REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

\- *versus* -

KUWAIT AIRWAYS CORPORATION,
Respondent.

CTA EB NO. 2798
(CTA Case No. 10107)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 26 2025 1:05 p.m.

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RESOLUTION

ANGELES, *J.*:

For the Court *En Banc*'s resolution is the ***Motion for Reconsideration (Re: Decision promulgated 4 November 2024)*** filed by petitioner Commissioner of Internal Revenue (CIR) on November 20, 2024, seeking the reversal of the *Decision* dated November 4, 2024, and the denial of the claim for refund of respondent Kuwait Airways Corporation.

To recall, on September 26, 2023, the CIR filed a *Petition for Review* praying for the reversal of the *Decision*[1] dated March 28, 2023, and *Resolution*[2] dated September 4, 2023, both promulgated by the Special Third Division of this Court (the "Court in Division") in CTA Case No. 10107, entitled "*Kuwait Airways Corporation vs.*

[1] EB Docket, Decision dated March 28, 2023, pp. 16-32.
[2] EB Docket, Resolution dated September 4, 2023, pp. 34-39.

Commissioner of Internal Revenue", and the denial of respondent's entire claim for refund of overpayment of income tax on its Gross Philippine Billings (GPBs) for fiscal year ended March 31, 2017.

On November 4, 2024, the Court *En Banc* rendered the *Decision* denying the *Petition*, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the CIR's *Petition for Review* filed on September 26, 2023, is hereby **DENIED** for lack of merit.
>
> Accordingly, the *Decision* dated March 28, 2023, and *Resolution* dated September 4, 2023, both promulgated in CTA Case No. 10107, are **AFFIRMED**.
>
> **SO ORDERED.**

Aggrieved by the said *Decision*, petitioner filed the instant *Motion*, based on the following ground:

> THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO PROVE ITS ENTITLEMENT TO REFUND IN THE AMOUNT OF ₱12,398,319.19 REPRESENTING OVERPAYMENT OF INCOME TAX ON ITS GROSS PHILIPPINE BILLINGS FOR FISCAL YEAR ENDED MARCH 31, 2017.[3]

Petitioner once again argues that: ***(a)*** Revenue Regulations (RR) No. 15-2013[4] provides that reciprocity requires that Philippine carriers operating in the Home Country of an international carrier are actually enjoying the same income tax exemption; and ***(b)*** there is no record that respondent submitted complete documents to substantiate its administrative claim for refund, and thus, there is sufficient reason for the denial of the claim.

On December 12, 2024, respondent filed its *Comment (Re: Motion for Reconsideration dated November 13, 2024),* seeking the denial of the instant *Motion*. In its *Comment,* respondent counter-argues that the grounds relied upon by petitioner in the *Motion* are the same issues and arguments raised in his *Petition for Review.* Respondent submits that it has proven with substantial and concrete evidence its entitlement to the use of preferential tax rate of 1½% on

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[3] *Motion for Reconsideration (Re: Decision promulgated 4 November 2024)*, pp. 1-2.
[4] Revenue Regulations Implementing Republic Act No. 10378 entitled "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed thereon by Amending Sections 28(A)(3)(A), 109, 118 And 236 of the National Internal Revenue Code (NIRC), as Amended, and for Other Purposes.

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its GPBs earned beginning January 1, 2014 pursuant to the Philippines-Kuwait Tax Treaty.

The *Motion* is **denied** for lack of merit.

It is important to note that a cursory reading of petitioner's *Motion* reveals that it is a near-verbatim rehash of his *Petition for Review*. The arguments raised in the *Motion* have been exhaustively passed upon, duly considered, and resolved by the Court *En Banc* in the assailed *Decision*.

In *Ortigas and Co. Ltd. Partnership v. Judge Velasco*[5], the Supreme Court explained the effect and disposition of a motion for reconsideration, as follows:

> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, **does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor**, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. **This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant**; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. **It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial** (Sec. 14, Art. VIII, Constitution; *i.e.*, **the motion contains merely a <u>reiteration or rehash of arguments</u> already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration,** etc. (Emphasis supplied)

Based on the foregoing, the Court may deny a motion for reconsideration if it contains mere reiteration of arguments which were already passed upon and considered without merit.

Relative thereto, it is well-settled that if the grounds relied upon are mere reiterations of the issues already passed upon, the Court need not "cut and paste" pertinent portions of the Decision or re-write the

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[5] *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645, August 15, 1997.

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ponencia in accordance with the outline of the Motion for Reconsideration.[6]

Be that as it may, the Court *En Banc* shall address once more the arguments raised by petitioner for further clarification.

As regards the alleged reciprocity requirement, RR No. 15-2013 is explicit that the 1½% preferential income tax rate for international carriers doing business in the Philippines may be availed of on the basis of an **applicable tax treaty,** and not under the principle of reciprocity. Section 4.2 of RR No. 15-2013 provides:

> 4.2) Preferential Income Tax Rate or Exemption of International Carrier with Flights or Voyage Originating from Philippine Ports. – Under Section 28(A)(3) of the NIRC, as amended by RA No. 10378, **international carriers doing business in the Philippines may avail of a preferential income tax rate** or income tax exemption on their gross revenues derived from the carriage of persons and their excess baggage **on the basis of the following**:
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> A) **Applicable tax treaty to which the Philippines is a signatory**. – Tax Treaties generally allow the Philippines to impose **<u>preferential income tax rates</u>** on profits from the operation of ships or aircrafts in international traffic by residents of the other contracting states. There are Tax Treaties which provide that the tax shall not exceed the lesser of one and one-half percent (1-1/2%) of the gross revenues derived from sources in the Philippines, or the lowest rate of the Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
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> ....
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> B) **Reciprocity**. – This may be invoked by an international carrier as basis for Gross Philippine Billings Tax **<u>exemption</u>** when its Home Country grants income tax exemption to Philippine carriers.
>
> ....
>
> Reciprocity requires that Philippine carriers operating in the Home Country of an international carrier are actually enjoying the income tax exemption. (Emphasis supplied)

To reiterate, Section 4.2(B) of RR No. 15-2013 is unequivocal that proof of reciprocity is required only if an international carrier invokes the same as basis for its GPB **exemption**. In this case, respondent's submission of its Application for Relief from Double Taxation on Shipping and Air Transport (BIR Form No. 0901-T) filed on June 5, 2015, clearly shows that the same was for the availment of the

[6] *Social Justice Society Officers v. Lim*, G.R. Nos. 187836 & 187916, March 10, 2015.

preferential rate of 1½% on the basis of the Philippines-Kuwait Tax Treaty, not exemption.

With respect to petitioner's contention that it has no record that respondent submitted complete supporting documentation relative to its claim for refund, the Court *En Banc* must emphasize that respondent's judicial claim with the Court in Division was prompted by the petitioner's inaction on its application. Nevertheless, the petitioner still failed to show what documents were not submitted in the administrative level. Notably, petitioner did not even present any evidence before the Court in Division to controvert respondent's evidence. Consequently, the Court *En Banc* cannot give credence to petitioner's bare allegations for being devoid of any evidentiary weight.

In view of the foregoing, the Court finds no merit in the instant *Motion* as the same did not raise new, cogent, or substantial ground to warrant reconsideration of this Court's *Decision* dated November 4, 2024.

WHEREFORE, premises considered, the CIR's ***Motion for Reconsideration (Re: Decision promulgated 4 November 2024)*** filed on November 20, 2024, is hereby **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice