REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

QANTAS AIRWAYS LIMITED,
Petitioner,

-versus - C.T.A. CASE NO. 4459

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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6/23/93

D E C I S I O N

This case involves a claim for refund in the alleged overpayment of two and one-half (2 1/2) per centum tax on Gross Philippine Billings (GPB) for the period January 1 to June 30, 1988 in the amount of P1,494,387.92.

Petitioner is a resident foreign corporation, organized and existing under the laws of Queensland, Australia, and is duly authorized to engage in business in the Philippines as an international carrier.

For the two quarters ended March 31 and June 30, 1988, petitioner paid a total amount of P2,802,278.37 as taxes on its Gross Philippine Billings (GPB) pursuant to Section 25(a)(2) of the National Internal Revenue Code, as amended. The aforesaid taxes were paid as follows:

Quarter Ended	Gross Phillippine Billings	Quarterly Tax Due at 2 1/2% and Paid
March 31, 1988	P 45,536,536	P1,138,413.40
June 30, 1988	66,554,607	1,663,865.17
Total	P112,091,143	P2,802,278.57

(See Annexes A and B and sub-markings)

using the amount reflected in its ticket as cost of such ticket. "In reality, however, such amount is not petitioner's actual revenue from the sale of the ticket as the amount reflected therein did not consider the discount being given by the issuing airline to the travel agency to whose client the ticket is being issued." (Petitioner's Memorandum, p. 3.) What was received by the petitioner, therefore, was not the amount reflected in its ticket but the discounted price thereof. Hence, the actual flown revenue of petitioner for the same period as determined at the end of the taxable year upon receipt of the corresponding figures from its Head Office in Australia should only amount to P52,315,626. Consequently, the tax due on the actual flown revenue, according to the petitioner, should only be P1,307,890.65 computed as follows:

Quarter Ended	Actual GPB	2 1/2% GPB tax that should only be paid
March 31, 1988	P 27,761,702	P 694,042.55
June 30, 1988	24,553,924	613,848.10
Total	P 53,315,626	P1,307,890.65

Considering, therefore, that the tax due on the reported GPB of P112,091,143.00 was P2,802,278.57 while the actual flown revenue of P52,315,626.18 was only P1,307,890.65, logically, there was, according to the petitioner, a GPB tax overpayment of P1,494,387.92. Hence, this claim for refund.

The issue to be resolved here is: whether or not "the two and one-half percent (2 1/2%) tax on GPB be based on the amount reflected in the petitioner's airline ticket or on the discounted price thereof.

The law applicable in resolving the issue is quoted, thus:

> "Sec. 25. Rates of tax on foreign corporation.- (a) Tax on resident foreign corporations (1) In general.
>
> Unless otherwise provided, a corporation organized, authorized or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to a tax equivalent to 35% of the taxable income derived in the preceding taxable year from all sources within the Philippines.
>
> (2) International carriers.- International carriers doing business in the Philippines shall pay a tax of two and one-half percent (2-1/2%) on their 'Gross Philippine Billings' as defined hereunder:
>
> (A) International air carrier.- '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: xxx xxx" (Underscoring supplied)

Petitioner's contention that "the amount actually received by the petitioner as consideration for its ticket is its revenue which should be subject to the 2-1/2% GPB tax and not the face value of the ticket" (see Petitioner's Memorandum, p. 7) is unacceptable. The law is explicit on imposing the 2-1/2% GPB tax on "gross revenue realized from uplifts of passengers ...". By "gross revenue" it means "whole, entire, total" (Appeal of Braun, 105 Pa. 415, 41'5) "without deductions..." (First Trust Co. of St. Paul v. Commonwealth Co., C.C.A.8.D., 98 F. 2d 27, 31). It is synonymous with "gross income." The Tax Code defines "gross income" thus:

> "Gross income" includes gains, profits, and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from profession, vocations, trades, <u>business, commerce, sales</u> or dealing in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities or <u>the transactions of any business carried on for gain or profit or gains, profits, and income derived from any source whatever</u> xxx (Sec. 29 [3];undescoring supplied).

Petitioner in trying to buttress his weak stand made use of an analogy, thus:

> "mere increase in the value of shares of stocks does not make the stockholder taxable thereon as no

> income is received by such stockholder unless a sale of the shares is made for an amount in excess of its original cost. (Umali on Taxation, 1985 ed., p. 78). Similarly, the fact that a plane ticket is valued at a particular amount does not make the issuing airline subject to GPB tax on such amount unless a sale of the ticket is made based on the amount appearing on its face. If the airline sold the ticket for less, then it is only logical that its GPB tax liability should be based only on the amount actually received." (See Petitioner's Memorandum, p. 8).

Such contention is based neither in law nor in jurisprudence. It is erroneous because GPB tax is considered a tax on gross income (Commissioner of Internal Revenue vs. British Overseas Airways Corporation, April 30, 1987, 149 SCRA 395) meaning the income based on the price of the ticket on its face value, whole, entire, total and without deductions. In the sale of shares of stocks, value by itself is verily not an income, as correctly put by the petitioner since the market sales price is beyond the control of the seller. It is erratic and unpredictable. But "value by itself is not an income" is <u>not absolute</u> and was wrongfully compared with the sales of tickets since the face value of the ticket <u>can be realized</u> had the petitioner chosen to. But it did not. Petitioner could have sold the tickets using its own resources rather than give discounts to travel agencies. But it did not. Instead, it opted to avail of the services of travel agencies as a marketing strategy thereby giving them discounts. The respondent cannot question the generosity of the petitioner to these travel agencies. However, it was absolutely right for the respondent to protect the interest of the government in seeing to it that its share, by way of taxes on the given discounts, would not be given away but should be shouldered by the petitioner.

The petitioner, when it gave away discounts to travel agencies, was also giving away the share of the government by way of taxes on the said discounts. If ever the petitioner would like to show magnanimity of resources to its marketing arm (i.e., the travel agencies), it should not be at the expense of the government.

WHEREFORE, in all the foregoing, the petition for review is hereby DISMISSED for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, June 23, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals