REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SINGAPORE AIRLINES, LTD.,
Petitioner,

- versus - C.T.A. CASES NOS. 3351 & 3496

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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7/28/87

D E C I S I O N

These are two (2) consolidated cases involving claims for refund of 15% branch profits remittance taxes alleged to have been erroneously paid by petitioner Singapore Airlines, Ltd., on July 16, 1979, in the sum of ₱606,510.75, and on July 18, 1979 in the sum of ₱393,385.92, inclusive of interest (CTA Case No. 3351), and on July 15, 1980 in the amount of ₱405,785.95 (CTA Case No. 3496).

Petitioner is a resident foreign corporation engaged in business as international carrier in the Philippines. It is the Philippine branch of the main corporation organized and existing under the laws of the Republic of Singapore. Its head office is located in the Republic of Singapore, the country in which petitioner's head office is based, and which country had a tax treaty with the Philippines, the pertinent provision of which is quoted hereunder:

"SHIPPING AND AIR TRANSPORT

"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 whichever is the lesser of either-

"(a) one and one-half per cent of the gross revenues derived from sources in that State; or

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

The existence of this treaty was not denied by respondent as in fact he had admitted it. (par. 4, Answer, pp. 23-24 CTA rec.) This treaty, under its Article 27, provides that-

"2. This convention (treaty) shall enter force upon the exchange of the instruments of ratification and its provisions shall have effect:

"(a) in respect to tax withheld or deducted at source on amounts paid to non-residents on or after the first day of January in the calendar in which the

> exchange of instrument of ratification takes place;"

The exchange of instrument of ratification of the convention (or treaty) took place on November 16, 1977 and in pursuance to Article 27 of the said Treaty, the provisions thereof takes effect on January 1, 1977.

Petitioner is a corporation which maintains the fiscal year method of returning its corporate income and expenses. Its fiscal year periods begins March 31, 1976 and ends on March 31 of the suceeding year and so on. So that from March 31, 1980, it paid its 2½% tax due on the net incomes earned during petitioner's fiscal years.

And for its branch profits for the fiscal year ended March 31, 1977 (from March 31, 1976), petitioner paid to the government the amount of ₱393,385.92 as 15% branch profit remittance tax, inclusive of interest, on July 18, 1978 (Exhs. D & D-1). /For CTA Case No. 3351/.

On July 16, 1979, petitioner filed with respondent an Annual Report of Creditable Income Tax Withheld at Source covering 15% branch profit remittance tax in the amount ₱606,510.75 for fiscal year ended March 31, 1979 (from March 31, 1978) amounting to ₱4,043,405.00 and paid the said 15% branch profit remittance tax thereon of ₱606,510.75 on the same date (Exhs. B & B-1 respectively.) /CTA Case No. 3351./

Finally, on July 15, 1980, petitioner filed a similar Annual Return of Creditable Income Tax Withheld at Source covering the 15% branch profit remittance tax of ₱405,785.95 for the fiscal year ended March 31, 1980 (from March 31, 1979) amounting to ₱2,705,239.66 and was paid on the same date. (Exhs. C, C-1 & C-2, respectively.)

Sometime in April 1981, petitioner informed the Commissioner of Internal Revenue of the Memorandum signed by Republic of Singapore and the Philippines on April 3, 1981 (Exh. F), through the duly authorized representatives of the Ministers of Finance of the Republic of the Philippines and of the Republic of Singapore on taxation of shipping and air transport profits under the Convention for the Avoidance of Double Taxation between said countries, the pertinent portions of which are quoted as follows:

> "xxx The total incidence of taxes imposed by a Contracting State on the profits from the operation of ships and aircraft in international traffic of an enterprise of the other Contracting State shall not exceed the lesser of one and one-half percent of the gross revenues derived from sources in that state or the lowest rate of Philippine tax that may be imposed

on profits of the same kind derived under similar circumstances by a resident of a third state.

"Both delegations thus agreed that as such, the total amount of corporate income tax and branch profit remittance tax that may be imposed on such profits of an enterprise of one Contracting State by the other Contracting State shall not exceed the rates stipulated in Article 8 during the effectivity of the convention. (Emphasis ours)".

Consequently, on June 17, 1981, petitioner filed with respondent a claim for the refund of the 15% branch profit remittance tax erroneously paid for the fiscal years 1976-1977, 1978-1979 and 1979-1980, in the amounts of ₱393,385.92, ₱606,510.75 and ₱405,785.95, respectively, or in the total sum of ₱1,405,682.62 (Exh. G).

No decision of the claim for refund having been forthcoming, petitioner filed the instant petitions for review or appeals in these two cases.

The only issue in these cases is whether or not petitioner's gross income for the years 1976-1977, 1978-1979 and 1979-1980 on which the 15% gross profit remittance tax of ₱393,385.92, ₱606,510.75 and ₱405,785.95, respectively, or in the total amount of ₱1,405,682.62, were erroneously paid and subject to refund.

The determination of this issue hinges on the strength of the provision of the Convention (or treaty) for the Avoidance of Double Taxation between Singapore and the Philippines, and subject to an implementing memorandum signed on April 3, 1981 between these two countries relative to taxation of shipping and air transport profits, which states in part "xxx that with reference to the provisions of Article 8 of the Convention on Shipping and Air Transport, the total incidence of taxes imposed by a Contracting State on profits from the operation of ships and aircraft in international traffic of an enterprise of the other Contracting State shall not exceed the lesser of one-half percent of the gross revenues derived from sources in that State or the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State" and that "xxx the total amount of corporate income tax and branch profits remittance tax that may be imposed on such profits of an enterprise of one Contracting State by the other Contracting State shall not exceed the rates stipulated in Article 8 during the effectivity of the Convention." (pp. 5-7, CTA rec.)

Article 8 of the said Treaty between the Philippines and Singapore states as follows:

"SHIPPING AND AIR TRANSPORT"

> "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 whichever is the lesser of either -
>
> "(a) one and one-half per cent of the gross revenues derived from sources in that State; or
>
> "(b) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State."

and this was the provision on the strength of which the aforesaid memorandum was entered into between our country and Singapore.

Under this treaty, which is the law between the contracting states therefore, the 15% branch profit remittance tax paid by petitioner Singapore Airlines, Ltd., for the fiscal years in question clearly far exceeded the 1½% tax to be imposed on the petitioner's combined corporate income and the branch profits remittance for which 1½% petitioner is only liable thereto. Consequently, the 15% branch remittance tax is not imposable on petitioner and said taxes it paid for the fiscal years in question are refundable to which respondent is impliedly agreeable, with the exception only of the 15% branch profit remittance tax paid in the amount of ₱393,385.92, representing the tax on the branch profit remittance for fiscal year 1976-1977, the refundability of which we are left to decide in this case.

With respect to the 15% branch profit remittance tax for fiscal year 1978-1979 and 1979-1980, paid on July 16, 1979 and July 15, 1980, respectively, respondent does not dispute or question that petitioner is entitled to their refund which we so hold.

We will now consider the question as to whether or not the Treaty between the Philippines and Singapore would encompass the 15% branch profit remittance tax paid for those profits earned during the fiscal year 1976-1977. Petitioner contends that the profits during said fiscal year 1976-1977 are determinable only after the close thereof, or after March 31, 1977, where the audited financial statement shall have been prepared and submitted by petitioner's external auditors. It concluded that the branch profits of petitioner could only be remitted to its Head Office in Singapore after the close of its taxable year, or after March 31, 1977. And inasmuch as the taxable year of petitioner is the fiscal year, the 15% branch profit tax recoverable includes those imposed on the branch profits of petitioner covering the fiscal year from March 31, 1966 to March 31, 1977, the recoverable overpaid tax falls under the full force of the provision of Articles of the Treaty between the Philippines and Singapore which is effective on January 1, 1977 or during the fiscal period of petitioner. Consequently, the said 15% branch profit remittance tax paid in the amount of ₱393,385.92 during the fiscal period in question is therefore, refundable in full.

In view of the foregoing, we are of the opinion and so hold that petitioner is entitled to the refund of the total sum of ₱1,405,682.63 representing 15% branch profitstax withheld and paid by petitioner for the fiscal years 1976-1977, 1978-1979 and 1979-1980, itemized as follows:

Fiscal year		
1976-1977	....	₱ 393,385.92
1978-1979	....	606,510.75
1979-1980	....	405,785.95
		₱1,405,682.62

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Singapore Airlines, Ltd. the total sum of ₱1,405,682.62 as overpaid branch profits tax for the fiscal year 1977-1978, 1978-1979, 1979-1980.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 24, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge