Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SABENA BELGIAN WORLD AIRLINES
(Philippine Branch),
Petitioner,

- versus - **C.T.A. CASE NO. 4437**

COMMISSIONER OF INTERNAL REVENUE, 3/18/94
Respondent.
x ------------------------------ x

D E C I S I O N

This is a petition for refund of alleged overpayments made by petitioner on its gross Philippine billings tax for the last quarter of 1987 and the year 1988, in the total amount of ₱475,557.57.

Petitioner is a resident foreign corporation licensed to do business in the Philippines, with branch office at the Ground Floor, Manila Pavilion Hotel, United Nations Avenue, Manila. It is engaged in the business of international passenger and cargo transportation.

During the period covered by the claim (i.e., last quarter of 1987 and the year 1988), petitioner made the following payments of income tax on its gross Philippine billings (Exhibits "G" to "R-2", inclusive):

	Date of Payment	Amount Paid
Return for October 1987	12-10-87	₱ 3,213.00
Return for November 1987	12-22-87	2,578.00
Tentative Consolidated Return for 1987	04-14-88	202,776.00
Amended Consolidated Return for 1987	08-23-88	2,510.00
Return for Jan./Feb. 1988	04-28-88	6,720.00
Return for March 1988	05-16-88	8,375.00
Quarterly Return for Period Ending March 1988	05-27-88	212,298.78
Return for April 1988	05-16-88	11,982.00
Return for May/June 1988	07-12-88	36,043.00
Quarterly Return for Period Ending June 1988	08-29-88	221,094.73
Quarterly Return for Period Ending Sept. 1988	11-29-88	183,741.92
Consolidated Annual Return For 1988	04-17-89	265,695.00
		₱ 1,157,027.43

On January 11, 1990, petitioner filed with respondent Commissioner a claim for refund of alleged overpayments of the 1.5% tax on its gross Philippine Billings for the years 1987 and 1988 (Exhibit "W", pp. 172-175, Records). Petitioner alleged that it had erroneously declared as its gross Philippine billings the amounts of ₱68,038,825.00 and ₱63,639,447.00 for 1987 and 1988, respectively. It claimed that it failed to deduct from its declared "gross Philippine billings the total market discounts allegedly extended by its Head Office on both passenger ticket sales and freight charges during the years in question. In support of its claim, petitioner submitted authenticated statements of market discounts on gross fares in the Philippines issued by its Head Office (Exhibits "U" to "V-1b", pp. 166-170, Records).

On March 11, 1991, respondent Commissioner rendered a decision denying with finality petitioner's claim, on the ground that market discounts are not deductible from petitioner's gross Philippine billings (BIR Records, p. 58). On April 11, 1990, petitioner filed the instant petition.

The sole issue presented before the Court is whether petitioner is entitled to deduct the alleged market discounts extended by its Head Office from its declared gross Philippine billings for purposes of computation of the 1.5% international carrier's tax.

Petitioner contends that it is entitled to deduct the market discounts allegedly extended by its Head Office from the total amount of its gross Philippine billings for purposes of computing its international carrier's tax liability. We find this contention untenable.

It is settled that tax refunds are in the nature of exemptions and should therefore be construed strictly against the claimant (*Commissioner of Internal Revenue v. Ledesma*, 31 SCRA 95 [1970]). Accordingly, it is incumbent upon the claimant to prove to the satisfaction of the court both the factual and legal bases for his claim.

In the instant case, petitioner's claim for refund is anchored on the contention that it is entitled to deduct from its gross Philippine billings the amount of the market discounts allegedly extended by it to its Philippine customers. Accordingly, to be entitled to a refund, it was incumbent for petitioner to show, by the required quantum of proof, first, that it actually extended the alleged market discounts; second, the exact amount of said discounts; and third, the legal justification for its claim that such discounts should be deducted from its gross Philippine sales in order to determine its "gross Philippine billings".

Identical to the case at bar is that of Quantas Airways Limited vs. CIR, CTA Case No. 4459, June 23, 1993, wherein the Tax Court held that 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" without deductions.

Correlatively is the case of Commissioner of Internal Revenue vs. British Overseas Airways Corporation; 149 SCRA 395, April 30, 1987. The High Court had occassion to rule that Gross Philippine billings includes 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.

Moreover, the foregoing provision ensures that international airlines are taxed on their income from Philippine sources. The 2 1/2% tax on gross Philippine billings is on income tax. If it had been intended as an excise or percentage tax it would have been place underr Title V of the Tax Code covering Taxes on Business.

After going through the records of this case, the Court is of the opinion that petitioner has not satisfactorily proved exact amount of the total market discounts it allegedly extended to its Philippine customers for the taxable years in question. The documentary evidence adduced by it in support of its claim are at best self-serving and contradictory, and are therefore inconclusive. Consequently, even if we were to give said documents their "full probative (sic) value", it would do little to further petitioner's cause.

To illustrate, petitioner's documentary exhibits do not clearly reflect the exact amount of the gross income it realized during the years in question from both passenger and freight sales. As shown in the following table, the entries found in petitioner's exhibits are highly confusing and contradictory. Thus:

A. For 1987

GROSS SALES ENTRIES

Month	PASSENGERS		FREIGHT	
	Per Auditor's Report (Exhibits "S" & "T") (in USD)	Per VP's Report (Exhibits "U" & "V") (in USD)	Per Auditor's Report Exhibits "S" & "T") (in USD)	Per VP's Report (Exhibits "U" & "V") (in USD)
	[1]	[2]	[3]	[4]
January	127,786.21	132,830.00	51,627.53	37,037.00
February	177,075.41	186,091.00	88,500.59	52,789.00
March	186,789.36	315,053.00	80,553.05	67,546.00
April	309,034.54	331,070.00	61,902.51	56,809.00
May	309,932.52	279,334.00	61,278.33	42,723.00
June	279,670.43	406,763.00	34,615.23	30,717.00
July	224,109.78	35,199.00	48,724.10	40,244.00
August	193,133.23	139,621.00	64,463.44	44,502.00
September	211,137.88	128,149.00	105,079.36	88,704.00
October	173,498.79	92,671.00	72,307.74	56,412.00
November	161,382.70	157,625.00	64,942.39	42,743.00
December	149,370.82	94,216.00	51,897.09	38,595.00
	2,502,921.68	2,298,622.00	785,891.37	598,821.00

Difference between [1] and [2] = USD 207,299.68

Difference between [3] and [4] = USD 187,070.37

GROSS SALES ENTRIES

Month	PASSENGERS		FREIGHT	
	Per Auditor's Report (Exhibits "S" & "T") (in ₱)	Per VP's Report (Exhibits "U" & "V") (in ₱)	Per Auditor's Report Exhibits "S" & "T") (in ₱)*	Per VP's Report (Exhibits "U" & "V") (in ₱)*
	[1]	[2]	[3]	[4]
January	2,614,876.50	2,718,087.00	1,056,448.95	757,884.43
February	3,634,508.26	3,819,554.99	1,816,492.27	1,083,504.78
March	3,840,856.28	6,478,277.31	1,656,372.15	1,388,914.62
April	6,336,691.52	6,788,524.14	1,269,298.57	1,164,857.18
May	6,345,310.46	5,718,860.85	1,254,563.60	874,676.52
June	5,271,050.24	8,320,906.63	708,103.02	628,259.24
July	4,583,045.04	719,819.55	996,407.93	822,989.80
August	3,947,392.09	2,853,671.73	1,317,548.94	909,563.03
September	4,349,545.80	2,639,933.47	2,164,687.43	1,827,346.75
October	3,592,500.56	1,918,864.26	1,497,218.55	1,168,078.15
November	3,359,519.86	3,281,295.39	1,351,912.17	889,785.31
December	3,109,108.89	1,961,077.77	1,080 222.27	803,343.35
	51,434,405.51	44,527,966.96	16,169,275.83	12,193,303.16

Difference between [1] and [2] = 6,906,438.55

Difference between [3] and [4] = 3,849,972.67

Note: * Converted to PhP based on the same rate used in the Auditor's Report.

B. For 1988

GROSS SALES ENTRIES

Month	PASSENGERS		FREIGHT	
	Per Auditor's Report (Exhibits "S" & "T") (in USD)	Per VP's Report (Exhibits "U" & "V") (in USD)	Per Auditor's Report (Exhibits "S" & "T") (in USD)	Per VP's Report (Exhibits "U" & "V") (in USD)
	[1]	[2]	[3]	[4]
January	119,635.41	159,908.00	48,765.15	44,416.00
February	167,587.30	225,855.00	63,609.49	52,810.00
March	254,974.49	270,636.00	69,193.53	53,688.00
April	236,184.32	182,944.00	42,015.21	17,670.00
May	191,213.23	230,494.00	45,341.78	36,834.00
June	233,793.28	202,172.00	63,140.12	57,129.00
July	153,544.29	22,323.00	45,889.78	35,585.00
August	182,241.01	201,207.00	53,822.44	43,532.00
September	171,272.00	176,667.00	50,726.23	27,494.00
October	194,304.50	128,818.00	45,994.52	26,892.00
November	251,381.28	141,453.00	38,179.25	34,872.00
December	226,197.36	223,598.00	41,899.47	25,665.00
	2,382,328.47	2,206,025.00	608,578.58	458,628.00

Difference between [1] and [2] = 176,303.47

Difference between [3] and [4] = 149,950.58

GROSS SALES ENTRIES

Month	PASSENGERS		FREIGHT	
	Per Auditor's Report (Exhibits "S" & "T") (in ₱)	Per VP's Report (Exhibits "U" & "V") (in ₱) (in ₱)*	Per Auditor's Report (Exhibits "S" & "T") (in ₱)*	Per VP's Report (Exhibits "U" & "V")
	[1]	[2]	[3]	[4]
January	2,493,931.74	3,333,458.16	1,016,563.26	925,900.38
February	3,503,050.66	4,721,024.48	1,329,622.85	1,103,882.15
March	5,361,527.08	5,690,852.62	1,454,980.85	1,128,935.16
April	4,966,838.08	3,848,272.32	883,558.92	371,591.27
May	3,997,981.82	4,819,283.80	948,049.52	770,143.69
June	4,897,665.18	4,235,240.58	1,322,703.47	1,196,778.28
July	3,228,161.24	469,325.45	964,800.40	748,149.72
August	3,837,831.59	4,237,238.33	1,133,452.09	916,577.74
September	3,639,273.08	3,753,908.75	1,077,856.34	605,454.76
October	4,150,655.09	2,751,758.59	982,516.46	574,446.15
November	5,373,777.73	3,023,840.78	816,170.68	745,458.74
December	4,830,670.79	4,445,158.89	894,805.14	548,101.74
	50,281,374.09	45,659,362.75	12,825,079.97	9,635,596.78

Difference between [1] and [2] = 4,622,011.34

Difference between [3] and [4] = 3,189,483.19

Note: * Converted to PhP based on the same rate used in the Auditor's Report.

In addition to the foregoing discrepancies, the figures given by petitioner with respect to the alleged market discounts are themselves of doubtful veracity. For instance, in its Statement of Market Discount on Gross Fares for the year 1988 (Exhibit "V-1a"), petitioner allegedly had gross passenger sales of USD 22,323.00 for July of that year. However, the same statement also claims to have extended a total market discount of USD 25,179.50, or USD2,856.50 more than its reported gross sales for the same month. In addition, petitioner's claimed average discount rates of 55% and 46% for passenger sales in 1987 and 1988, respectively, and 41% and 25%, respectively, on freight sales during the same period, are likewise highly dubious.

Petitioner cannot simply brush these inconsistencies aside by claiming that "(T)he average discount percentage represents a valid indication of the difference between IATA gross fares and Market fare." The discrepancies noted by the Court are simply too significant to be explained in such a cavalier manner. As a result, no accurate determination can be made of the exact amount of discounts extended by petitioner and which it claims are deductible from its "gross Philippine billings".

WHEREFORE, premises considered, judgment is hereby rendered dismissing the petition for lack of merit. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, 18 March 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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