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. 2525
(CTA Case No. 9874)

Present:

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

Promulgated:
OCT 07 2022 2:03 PM

x - x

RESOLUTION

CUI-DAVID, J.:

Before this Court is petitioner's **Motion for Reconsideration (Re: Decision promulgated 16 June 2022)** filed on July 8, 2022, with respondent's **Opposition (Re: Motion for Reconsideration dated July 8, 2022)** filed through courier on August 15, 2022, and received by the Court on August 16, 2022.

On June 16, 2022, the Court promulgated a Decision affirming the Decision dated May 28, 2021, and the Resolution dated September 30, 2021, of the Court's Second Division, holding that respondent is entitled to the issuance of a tax credit certificate (TCC) in the reduced amount of ₱11,973,834.71, representing its overpaid income tax for the fiscal year (FY) ended March 31, 2016. The dispositive portion states as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated May 28, 2021, and the Resolution dated September 30, 2021, of the Second Division in the case docketed as CTA Case No. 9874 are **AFFIRMED.**
>
> **SO ORDERED.**

In her Motion, petitioner argues that the Court *En Banc* erred in ruling that respondent is entitled to the issuance of TCC for ₱11,973,834.71, representing its overpayment of income tax on its Gross Philippine Billings (GPB). Petitioner stresses that a motion for reconsideration is not *pro forma* just because it reiterated the arguments earlier passed upon and rejected by the Court, citing the case of *Marikina Valley Development Corporation v. Flojo.*[1]

Petitioner avers that respondent failed to show that Philippine carriers are enjoying the income tax exemption in the home country of respondent as allegedly required under Revenue Regulations (RR) No. 15-2013.[2] Finally, petitioner submits that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer, and that respondent fell short of proving the veracity of its claim for a refund.

Respondent, in its Comment, counters that the reciprocity requirement finds no application in this case, considering that it is not invoking income tax exemption but only the use of the preferential income tax rate of 1½% in its application for issuance of a TCC. Applying the same RR No. 15-2013 invoked by petitioner, respondent maintains that it is entitled to the claim for refund and/or issuance of TCC under Sections 1[3] and 4.2.[4] Article 8 of the Philippines-Kuwait Tax

---

[1] G.R. No. 110801, December 8, 1995.

[2] 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, September 20, 2013.

[3] On March 7, 2013, Republic Act (RA) 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" was signed into law. Pursuant thereto, international carriers may now avail of preferential rates or exemption from income tax on their gross revenues derived from the carriage of persons and their excess baggage based on the principle of reciprocity or an applicable tax treaty or international agreement to which the Philippines is a signatory. ...

[4] SEC. 4. INCOME TAX. — ...

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:

Treaty provides that respondent is entitled to use the preferential tax rate of 1½% on its gross revenues derived from the Philippines. Also, respondent invokes Revenue Memorandum Circular No. 37-2014, which states that the income tax provisions in the Philippines-Kuwait Tax Treaty shall apply to income derived or which accrued beginning January 1, 2014.

Finally, respondent points out that the ITAD BIR Ruling No. 034-17, dated November 6, 2017, issued by the Commissioner of Internal Revenue Caesar R. Dulay confirmed that respondent is subject to income tax of 1½% on its GBP earned beginning January 1, 2014, under paragraph 2(b), Article 8 of the Philippines-Kuwait Tax Treaty.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

The Court is confronted with the sole issue on whether respondent is entitled to use the preferential tax rate of 1½% on its GPBs. Respondent did not invoke an exemption on income taxes. Hence, the ground raised by petitioner relating to reciprocity is irrelevant. Generally, under Section 28(A)(3)(a) of the Tax Code, an international carrier doing business in the Philippines is subject to 2½% income tax rate on its GPBs but as an exception, may avail of a preferential rate based on an applicable tax treaty or international agreement to which the Philippines is a signatory, which, in this case, is the Philippines-Kuwait Tax Treaty. The BIR recognized the treaty in RMC No. 37-2014 and ITAD BIR Ruling No. 034-17. Hence, the confluence of the foregoing law, treaty, and issuances warrants respondent's availment of the 1½% preferential tax rate on its GPBs beginning January 1, 2014.

There being no substantial issue raised by petitioner in her Motion, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on June 16, 2022.

A) Applicable tax treaty to which the Philippines is a signatory. — Tax Treaties generally allow the Philippines to impose preferential income tax rates 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 (1½ %) 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. …

B) Reciprocity. — This may be invoked by an international carrier as basis for Gross Philippine Billings Tax exemption when its Home Country grants income tax exemption to Philippine carriers. …

x--x

WHEREFORE, petitioner's Motion for Reconsideration (Re: Decision promulgated 16 June 2022) is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate 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