REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KUWAIT AIRWAYS CORPORATION, Petitioner,	**CTA CASE NO. 9874**
	Members:
	CASTAÑEDA, JR., *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 2 8 2021

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9:40 a.m.

DECISION

CASTAÑEDA, JR., J.:

THE CASE

The *Petition for Review* filed on July 11, 2018, prays for the issuance of a tax credit certificate in the aggregate amount of ₱12,158,469.00, allegedly representing petitioner's overpayment of income tax on petitioner's Gross Philippine Billings (GBPs) for the fiscal year (FY) ended March 31, 2016.[1]

THE PARTIES

Petitioner Kuwait Airways Corporation is a foreign corporation formed and organized under the laws of Kuwait and a resident thereof.[2] It was authorized by the Securities and Exchange

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[1] Summary of the Case, Pre-Trial Order dated February 12, 2019, Docket – Vol. II, p. 718.
[2] Par. 1, Stipulations of Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket – Vol. II, p. 688; Exhibits "P-1", Docket – Vol. II, pp. 796 to 797; Exhibit "P-2", Docket – Vol. I, pp. 362 to 432.

Commission (SEC) to establish a branch office in the Philippines to engage in air transport services.[3] Its branch office in the Philippines is located at G/F GC Corporate Plaza 150 Legaspi Street, Legaspi Village, Makati City.[4] Petitioner is also registered with the Bureau of Internal Revenue (BIR) Revenue District Office No. 125 – Regular LT Division II, with Tax Identification Number (TIN) 001-482-624-00000.[5]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out all the functions, duties and responsibilities of the BIR, including, *inter alia*, the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

THE FACTS

On June 5, 2015, petitioner, through its District Sales Manager/OIC, Mr. Jaime F. Zambrano, filed an *Application for Relief from Double Taxation on Shipping and Air Transport* (BIR Form No. 0901-T) with the BIR's International Tax Affairs Division (ITAD), relative to the availment of the preferential tax rate of 1½%.[7]

While the foregoing application was still pending, petitioner filed its *Quarterly Income Tax Returns* (Quarterly ITRs) for the first three (3) quarters of the FY ending March 31, 2016, and its *Annual Income Tax Return* (Annual ITR) for the same FY, as well as paid the corresponding income taxes due thereon.[8]

Thereafter, in reply to petitioner's tax treaty relief application, respondent issued BIR Ruling No. ITAD 034-17 dated November 6, 2017,[9] ruling, *inter alia*, that since the Philippines, as of the said date, has not granted a most-favored-treatment to any international air carrier of a third country, petitioner is subject to income tax of 1½%

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[3] Exhibit "P-4", Docket – Vol. I, p. 435.
[4] Par. 1, Stipulations of Facts, JSFI, Docket – Vol. II, p. 688.
[5] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 689; Exhibit "P-5", Docket – Vol. I, p. 436.
[6] Par. 2, Stipulations of Facts, JSFI, Docket – Vol. II, p. 688.
[7] Exhibit "P-8", Docket – Vol. I, p. 501.
[8] Exhibits "P-9" to "P-12", Docket – Vol. II, pp. 830 to 834; Exhibits "P-14" to "P-17", Docket – Vol. II, pp. 835 to 839; Exhibits "P-19" to "P-22", Docket – Vol. I, pp. 548 to 552; and Exhibits "P-24" to "P-27", BIR Records, pp. 35 to 46.
[9] Exhibit "P-29", Docket – Vol. I, pp. 574 to 577.

on its GPBs earned beginning January 1, 2014, pursuant to Article 8 of the Philippines-Kuwait tax treaty.

Subsequently, on March 21, 2018, petitioner filed with the BIR its Amended Annual ITR for FY ending March 31, 2016, to reflect the application of the 1½% preferential income tax rate.[10]

On May 16, 2018, petitioner filed with BIR Regular Large Taxpayer Audit Division II its administrative claim for the issuance of TCC in its favor, in view of its alleged overpaid income tax for the FY ended March 31, 2016.[11]

Petitioner elevated the matter to this Court via the filing of the present *Petition for Review* on July 11, 2018.[12] The case was originally raffled to this Court's First Division.

In the Order dated September 27, 2018,[13] the present case was transferred to the Second Division of this Court.

Respondent filed his *Answer* on October 23, 2018,[14] interposing certain special and affirmative defenses, to wit: (1) in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor; (2) Revenue Memorandum Order (RMO) No. 1-2000 provides guidelines for proper implementation of Tax Treaties to which the Philippines is a signatory; (3) petitioner must prove that the preferential tax rate is applicable to its Gross Philippine Billings under the Philippine-Kuwait Tax Treaty; (4) partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language; and (5) being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

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[10] Exhibits "P-30" and "P-31", Docket – Vol. II, pp. 840 to 849; BIR Records, pp. 47 to 56.
[11] Exhibits "P-53" and "P-54", BIR Records, pp. 62 to 64.
[12] Docket – Vol. I, pp. 10 to 31; Par. 3, Stipulations of Facts, JSFI, Docket – Vol. II, p. 689.
[13] Docket – Vol. I, p. 310.
[14] Docket – Vol. I, pp. 317 to 324.

On October 24, 2018, respondent submitted through registered mail the *BIR Records* for the present case.[15]

The pre-trial conference of this case was initially set on November 22, 2018.[16] However, upon the filing of respondent's *Motion to Reset Hearing (Set on November 22, 2018)*,[17] the pre-trial conference was reset to, and subsequently held on, January 17, 2019.[18] Prior thereto, petitioner filed its *Pre-Trial Brief* on November 15, 2018,[19] while *Respondent's Pre-Trial Brief* was submitted on January 8, 2019.[20]

Subsequently, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on January 31, 2019.[21] Consequently, the Court issued the Pre-Trial Order dated February 12, 2019,[22] approving and adopting the said JSFI, and deeming the termination of the pre-trial.

The trial of the case then ensued.

During trial, petitioner presented its testimonial and documentary evidence. Petitioner proffered the testimonies of the following individuals, namely: (1) Ms. Maria Carmen S. Tiansay,[23] petitioner's District Sales Manager; (2) Ms. Ana Marie M. Molina,[24] Accounts Manager – Finance of petitioner; and (3) Ms. Maria Cristina Josefina Berces-Ocampo,[25] the Court-commissioned Independent Certified Public Accountant (ICPA).[26]

On May 17, 2019, petitioner submitted the ICPA *Report*.[27] gr

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[15] *Compliance* dated October 24, 2018, Docket – Vol. I, pp. 326 to 328.
[16] *Notice of Pre-Trial Conference* dated October 26, 2018, Docket – Vol. I, pp. 330 to 331.
[17] Docket – Vol. I, pp. 334 to 336.
[18] Minutes of the hearing held on, and Order dated, November 22, 2018, Docket – Vol. I, Docket – Vol. I, pp. 655 to 656; Minutes of the hearing held on, and Order dated, January 17, 2019, Docket – Vol. II, pp. 662 to 663.
[19] Docket – Vol. I, pp. 642 to 652.
[20] Docket – Vol. I, pp. 657 to 660.
[21] Docket – Vol. II, pp. 688 to 696.
[22] Docket – Vol. II, pp. 718 to 725.
[23] *Judicial Affidavit of Maria Carmen S. Tiansay*, Docket – Vol. I, pp. 344 to 359; Minutes of the hearing held on, and Order dated, March 4, 2019, Docket – Vol. II, pp. 727 to 728.
[24] *Judicial Affidavit of Ana Marie M. Molina*, Docket – Vol. I, pp. 473 to 498; Minutes of the hearing held on, and Order dated March 4, 2019, Docket – Vol. II, pp. 727 to 728.
[25] *Judicial Affidavit of Ms. Maria Cristina Josefina Berces-Ocampo*, Docket – Vol. II, pp. 748 to 766; Minutes of the hearing held on, and Order dated, June 10, 2019, Docket – Vol. II, pp. 767 to 768.
[26] *Oath of Commission* dated March 4, 2019, Docket – Vol. I, p. 726; Minutes of the hearing held on, and Order dated, March 4, 2019, Docket – Vol. II, pp. 727 to 728.
[27] *Manifestation* dated May 16, 2019, Docket – Vol. II, pp. 744 to 745.

Thereafter, petitioner filed its *Formal Offer of Documentary Evidence* on July 10, 2019.[28] Respondent submitted his *Comment (Re: Formal Offer of Evidence)* on July 12, 2019.[29]

In the Resolution dated October 1, 2019,[30] the Court admitted petitioner's exhibits, *except* for Exhibits "P-26", for not being found in the records.

Thus, petitioner filed a *Motion for Reconsideration Re: Resolution Dated October 1, 2019* on October 21, 2019,[31] praying that the newly scanned exhibits (in USB form) be admitted as replacement of the unclear and unreadable documents.

At the hearing held on October 23, 2019,[32] respondent's counsel manifested that he has no witness to present in this case.

On February 19, 2020, petitioner filed its *Supplemental Formal Offer of Documentary Evidence*.[33]

In the Resolution dated June 10, 2020,[34] the Court admitted petitioner's Exhibits offered in its *Supplemental Formal Offer of Documentary Evidence* and granted petitioner's *Motion for Reconsideration Re: Resolution Dated October 1, 2019*.

On July 29, 2020, respondent posted his *Memorandum*,[35] while petitioner submitted its *Memorandum* on September 1, 2020.[36]

This case was considered submitted for decision on September 18, 2020.[37]

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[28] Docket – Vol. II, pp. 776 to 795.
[29] Docket – Vol. II, pp. 853 to 854.
[30] Docket – Vol. II, pp. 861 to 862.
[31] Docket – Vol. II, pp. 865 to 867.
[32] Minutes of the hearing held on, and Order dated, October 23, 2019, Docket – Vol. II, pp. 868 and 873, respectively.
[33] Docket – Vol. II, pp. 883 to 886.
[34] Docket – Vol. II, pp. 938 to 939.
[35] Docket – Vol. II, pp. 945 to 950.
[36] Docket – Vol. II, pp. 953 to 966.
[37] Resolution dated September 18, 2020, Docket – Vol. II, p. 968.

THE ISSUE

The parties stipulated this sole issue for this Court's resolution, to wit:

> "Whether or not petitioner is entitled to the issuance of tax credit certificate in the amount of Twelve Million One Hundred Fifty Eight Thousand Four Hundred Sixty Nine Pesos (₱12,158,469.00) representing overpayment of income tax on petitioner's Gross Philippine Billings for the fiscal year ending March 31, 2016."[38]

Petitioner's arguments:

Petitioner claims entitlement to the issuance of a tax credit certificate for the FY ended March 31, 2016 on the following bases: (i) that respondent confirmed petitioner's entitlement to use the preferential tax rate of 1 ½% on its GPBs by virtue of the issuance of BIR Ruling No. ITAD 034-17 dated November 6, 2017; (ii) that petitioner has met all the qualifications and requirements to warrant the claim for the issuance of the tax credit certificate; and (iii) that petitioner filed the application for tax credit certificate within the period prescribed by law.

Respondent's counter-arguments:

Respondent claims that while petitioner was able to secure BIR Ruling No. ITAD 034-17, the same is accompanied by a strong caveat that in the event that the facts as alleged by the applicant turn out to be false, the said ruling shall be without force and effect. Thus, according to respondent, petitioner cannot simply claim a blanket application of the relief provided under the Tax Treaty when it obtained the said ruling since its claim for refund shall still be subject to administrative and judicial scrutiny. Hence, petitioner has the burden to discharge that its transactions are on all fours with the provisions of the treaty, as well as in the facts represented in the ruling.

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[38] Issues to be Tried and Resolved, JSFI, Docket – Vol. II, p. 689.

THE COURT'S RULING

The Court partially grants the present *Petition for Review.*

Governing provisions for refund claims.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. *gr*

> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[39]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[40]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject income tax paid is an "erroneous or illegal tax". gc

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[39] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[40] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

Petitioner timely filed its administrative and judicial claims.

For corporate income taxes, the two (2)-year prescriptive period should be reckoned from the time the final adjustment return or the Annual ITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.[41]

In this case, petitioner filed its Annual ITR for the FY ended March 31, 2016 on July 14, 2016 and paid the corresponding income tax in the amount of ₱6,244,873.00 on the basis of the special tax rate of 2½%.[42] After receipt by petitioner of BIR Ruling No. ITAD 034-17 dated November 6, 2017, confirming, in effect, its entitlement to the preferential tax rate of 1½% on its GPBs, it filed an Amended Annual ITR on March 21, 2018, to reflect the application said preferential tax rate, thereby showing an *overpayment* of income tax in the amount of ₱12,158,469.00.[43]

Considering that it is only in petitioner's Amended Annual ITR, which was filed on March 21, 2018, that an overpayment of income tax was shown, upon application of the 1½% preferential tax rate, the logical conclusion is that the two-year prescriptive period should be reckoned from the said date. Thus, counting two (2) years from March 21, 2018, petitioner had until March 21, 2020, within which to file its claim both in the administrative and judicial levels. Since petitioner filed its administrative claim on May 16, 2018,[44] and the judicial claim on July 11, 2018,[45] the same were filed within the two-year prescriptive period.

Correspondingly, in this case, petitioner timely filed its administrative and judicial claims.

There was an erroneous/ overpayment of income tax Jz

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[41] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[42] Exhibits "P-24" to "P-27", Docket – Vol. I, pp. 557 to 569.
[43] Exhibits "P-30" and "P-31", Docket – Vol. II, pp. 840 to 849; BIR Records, pp. 47 to 56.
[44] Exhibits "P-53" and "P-54", BIR Records, pp. 62 to 64.
[45] Docket – Vol. I, pp. 10 to 31; Par. 3, Stipulations of Facts, JSFI, Docket – Vol. II, p. 689.

for the FY ended March 31, 2016.

Section 28(A)(3)(a) of the NIRC of 1997, as amended by Republic Act No. 10378,[46] reads as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> (A) *Tax on Resident Foreign Corporations.* –
>
> xxx xxx xxx
>
> (3) *International Carrier.* – **An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) on its 'Gross Philippine Billings'** as defined hereunder:
>
> (a) ***International Air Carrier.* – '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:** *Provided*, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: *Provided, further*, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.
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> xxx xxx xxx

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[46] 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.

> *Provided,* **That international carriers doing business in the Philippines may avail of a preferential rate** or exemption **from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory** or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision." *(Emphases added)*

Based on the foregoing provision, it is clear that an international air carrier doing business in the Philippines shall pay a tax of two and one-half percent (2½%) on its Gross Philippine Billings. However, such international air carrier may, *inter alia*, avail of a preferential rate from the said tax on its gross revenue derived from the carriage of persons and their excess baggage, on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory.

As it is recognized, the application of the provisions of the NIRC must be subject to the provision of tax treaties entered into by the Philippines with foreign countries.[47]

Relative to the present case, Article 8 of the Philippines-Kuwait tax treaty,[48] which are applicable to income derived or which accrued beginning January 1, 2014,[49] provides as follows:

"Article 8
SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

[47] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.

[48] Formally known as the AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

[49] Revenue Memorandum Circular No. 37-2014 dated May 8, 2014 (SUBJECT: Entry into Force, Effectivity, and Applicability of the Philippines-Kuwait Double Taxation Agreement).

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first mentioned State but the tax so charged shall not exceed the lesser of:

a) one and one-half per cent of the gross revenue derived from sources in that State; and

b) the lowest rate that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

xxx xxx xxx." *(Emphasis added)*

On the basis of thereof, beginning January 1, 2014, profits from sources within the Philippines derived by an enterprise of Kuwait from the operation of ships or aircraft in international traffic shall be subject to income tax, either at: (1) 1½% of the gross revenue derived from the Philippines; or (2) the lowest rate that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

Apropos, the Government of the Philippines is obligated to observe the terms and conditions of the Philippines-Kuwait tax treaty under the rule of *pacta sunt servanda*, a fundamental maxim of international law that requires the parties to keep their agreement in good faith.[50]

Furthermore, it must be pointed out that the purpose of tax treaties is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two (2) different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same

[50] Refer to *Land Bank of the Phils. vs. Atlanta Industries, Inc.,* G.R. No. 193796, July 2, 2014, citing *Secretary of Justice vs. Hon. Lantion,* 379 Phil. 165, 212 (2000).

taxpayer in respect of the same subject matter and for identical periods.[51]

As already noted, respondent issued BIR Ruling No. ITAD 034-17 dated November 6, 2017,[52] wherein he ruled, *inter alia*, that since the Philippines, as of the said date, has not granted a most-favored-treatment to any international air carrier of a third country, petitioner is subject to income tax of 1½% on its GPB earned beginning January 1, 2014, pursuant to the aforequoted Article 8 of the Philippines-Kuwait tax treaty.

Bearing in mind the rationale of tax treaties/conventions, there is no reason to deprive petitioner of its availment of the preferential tax rate of 1½% on its GPBs, in accordance with Article 8 of the Philippines-Kuwait tax treaty, especially that its entitlement to the same had already been confirmed by no less than respondent himself when he issued BIR Ruling No. ITAD 034-17 dated November 6, 2017.

Having resolved the foregoing matter, this Court shall now determine whether petitioner is entitled to the issuance of a tax credit certificate in the aggregate amount of ₱12,158,469.00, as prayed for in the present *Petition for Review*.

Petitioner filed its Quarterly ITRs for the first three (3) quarters of FY ending March 31, 2016, and its Annual ITR for the same FY, on the following dates:

Period	**Date Filed**
For the 1st Quarter[53]	August 27, 2015
For the 2nd Quarter[54]	November 27, 2015
For the 3rd Quarter[55]	February 26, 2016
For the FY ending March 31, 2016[56]	July 14, 2016

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[51] Refer to *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, supra.
[52] Exhibit "P-29", Docket – Vol. I, pp. 574 to 577.
[53] Exhibits "P-9" and "P-10", Docket – Vol. II, pp. 830 to 832.
[54] Exhibits "P-14" and "P-15", Docket – Vol. II, pp. 835 to 837.
[55] Exhibits "P-19" and "P-20", Docket – Vol. I, pp. 548 to 550.
[56] Exhibit "P-24", BIR Records, pp. 37 to 46.

In the said *Returns*, petitioner subjected its gross revenues derived from passenger and cargo sales, excess baggage, and other income for the above-stated period to the income tax rate of **2½%**, as shown below:

Exhibit	"P-9"	"P-14"	"P-19"	"P-24"
Period Covered	1st Quarter of FY 2016	2nd Quarter of FY 2016	3rd Quarter of FY 2016	FY 2016
Sales/Revenues/Receipts/Fees	₱442,816,512.74	₱285,020,092.79	₱225,879,630.85	₱1,215,846,969.00
Taxable Income This Quarter	₱442,816,512.74	₱285,020,092.79	₱225,879,630.85	₱1,215,846,969.00
Add: Taxable Income from Previous Quarter(s)	-	-	-	-
Total Taxable Income to Date	₱442,816,512.74	₱285,020,092.79	₱225,879,630.85	₱1,215,846,969.00
Tax Rate	**2.50%**	**2.50%**	**2.50%**	**2.50%**
Income Tax Due	₱ 11,070,412.82	₱ 7,125,502.32	₱ 5,646,990.77	₱ 30,396,174.00
Less: Tax Credits/Payments				
Tax Payment(s) from Previous Quarter(s)	₱ -	₱ -	₱ -	₱ 22,996,927.00
Creditable Tax Withheld for the Previous Quarter(s)	-	-	-	845,979.00
Creditable Tax Withheld per BIR Form No. 2307 for this Quarter	544,461.13	176,425.00	125,092.39	308,395.00
Total	₱ 544,461.13	₱ 176,425.00	₱ 125,092.39	₱ 24,151,301.00
Tax Payable	**₱10,525,951.69**	**₱6,949,077.32**	**₱5,521,898.38**	**₱ 6,244,873.00**

The above *Tax Payable* in the respective amounts of ₱10,525,951.69, ₱6,949,077.32, ₱5,521,898.38 and ₱6,244,873.00, or the total amount of ₱29,241,800.39, were accordingly paid by petitioner *via* the BIR's Electronic Payment System on August 27, 2015, November 27, 2015, February 26, 2016, and July 14, 2016, respectively, as evidenced by the corresponding Land Bank of the Philippines Confirmation Receipts and/or eFPS BIR payment confirmations, with stamped received by the BIR.[57]

After receipt of the said BIR Ruling No. ITAD 034-17, confirming its entitlement to the preferential tax rate of **1½%** on its GPBs, petitioner filed an Amended Annual ITR for FY 2016 on March 21, 2018, to reflect the application of the said rate.[58] As shown therein, this resulted to an *overpayment* of income tax in the amount of ₱12,158,469.00, computed as follows:

Sales/Revenues/Receipts/Fees	₱ 1,215,846,969.00
Income Tax Rate	**1.50%**
Income Tax Due	₱ 18,237,705.00
Less: Tax Credits/Payments	

[57] Exhibits "P-11", "P-12", "P-16", "P-17", "P-21", "P-22", and "P-27", Docket – Vol. II, pp. 833 to 834, and 838 to 839; Docket – Vol. I, pp. 551 to 552; and BIR Records, p. 35.
[58] Exhibit "P-30", BIR Records, pp. 47 to 56.

Income Tax Payment(s) from Previous Quarter/s	₱ 22,996,927.00
Creditable Tax Withheld from Previous Quarter/s	845,979.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	308,395.00
Tax Paid in Return Previously Filed, if this is an Amended Return	6,244,873.00
Total	₱ 30,396,174.00
Tax Payable (Overpayment)	**₱(12,158,469.00)**

Notably, petitioner's tax credits/payments in the total amount of ₱30,396,174.00 for FY ended March 31, 2016, consisted of the quarterly payments in the aggregate amount of ₱29,241,800.00,[59] and creditable taxes withheld in the amount of ₱1,154,374.00.[60]

In proving the creditable taxes withheld (CWTs) in the aggregate amount of ₱1,154,374.00, petitioner presented its *Certificates of Creditable Tax Withheld at Source* (BIR Forms No. 2307) and *Summary Alphalist of Withholding Taxes*[61] for FY 2016. However, the Court notes that some of the said *Certificates* were either dated prior to the year of the claim, or not under the registered name of petitioner as payee. Thus, the following withheld taxes totalling ₱184,634.29, shall be disallowed and deducted from petitioner's refundable amount, to wit:

Exhibit "P-56"[62] (last 8-digits of the filename found in the CD)	Page No.	Payor of Income	Amount of Tax Withheld
1. Dated outside the period of claim.			
"06302015"	5	AIRSPEED INTERNATIONAL CORP.	₱ 7,892.42
"06302015"	6	AIRSPEED INTERNATIONAL CORP.	1,464.66
"06302015"	12	BVM SANCHEZ & SON GLOBAL LOGISTICS INC.	10,452.29
"06302015"	14	BVM SANCHEZ & SON GLOBAL LOGISTICS INC.	346.65
"06302015"	17	CTSI LOGISTICS PHILIPPINES, INC.	922.01
"06302015"	19	CTSI LOGISTICS PHILIPPINES, INC.	25,949.95
"06302015"	21	DHL GLOBAL FORWARDING (PHILS) INC.	1,468.43
"06302015"	22	DHL GLOBAL FORWARDING (PHILS) INC.	40,325.86
"06302015"	23	DHL GLOBAL FORWARDING (PHILS) INC.	23,482.38
"06302015"	27	DIMERCO EXPRESS PHILS INC	1,994.86
"06302015"	28	DIMERCO EXPRESS PHILS INC	90.51
"06302015"	29	DIMERCO EXPRESS PHILS INC	60.93
"06302015"	30	DIMERCO EXPRESS PHILS INC	152.19

[59] ₱22,996,927.00 plus ₱6,244,873.00.
[60] ₱845,979.00 plus ₱308,395.00.
[61] Exhibit "P-56" (CD).
[62] Exhibit "P-56" actually consists of two (2) CDs. One particular CD contains four (4) files containing the BIR Forms No. 2307 issued to petitioner supposedly and respectively for the four (4) quarters of FY ending March 31, 2016.

"06302015"	31	DIMERCO EXPRESS PHILS INC	257.56
"06302015"	36	DSV AIR & SEA, INC.	331.52
"06302015"	42	FIRST IMPERIAL CARGO INC	581.95
"06302015"	55	HIGH LIGHT EXPRESS PHILS. CORP.	583.65
"06302015"	59	INTERCONTINENTAL FREIGHT FACILITATORS, INC.	62.27
"06302015"	64	KINTETSU WORLD EXPRESS (PHILS.) INC.	500.35
"06302015"	79	NIPPON EXPRESS PHILIPPINES CORPORATION	11,105.02
"06302015"	83	ORIENTAL AIR TRANSPORT SERVICE PHILS	78.06
"06302015"	88	RAPID INC.	40.80
"06302015"	92	SDV (SCAC) PHILIPPINES, INC.	848.51
"06302015"	99	SKY FREIGHT FORWARDERS INC.	2,436.22
"06302015"	100	SKY FREIGHT FORWARDERS INC.	2,086.22
"06302015"	101	SKY FREIGHT FORWARDERS INC.	2,147.35
"06302015"	102	SKY FREIGHT FORWARDERS INC.	2,011.01
"06302015"	107	SKYLINK CO., INC	228.21
"06302015"	117	TRANS-GLOBAL CONSOLIDATORS, INC.	22,669.25
"06302015"	124	YUSEN LOGISTICS PHILIPPINES INC.	165.14
"06302015"	125	YUSEN LOGISTICS PHILIPPINES INC.	33.87
"09302015"	82	U-FREIGHT PHILS., INC.	65.26
"09302015"	83	U-FREIGHT PHILS., INC.	382.99
"09302015"	84	U-FREIGHT PHILS., INC.	930.95
		Subtotal	***₱ 162,149.30***
2. Certificates not in petitioner's registered name, as payee.			
"06302015"	46	HANKYU HANSHIN EXPRESS PHILS., INC.	₱ 30.14
"06302015"	47	HANKYU HANSHIN EXPRESS PHILS., INC.	94.57
"06302015"	48	HANKYU HANSHIN EXPRESS PHILS., INC.	1,561.59
"06302015"	49	HANKYU HANSHIN EXPRESS PHILS., INC.	892.55
"06302015"	50	HANKYU HANSHIN EXPRESS PHILS., INC.	36.63
"06302015"	51	HANKYU HANSHIN EXPRESS PHILS., INC.	200.26
"06302015"	52	HANKYU HANSHIN EXPRESS PHILS., INC.	381.13
"06302015"	53	HANKYU HANSHIN EXPRESS PHILS., INC.	538.90
"06302015"	66	KUEHNE + NAGEL INC	1,339.37
"06302015"	67	KUEHNE + NAGEL INC	3,366.40
"06302015"	68	KUEHNE + NAGEL INC	947.18
"06302015"	69	KUEHNE + NAGEL INC	1,066.83
"06302015"	70	KUEHNE + NAGEL INC	2,806.35
"06302015"	71	KUEHNE + NAGEL INC	2,880.39
"06302015"	72	KUEHNE + NAGEL INC	1,610.11
"09302015"	26	HANKYU HANSHIN EXPRESS PHILS., INC.	294.97
"09302015"	27	HANKYU HANSHIN EXPRESS PHILS., INC.	110.51
"09302015"	28	HANKYU HANSHIN EXPRESS PHILS., INC.	243.22
"09302015"	29	HANKYU HANSHIN EXPRESS PHILS., INC.	63.79
"09302015"	39	KUEHNE + NAGEL INC	905.77
"09302015"	40	KUEHNE + NAGEL INC	93.72
"12312015"	22	HANKYU HANSHIN EXPRESS PHILS., INC.	121.54
"12312015"	23	HANKYU HANSHIN EXPRESS PHILS., INC.	181.46
"12312015"	24	HANKYU HANSHIN EXPRESS PHILS., INC.	473.43
"12312015"	25	HANKYU HANSHIN EXPRESS PHILS., INC.	282.81
"12312015"	26	HANKYU HANSHIN EXPRESS PHILS., INC.	200.63
"03312016"	31	HANKYU HANSHIN EXPRESS PHILS., INC.	87.06
"03312016"	32	HANKYU HANSHIN EXPRESS PHILS., INC.	194.97
"03312016"	33	HANKYU HANSHIN EXPRESS PHILS., INC.	373.29
"03312016"	34	HANKYU HANSHIN EXPRESS PHILS., INC.	279.93
"03312016"	35	HANKYU HANSHIN EXPRESS PHILS., INC.	495.63

"03312016"	36	HANKYU HANSHIN EXPRESS PHILS., INC.	282.52
"03312016"	49	KUEHNE + NAGEL INC	47.34
		Subtotal	***₱ 22,484.99***
		TOTAL	**₱ 184,634.29**

In sum, out of the claimed amount of ₱12,158,469.00, representing the 1% difference between the income tax rates of 2½% and 1½% income tax on petitioner's GPBs amounting to ₱1,215,846,969.00 for FY 2016, the amount of **₱11,973,834.71** constitutes erroneously paid taxes, computed as follows:

Income Tax Due @ 1.5% of Gross Philippine Billings			₱ 18,237,705.00
Less: Tax Credits/Payments			
Income tax payments for the FY 2016		₱29,241,800.00	
Creditable Tax Withheld	₱1,154,374.00		
Less: Disallowed by the Court	184,634.29	969,739.71	30,211,539.71
Total Amount Refundable per Court			**₱(11,973,834.71)**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of **₱11,973,834.71**, representing the latter's overpaid income taxes for FY ended March 31, 2016.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

With Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KUWAIT AIRWAYS CORPORATION, Petitioner,	**CTA CASE NO. 9874**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 28 2021 9:40 a.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I agree in partially granting petitioner Kuwait Airways Corporation's (**petitioner's**) Petition for Review.

With all due respect, however, I beg to differ from the reckoning point of the 2-year period (under Section 229 of the National Internal Revenue Code [**NIRC**] of 1997, as amended), as discussed in the *ponencia* of our distinguished Chairman, which was counted from the filing of petitioner's Amended Annual Income Tax Return (**ITR**) on 21 March 2018.

Records show that petitioner filed on 14 July 2016 its ITR for the fiscal year ending on 31 March 2016.[1] After its receipt of Bureau of Internal Revenue (**BIR**) Ruling No. ITAD 034-17 dated 06 November 2017[2], it filed its Amended Annual ITR on 21 March 2018[3], reflecting the application of the preferential rate of 1 ½%, which then showed an overpayment of income tax in the amount of ₱12,158,469.00.

In this regard, Section 229 of the NIRC of 1997, as amended, clearly provides:

[1] Exhibits "P-24" to "P-27", BIR Records, pp. 35-46.
[2] Exhibit "P-29", Division Docket, Volume I, pp. 574-577.
[3] Exhibits "P-30" and "P-31", id., Volume II, pp. 840-849.

> ...
>
> **Sec. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty <u>regardless of any supervening cause that may arise after payment</u>:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[4]
>
> ...

Under the said provision, the 2-year period shall be reckoned **from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**.

In *Commissioner of Internal Revenue v. Manila Electric Company (MERALCO)*[5] (**MERALCO**), the Supreme Court interpreted the said provision, in relation to a ruling subsequently issued by the BIR, as follows:

> ...
>
> **As can be gleaned from the foregoing, the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment. It should be pointed out further that while the prescriptive period of two (2) years commences to run from the time that the refund is ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. The issuance by the BIR of the Ruling declaring the tax-exempt status of NORD/LB, if at all, is merely confirmatory in nature.** As aptly held by the CTA-First Division, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003, since said ruling is not the operative act from which an entitlement of refund is determined. In other words, the BIR is tasked only to confirm what is provided under the Tax Code on the matter of tax exemptions as well as the period within which to file a claim for refund.
>
> ...

From the foregoing, it is clear that the 2-year period should have been reckoned from the payment of tax on 14 July 2016 despite the supervening cause

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4 Emphasis and underscoring supplied.
5 G.R. No. 181459, 09 June 2014; Citation omitted and emphasis supplied.

that arose after payment, such as the issuance of BIR Ruling No. ITAD 034-17 and the filing of Amended Annual ITR.

It must be noted that the Supreme Court even emphasized in *MERALCO* that issuance by the BIR of the ruling is merely confirmatory in nature and is not the operative act from which an entitlement of refund is determined.

At any rate, petitioner's administrative and judicial claims were still timely filed even if the same is counted from the filing and payment of the Annual ITR on 14 July 2016. Records reveal that petitioner filed its administrative claim on 16 May 2018[6] and the judicial claim on 11 July 2018[7], both within the 2-year prescriptive period under Section 229 of the NIRC of 1997, as amended.

In sum, I vote to partially grant petitioner's Petition for Review in the reduced amount of ₱11,973,834.71.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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6 Exhibits "P-53" and "P-54", BIR Records, pp. 62-64.

7 Division Docket, Volume I, pp. 10-31; Joint Stipulation of Facts and Issues, Division Docket, Volume II, p. 689.