from the Philippines, thereby having no GPB as defined, it is exempt from paying any income tax at all. In other words, the existence of Sec. 28(A)(3)(a) according to petitioner precludes the application of Sec. 28(A)(1) to it.

Its argument has no merit.

First, the difference cited by petitioner between the 1939 and 1997 NIRC with

regard to the taxation of off-line air carriers is more apparent than real.

We point out that Sec. 28(A)(3)(a) of the 1997 NIRC does not, in any categorical term, exempt all international air carriers from the coverage of Sec. 28(A)(1) of the 1997 NIRC. Certainly, had legislature's intentions been to completely exclude all international air carriers from the application of the general rule under Sec. 28(A)(1), it would have used the appropriate language to do so; but the legislature did not. Thus, the logical interpretation of such provisions is that, if Sec. 28(A)(3)(a) is applicable to a taxpayer, then the general rule under Sec. 28(A)(1) would not apply. If, however, Sec. 28(A)(3)(a) does not apply, a resident foreign corporation, whether an international air carrier or not, would be liable for the tax under Sec. 28(A)(1).

Clearly, no difference exists between *British Overseas Airways* and the instant case, wherein petitioner claims that the former case does not apply. Thus, *British Overseas Airways* applies to the instant case. The findings therein that an off-line air carrier is doing business in the Philippines and that income from the sale of passage documents here is Philippine-source income must be upheld.

Petitioner further reiterates its argument that the intention of Congress in amending the definition of GPB is to exempt off-line air carriers from income tax by citing the pronouncements made by Senator Juan Ponce Enrile during the deliberations on the provisions of the 1997 NIRC. Such pronouncements, however, are not controlling on this Court. We said in *Espino v. Cleofe*:^[8]

A cardinal rule in the interpretation of statutes is that the meaning and intention of the law-making body must be sought, first of all, in the words of the statute itself, read and considered in their natural, ordinary, commonly-accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction. Courts, therefore, as a rule, cannot presume that the law-making body does not know the meaning of words and rules of grammar. Consequently, the grammatical reading of a statute must be presumed to yield its correct sense. x x x **It is also a well-settled doctrine in this jurisdiction that statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law.** (Emphasis supplied.)

Moreover, an examination of the subject provisions of the law would show that petitioner's interpretation of those provisions is erroneous.

Sec. 28(A)(1) and (A)(3)(a) provides:

SEC. 28. Rates of Income Tax on Foreign Corporations. -

(A) Tax on Resident Foreign Corporations. -

(1) In General. - Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws