REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SINGAPORE AIRLINES CARGO PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7500

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAY 19 2008 ; 1:00 pm

x - x

DECISION

CASANOVA, *J.:*

STATEMENT OF THE CASE

This *Petition for Review,* filed on July 11, 2006, is seeking that respondent refund to petitioner the amount of FIVE MILLION SEVEN HUNDRED THIRTEEN THOUSAND SEVEN HUNDRED FORTY-THREE PESOS AND 86/100 (P5,713,743.86) representing overpaid income tax, plus legal interest until fully paid, allegedly arising from reduced annual income tax rate of 1 ½% under Article 8 of the Philippines-Singapore Tax Treaty as opposed to 2% rate under Section 2.57.2 (E)(4)(e) [1] of Revenue Regulations No. 6-2001.

STATEMENT OF THE FACTS

As culled from the records of the case, the facts are as follows:

Petitioner Singapore Airlines Cargo Pte. Ltd. (Singapore Airlines) is a corporation duly organized and existing under and by virtue of the laws of Singapore with principal office

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[1] Petitioner erroneously cited Section 2.57.2 (E)(3)(e) but upon confirmation by this Honorable Court, the proper citation should be Section 2.57.2 (E)(4)(e).

address at 05-J, Airfreight Terminal 5, 30 Airline Road Singapore. By virtue of a License to Transact Business in the Philippines issued by the Securities and Exchange Commission,[2] its Philippine branch at 2/F PAIR-PAGS Center, Ninoy Aquino Avenue, Pasay City, Philippines was granted the authority to engage in the business of airline transport carriage of freight and mail without operating domestic freighter flights. [3]

Respondent Commissioner of Internal Revenue (Commissioner), on the other hand, is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the 1997 National Internal Revenue Code (1997 Tax Code), with office address at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.[4]

In the course of its operations and in the conduct of its business in the Philippines, Singapore Airlines filed its quarterly and annual income tax returns[5] for Fiscal Year ending March 31, 2003. In computing for its tax liabilities, Singapore Airlines' basis of computation is Article 8 of the Philippines-Singapore Treaty which granted it a preferential tax rate of 1 ½% on its Gross Philippine Billings (GPB). However, its withholding agents deducted an equivalent of 2% on its sales pursuant to Section 2.57.2 (E)(4)(e) of Revenue Regulations No. 6-2001 (RR 6-2001) [6]. As a result of this over-deduction, petitioner claims the .5% difference as excess tax paid making it refundable under Section 76 of the 1997 Tax Code.

Specifically for the period of the claim, the quarterly returns showed the following details:

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[2] Exhibit "A"
[3] Petition for Review, Par. 6, *Rollo*, p. 7; Memorandum, Par. 1, *Rollo*, p. 1697.
[4] Joint Stipulation of Facts, Par. 2, *Rollo*, p. 1453.
[5] Exhibits "D", "E", "F", and "G".
[6] Revenue Regulations 6-2001 pertains to the amendatory provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax rates on Certain Income Payments Subject to Creditable Withholding Rax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon and Others.

Quarter	1ST Quarter	2ND Quarter	3RD Quarter
Date Filed	Aug. 29, 2003	Dec. 4, 2003	Mar. 1, 2004
Exhibit	Exhibit "E"	Exhibit "F"	Exhibit "G"
Sales/Revenues/Receipts	107,114,919.24	113,968,248.73	173,839,372.60
Less: Cost of Sales/Services			
Gross Income	107,114,919.24	113,968,248.73	173,839,372.60
Add: Other Income			
Total Gross Income	107,114,919.24	113,968,248.73	173,839,372.60
Less: Deductions			
Taxable Income this Quarter	107,114,919.24	113,968,248.73	173,839,372.60
Add: Taxable Income from Previous Quarter(s)			221,083,167.97
Total Taxable Income to Date	107,114,919.24	113,968,248.73	394,922,540.57
Tax Rate	1.5%	1.5%	1.5%
Tax Due	1,606,723.79	1,709,523.73	5,923,838.11
Aggregate Tax Due	1,606,723.79	1,709,523.73	5,923,838.11
Less: Tax Credits/Payments			
CWT for Previous Quarters			5,567,235.03
CWT for this Quarter	2,767,065.14	2,800,169.89	4,768,425.67
Total tax Credits/Payments			10,335,660.70
Total Payable	(1,160,341.35)	(1,090,646.16)	(4,411,828.59)

On the other hand, its Annual Income Tax Return, filed on June 13, 2004 presented the following data:

Sales/Revenues/Receipts	P	540,519,349.01		
Less: Cost of Sales/Services				
Gross Income				
Add: Other Income				
Total Gross Income		540,519,349.01		
Less: Deductions				
Taxable Income		540,519,349.01		
Tax Rate		1.5%		
Income Tax		8,107,790.24		
Aggregate Income Tax Due				8,107,790.24
Less:Tax Credits/Payments				
CWT for Previous Quarters		10,335,660.70		
CWT for the Fourth Quarter		3,485,873.40		
Total Tax Credits/ Payments				13,821,534.10
Total Payable/(Overpayment)			P	(5,713,743.86)

Its Gross Philippine Billings (GPB) for all four quarters were alleged by petitioner to have been taxed at an average rate of two percent (2%) duly reflected on the Certificates of Creditable Withholding Taxes issued by the withholding agents of petitioner. Over the fiscal year, this repetitive excessive withholding accumulated to P5,713,743.86.[7]

On July 29, 2005, petitioner filed a letter-request before the respondent asking for a ruling that Singapore Airlines be subjected to the preferential tax rate of 1 ½ % and at the same time requesting that it be issued a tax refund or a tax credit certificate in the amount of P5,713,743.86. As an argument, Singapore Airlines cited BIR Ruling No. 022-96 dated February 22, 1996 wherein the 1 ½% treaty rate was applied to the GPB derived by a Brazilian Airline company from Philippine sources pursuant to paragraph 1, Article 8 and paragraph 5 of the Protocol of the RP-Brazil Treaty. It likewise cited BIR Ruling No. 91-04 dated August 31, 2004 again applying the 1.5% tax on profits earned by Gulf Air Company G.S.C in its operation of aircraft in international traffic beginning January 1, 2004 when the Philippines-Bahrain Treaty took effect. [8]

The Commissioner replied on November 23, 2005, confirming that indeed under Article 8 of the Philippines-Singapore tax treaty, Singapore Airlines is entitled to the preferential tax rate of 1 ½%. The Commissioner further elucidated in his reply that:[9]

> "In reply, please be informed that paragraph 1, Article 8 (Shipping and Air Transport) of the Philippines-Singapore tax treaty provides:
>
> ARTICLE 8
> 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 Philippines tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
>
> *xxx xxx xxx'*

[7] Memoranda, Par. 3, *Rollo* p. 1697.
[8] Exhibit "I"
[9] Exhibit "J"

> Paragraph 1 states that profits derived by Singapore Airlines from the operation of aircraft in international traffic from sources in the Philippines may be taxed in the Philippines at the rate of one and one-half percent (1 ½%) or at the lowest rate imposed by the Philippines on such profits derived under similar circumstances by a resident of a third State (the *most-favored-nation* tax rate).
>
> Accordingly, since the Philippines, as of this date, has not yet granted to a resident of a third State a *most-favored-nation* tax rate on profits from the operation of aircraft in international traffic, such profits derived by *Singapore Airlines* from sources within the Philippines shall be subject to 1 ½% income tax, based on the gross amount thereof. (BIR Ruling No. DA-ITAD 91-04 dated August 31, 2004)."

With the favorable ruling, the docket of petitioner's claim for refund was forwarded to Revenue District Office No. 51 (RDO 51) for processing and investigation.[10] However, due to lack of developments on its claim, petitioner wrote another letter to RDO 51 on May 26, 2006. In said letter, Singapore Airlines reiterated its request for the refund of P5,713,743.86 and further cited a portion of BIR Ruling No. DA-130-04 dated March 26, 2004 where the BIR ruled that the withholding tax rates on income payments to international airlines that is a resident shall be 1.5% under RR 6-2001.[11]

Despite petitioner's second letter, no action was made on its claim. Hence, in order to protect its interests, Singapore Airlines filed the Petition for Review before Us on July 11, 2006.

In respondent's Answer[12] filed on September 4, 2006, the Commissioner's Special and Affirmative Defenses alleged the following:

> "1. He ADMITS the allegation in paragraph 7 and the allegation in paragraph 12 of the petition that respondent issued ITAD Ruling no. 142-05, but DENIES the rest of the allegations in paragraph 12 for being mere opinions, gratuitous assertions and erroneous conclusions or interpretations of fact and/or law.
>
> 2. He SPECIFICALLY DENIES the allegations in paragraphs 6, 8, 9, 10, 11 and 13 of the petition for lack of knowledge or information sufficient to form a belief as to the truth thereof.
>
> 3. He SPECIFICALLY DENIES the allegations in paragraphs 1,2,3,4,5,14,15 and under the heading "Discussion" of the petition

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[10] Ibid.
[11] Exhibit "K".
[12] *Rollo,* 1412.

for being, as a whole, mere opinions, gratuitous assertions and erroneous conclusions or interpretations of fact and/or law, the truth of the matter being those stated hereunder.

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

5. The amount of P5,713,743.86 being claimed by petitioner as alleged overpaid income taxes or excess creditable withholding taxes for the fiscal year ending March 31, 2004 is not properly documented.

6. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code in the prescriptive period for claiming tax refund/credit.

7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue vs. Manila Jockey club, Inc. 98 Phil 670).

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

In the parties' Joint Stipulation of Facts filed on October 19, 2006,[13] the following have been agreed upon:

"1. Petitioner is an entity duly registered with the Bureau of Internal Revenue.

2. Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including among other, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at BIR National Office Building, Agham Road, Diliman ,Quezon City.

3. Respondent issued ITAD Ruling No. 142-05 dated November 23, 2005."

During the hearing, Singapore Airlines presented various documentary and testamentary evidence to prove its claim. In addition to its income tax returns, the bulk of

[13] *Rollo*, pp. 1453-1454.

petitioner's documentary evidence consisted of Certificates of Creditable Withholding Taxes, airway bills, International Air Transport Association Cargo Accounts Settlement System (IATA-CASS) reports, sales invoices, cargo and mail manifests primarily offered to prove that Singapore Airlines conducted operations during the period claimed and that withholding agents withheld 2% of its sales to remit to the BIR.[14] Petitioner even commissioned an independent Certified Public Accountant (ICPA) to examine its voluminous records and authenticate its right to tax refund.[15]

In gist, the ICPA concluded that instead of the full amount of P5,713,743.86, Singapore Airlines is entitled to the reduced amount of P5,515,272.36 based on the following grounds:[16]

> "a. The withholding agents withheld and remitted to the BIR 2% of petitioner's GPB instead of the preferential rate of 1.5%, which resulted in excess withholding in the amount of P5,713,743.86. This amount was reported in petitioner's ITR;
>
> b. There were airway bills of other airlines that were previously unaccounted for, thus, revenues therefrom amounting to Php190,288.57 were not included in petitioner's ITR. This resulted in the increase of petitioner's gross revenue from cargo and an addition to its income tax liability. Conversely, petitioner's claim for excess withholding was reduced by Php2,854.32;
>
> c. The mail revenue was computed based on the rates used in the sales invoices supporting such revenue instead of the rates used in the computation thereof for ITR purposes. This resulted in the increase of petitioner's mail revenue by Php7,263,595.35. Hence, its claim for excess withholding was reduced by Php108,953.93;
>
> d. Exclusion of certain creditable withholding tax certificates in the aggregate amount of Php 86,663.25 either because they were not signed or original copies thereof could no longer be found."

Respondent, for his part, failed to present any evidence before this Court and submitted this case for decision during the hearing on October 2, 2007. The Commissioner

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[14] Exhibits "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U","V", and "W".
[15] Motion to Commission Independent Certified Public Accountant with Motion to Cancel Hearing, *Rollo*, pp. 1484-1487; Transcript of Stenographic Notes (TSN), January 18, 2007, pp. 18-19.
[16] Memoranda, Par 27, *Rollo* pp. 1707-1708; Exhibit "X-10-A."

was prevented from presenting its case due to the failure of the Revenue District Office to forward a report on its investigation of petitioner's claim.[17]

After the parties' submission of their respective Memorandum, the petitioner on November 27, 2007[18] and the respondent on December 3, 2007,[19] this case was submitted for decision on January 2, 2008.[20]

ISSUE

From the Joint Stipulation of Facts, neither party agreed upon common issues to be resolved. However, this Court has arrived at the sole issue to be decided gathered from the respective pre-trial briefs[21] of Singapore Airlines and the Commissioner of Internal Revenue which is:

> "whether or not petitioner is entitled to a refund in the amount of P5,713,743.86, as alleged overpaid income taxes for the fiscal year ending March 31, 2004, plus legal interest until fully paid"

DISCUSSION

We partially grant petitioner's prayer.

Generally, international carriers are taxed at a rate of 2 ½% on their GPB pursuant to Section 28 (A)(3) of the 1997 Tax Code, to wit:

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:

xxx xxx xxx"

[17] TSN, October 2, 2007, pp. 3-4.
[18] Memorandum [For the Petitioner], *Rollo* p. 1696.
[19] Memorandum for the Respondent, *Rollo,* p. 1736.
[20] Resolution, *Rollo,* p. 1743.
[21] Respondent' Pre-trial Brief, *Rollo,* p. 1420; Petitioner's Pre-Trial Brief, *Rollo,* p. 1424.

> (a) International Air Carrier.—'Gross Philippine Billings' refers to the amount of gross revenue derived from the 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 port 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.
>
> xxx xxx xxx"

However, pursuant to Section 2.57.2 (E)(4)(e) of RR 6-2001, the rate of 2 ½% was reduced to 2% which was the rate that petitioner's withholding agents used. This Revenue Regulation states that:

> "Section 2.57.2- Income payment subject to creditable withholding tax and rates prescribed thereon- Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (E) Income payments to the following contractors, whether individual or corporate- Two percent (2%)
>
> xxx xxx xxx
>
> (3) Other contractors-
> xxx xxx xxx
>
> (e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand (P2,000) per month, regardless of the number of shipments during the month;
> xxx xxx xxx"

Notwithstanding RR 6-2001, the rate of 2% on an international carrier's GPB can be further reduced by an international agreement between the Philippines and another state. In the case at bar, the relevant treaty, as properly invoked by petitioner, is the Philippine-Singapore Treaty which went into force on November 16,1977. The applicable stipulation is again reproduced hereunder for convenience:

ARTICLE 8
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 Philippines tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
>
> xxx xxx xxx'

From the above, it appears that where a foreign corporation of a contracting state, earns profits within another contracting state, the latter may validly tax the former based on the lesser of two preferential rates: 1 ½% or at a rate that may be granted to a third state, known as *the-most-favored-nation* tax rate. Further examination of the provision shows that the preferential rates are the maximum rates imposable by virtue of the phrase "shall not exceed." This means that any tax liability chargeable by the contracting states concerned on earnings arising from the operation of ships or air transport in international traffic shall not exceed the 1 ½%-limitation, or that lower rate granted to a favored third state, and that said rate would apply only if the tax imposed by our laws exceeds the same.[22]

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[22] Air New Zealand vs. Commissioner of Internal Revenue, CTA EB Case No. 230, June 28,2007, CTA Case No. 6657.

Due to the limitation provided by the Philippines-Singapore treaty, it appears that the liability of Singapore Airlines is only 1 ½% of its GPB. Our laws impose a minimum of 2% rate on petitioner's GPB which exceeds the 1 ½% rate provided for by the treaty. Since no lower tax rate was given to a third state, We are obliged to impose the 1 ½% rate. By virtue of the principle of *pacta sunt servanda*, it is not only by moral obligation that We are constrained to adopt the preferential rate of 1 ½% on Singapore Airlines but we are legally bound to do so as treaties must be observed with utmost good faith.[23]

Further examination of the above treaty provision shows that it does not necessarily refer to Gross Philippine Billings but of whatever profits or income derived within a contracting state.[24] In the case of *Commissioner of Internal Revenue vs. British Overseas Airways Corporation, G.R. No. L-65773-74 April 30, 1987*, the Supreme Court said that:

> "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, *business, commerce*, *sales*, or dealings 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 the *transactions of any business carried on for gain or profile,* or gains, profits, and *income derived from any source whatever* (Sec. 29[3]; Emphasis supplied)
>
> The definition is broad and comprehensive to include proceeds from sales of transport documents. "The words 'income from any source whatever' disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws." Income means "cash received or its equivalent"; it is the amount of money coming to a person within a specific time ...; it means something distinct from principal or capital. For, while capital is a fund, income is a flow. As used in our income tax law, "income" refers to the flow of wealth.
>
> xxx xxx xxx
>
> Did such "flow of wealth" come from "sources within the Philippines",

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[23] Bayan vs. Zamora, G.R. No. 138570. October 10, 2000; Tañada vs. Tuvera, G.R. No. 118295. May 2, 1997; Secretary of Justice vs. Lantion, G.R. No. 139465. January 18, 2000
[24] Supra. Note 21.

> **<u>The source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines</u>**."

In the case before Us, the activity that produced the income is petitioner's transport of cargo and mail loaded on its aircraft by its own clients or those by other airlines[25] originating from the Philippines as shown by its airway bills, IATA-CASS reports, and cargo and mail manifests. This activity is the very basis of petitioner's GPB including it within the purview of the Philippines-Singapore treaty as profits earned within a contracting state.

Having resolved the proper liability and tax base of Singapore Airlines, We now decide the exact amount that petitioner should have paid, thereafter the excess tax refundable to it, if any is due, and if indeed petitioner is entitled to its claim.

Although the Income Tax Return filed by petitioner showed the amount of P540,519,349.01 as its GPB, with 1 ½% income tax of P8,107,790.24,[26] the commissioned ICPA arrived at a higher amount of P547,973,232.93, with income tax of P8,219,598.49.[27] But upon verification by this Court of petitioner's sales in BIR Forms 2307, Singapore Airlines' GPB should be P659,699,944.19, arrived at with the following computation:

Quarter ending		**Cargo**		**Mail** *(Exh. X-9)*		**Total**
30-Jun-03 *(Exh. X-5)*	P	133,486,987.64	P	6,169,201.05	P	139,656,188.69
30-Sep-03 *(Exh. X-6)*		136,330,376.97		-		136,330,376.97
31-Dec-03 *(Exh. X-7)*		211,462,083.71		2,351,807.83		213,813,891.54
31-Mar-04 *(Exh. X-8)*		182,746,832.20		6,886,535.19		189,633,367.39
TOTAL	P	664,026,280.52	P	15,407,544.07	P	679,433,824.59
Less: Disallowances per Court's verification						
1.) Outside period of claim			P	28,190,361.58		
2.) No signature				2,282,654.82		30,473,016.40
Add: Withholding tax without income payments indicated on the certificates *(Exh. X-4)*			P	215,111.02		
Less: BIR Form 2307 without signature *(Exh. N-14)*				328.30		
			P	214,782.72		
Divided by applicable tax rate				2%		10,739,136.00
Total gross revenue					**P**	**659,699,944.19**

[25] Exhibit "Y", Q8-A, Q10-A.
[26] Exhibit "D".
[27] Exhibit "X-10-A".

Applying the preferential tax rate, the tax due from petitioner is P9,895,499.16 which is far from the computed amount by the ICPA and that of petitioner. In effect, this will reduce petitioner's refund claim since the discrepancy between the withheld taxes of petitioner's suppliers and the tax rightfully due the government shall likewise adjust.

The commissioned ICPA verified valid creditable withholding tax in the amount of P13,488,411.99 from petitioner's cargo revenue,[28] however, further examination of the certificates of creditable tax withheld at source reveal that there are certificates that should likewise be disallowed for being outside the period of claim and for not being signed by the withholding agent's representative. These certificates are as follows:

1.) Outside the period of claim

Exh.	**Payor**	**Period Covered**	**Income payment**	**CWT**
L-27	Jardine Aboitiz	Apr. 1 - June 30, 2002	P 1,472,334.43	P 29,446.68
O-81	Intercontinental Freight	Jan. 16-31, 2003	7,287.87	145.76
O-150	SFE- Scanwell	Feb. 1-15, 2003	1,926.53	38.53
O-221	Associated Freight	Apr. 1-15, 2004	140,628.50	2,812.57
O-225	DHL Worldwide Express	Apr. 1-15, 2004	104,544.78	2,090.90
O-226	DHL Worldwide Express	Apr. 1-15, 2004	5,180.52	103.61
O-228	Eagle Express Lines	Apr. 15, 2004	134,260.39	2,684.88
O-230	Emery Transnational	Apr. 1-15, 2004	333,463.00	6,669.26
O-235	Fritz Logistics	Apr. 15, 2004	1,019,043.62	20,380.87
O-236	Geologistics	Apr. 1 - June 30, 2004	863,037.50	17,260.75
O-240	Jardine Aboitiz	Apr. 1-15, 2004	1,158,963.46	23,179.27
O-249	Nippon Express	Apr. 1-15, 2004	3,312,657.32	66,253.15
O-252	Panalpina World Transport	Apr. 1-15, 2004	3,218,226.44	64,364.53
O-257	Danzas AEI	Apr. 1 - June 30, 2004	457,703.00	9,154.06
O-258	Sagawa Express	Apr. 1-30, 2004	24,180.87	483.62
O-261	Stamn International	Apr. 15, 2004	19,694.21	393.81
O-267	Yusen Air & Sea Service	Apr. 15, 2004	2,505,343.32	50,106.87
O-274	Associated Freight	Apr. 16-30, 2004	127,847.15	2,552.94
O-275	Bax Global	Apr. 1-30, 2004	1,823,656.20	36,473.12
O-276	Birkart Globistics	Apr. 30, 2004	24,948.64	498.97
O-280	CPI Transport	Apr. 16-30, 2004	378,013.53	7,560.02
O-282	DHL Worldwide Express	Apr. 16-30, 2004	100,026.83	2,000.54
O-283	DHL Worldwide Express	Apr. 16-30, 2004	7,348.66	146.97
O-285	Eagle Express Lines	Apr. 30, 2004	147,070.16	2,941.50
O-292	Fritz Logistics	Apr. 30, 2004	962,868.78	19,257.38
O-293	Geologistics	Apr. 1 - June 30, 2004	1,204,066.00	24,081.32
O-297	Jardine Aboitiz	Apr. 16-30, 2004	782,664.01	15,653.28
O-306	Nippon Express	Apr. 16-30, 2004	3,071,864.49	61,437.29
O-309	Panalpina World Transport	Apr. 16-30, 2004	3,526,386.87	70,527.74
O-312	Danzas AEI	Apr. 1 - June 30, 2004	400,309.50	8,006.19
O-317	Stamn International	Apr. 29, 2004	20,381.46	407.48

[28] Exhibit "X-4".

O-323	Yusen Air & Sea Service	Apr. 30, 2004	834,433.54	16,688.67
	SUB-TOTAL		***P28,190,361.58***	***P 563,802.53***
2.) No signature				
L-173	Hecny	Apr. 1 - June 30, 2003	P 11,914.31	P 238.29
L-203	American Freight	Jul. 15, 2003	28,542.25	510.85
L-238	RAF	2003	127,537.08	2,550.74
M-169	DHL Worldwide Express	Aug. 16-31, 2003	119,548.00	2,390.96
M-212	Yusen Air & Sea Service	Sept. 1, 2003	1,282,200.56	25,644.01
M-260	Sky Freight	Sept. 1-15, 2003	185,093.33	3,701.87
N-14	DFDS Transport	Oct. 1-15, 2003	-	328.30
N-242	Kuehne & Nagel Inc.	Dec. 1-15, 2003	108,102.00	2,162.04
N-250	RAF	Dec. 1-31, 2003	36,757.09	735.14
N-275	Eagle Express Lines	Jan. 31, 2004	16,971.84	339.45
N-305	Trans Air Corp.	Dec. 16-31, 2003	178,379.26	3,567.58
O-13	Eagle Express Lines	Feb. 15, 2004	104,043.06	2,081.09
O-112	American Freight	Feb. 1-15, 2004	83,566.04	1,671.32
	SUB-TOTAL		***P 2,282,654.82***	***P 45,921.64***
	TOTAL		**P30,473,016.40**	**P 609,724.17**

With the increase of its tax liability and the disallowances of certain Certificates of Creditable Withholding Tax, petitioner's excess tax payments proper claim for refund for the fiscal year ending March 31, 2004 only amount to P3,229,647.52 and not P5,713,743.86 based on the following computation:

Gross Philippine Billings			P 659,699,944.19
Applicable tax rate			1.50%
Income tax due			P 9,895,499.16
Less: Verified creditable taxes withheld per BIR Forms 2307			
Cargo *(Exh. X-4)*	P 13,488,411.99		
Mail *(Exh. X-9)*	246,458.86	P 13,734,870.85	
Less: Disallowance per Court's verification			
Outside the period of claim	P 563,802.53		
No signature	45,921.64	609,724.17	13,125,146.68
Excess creditable tax withheld			**P (3,229,647.52)**

As to petitioner's right to claim the overpayment, it shows that Singapore Airlines has properly established the same. Based on numerous cases that this Court has decided, it has been recognized that petitioner must comply with the following requisites in order to be entitled to refund:

1. The claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997;

2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom and the income upon which the taxes were withheld was included in the return of the recipient pursuant to Section 2.58.3(B) of Revenue Regulations No. 2-98; and

3. The excess unutilized tax is not carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years pursuant to Section 76 of the NIRC of 1997.

A review of the records of the case shows that petitioner met all of the three conditions above.

As early as its follow-up letter on May 26, 2007, petitioner had sufficiently argued the timeliness of its refund claim since it has until July 13, 2006 to file its administrative claim for refund considering that its Annual Income Tax Return for the fiscal year ending March 31, 2004 was filed on July 13, 2004.[29] Still within the two-year period, petitioner filed its Petition for Review on July 11, 2006.[30] Hence, both claims in the administrative and judicial levels are within the prescriptive period provided for by law.

For the second requirement, in order to establish the fact of withholding, petitioner submitted various Certificates of Creditable Tax Withheld at Source[31] showing creditable withholding taxes from its cargo and mail revenue for the fiscal year ending March 31, 2004. As discussed above, these certificates were reviewed and were found to be substantiated at the reduced amount, however, of P13,125,146.68.

Finally, as to the third requirement, petitioner submitted its annual income tax return for the fiscal year ending March 31, 2005 [32] and showed that the excess unutilized tax was not carried over and credited against its income tax liabilities in the succeeding taxable year.

Considering the foregoing, it is justified to conclude that petitioner was able to substantiate and prove its right to its refund claim to the extent of P3,229,647.52.

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[29] Exhibit "K"
[30] Petition for Review, *Rollo*, p. 1.
[31] Exhibits "L", "M", "N", "O" and "P"
[32] Exhibit "H"

The purpose of international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of international juridical double taxation, in the hope of encouraging the free flow of goods and services and the movement of capital, technology and persons between countries, primarily to launch conditions deemed vital in creating robust and dynamic economies.[33]

Our role as implementors of law is to generate this climate by upholding treaties whenever facts, justice and equity call for its application. Otherwise, the benefits sought to be attained by international agreements shall be deemed illusory.

WHEREFORE, upon consideration of all documents and evidence submitted by petitioner, Singapore Airlines is liable to the rate of 1 ½% on its Gross Philippine Billings pursuant to Article 8 of the Philippines-Singapore Treaty and not 2% based on Revenue Regulations No. 6-2001. As a result of its overpayment, the Commissioner of Internal Revenue is hereby ordered to **REFUND** or **ISSUE** a tax credit certificate in petitioner's favor in the amount of P3,229,647.52.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[33] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. et. al., G.R. No. 127105, June 26, 1999.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division