REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOURS SPECIALISTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3530

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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8/30/85

D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Internal Revenue holding petitioner Tours Specialists, Inc. liable for the amounts of ₱495,333.97, ₱142,420.32 and ₱127,686.00 or a total of ₱765,440.40 as deficiency income tax for the years 1974, 1975 and 1976, respectively.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office and address at P. Burgos St., corner Mercedes St., Makati. It is engaged in the tours servicing business and is duly registered with the Philippine Tourism Authority under Certificate of Registration No. 002 and 002-A dated August 9, 1974 and May 18, 1976, respectively. (Exhs. "K" and "K-1", pp. 114 and 115, BIR records.)

As a registered tourism enterprise, petitioner, availing of the reduced income tax incentives granted in Presidential Decree No. 535, deducted from its net taxable income for the years in question, the following amounts it computed to be 50% of its total foreign currency earnings:

1974	₱2,471,800.13	(Exh. "A-1", p. 16, BIR records.)
1975	₱2,125,784.44	(Exh. "B-1", p. 40, BIR records.)
1976	₱1,341,993.00	(Exh. "C-1", p. 65, BIR records.)

On November 22, 1977, the Philippine Tourism Authority, or simply Authority, pursuant to Presidential Decree No. 535, which vests in it the administration of investment incentives to registered tourism enterprises, issued "Certificate of Reduced Income Tax under Section 8(a) of P.D. 535" allowing petitioner to deduct from its net taxable income, 50% of its foreign exchange earnings as determined by said Authority. This certification is reproduced hereunder: (Exh. "J", p. 116, BIR records.)

22 November 1977

Tours Specialists, Inc.
Makati Bel-Air Condominium
5022 P. Burgos Street
Makati, Metro Manila

Re: <u>Certification of Reduced Income Tax under Section 8 (a) of P.D. 535</u>

Gentlemen:

Pursuant to Presidential Decree No. 535 which vests in the Philippine Tourism Authority the administration of investment incentives to registered tourism enterprises, you are hereby allowed to deduct from your net taxable income for the years specified hereunder the following amounts:

1974	₱1,147,346.00
1975	₱1,261,559.00
1976	₱1,476,883.00

The deductible amounts represent 50% of your Foreign Exchange Earnings of ₱2,294,692, ₱2,523,118 and ₱2,953,767 for the years 1974, 1975 and 1976 respectively.

This certificate is subject to the provisions of Section 8(a) P.D. 535 and Section 10 of R.A. 6135.

We trust that you will be guided accordingly.

Very truly yours,

(SGD.) RODOLFO A. CACDAC
Acting General Manager

cc: Department of Finance
Bureau of Internal Revenue

Under Letter of Authority No. 04348 NA dated December 4, 1977, respondent's examiners of the Investment Incentives Division conducted an examination of petitioner's income tax liabilities for the years 1974 to 1976. (Exh. "6", p. 136, BIR records.)

After investigation, said examiners recommended the disallowance of the reduced income tax incentives availed of by petitioner for these years and the disallowance of claimed expenses in the respective amounts of ₱29,076.75, ₱10,918.39 and ₱20,833.21 for the years 1974, 1975 and 1976. On the basis of the findings and recommendations of the examiners, respondent issued against petitioner the following deficiency income tax assessments dated November 29, 1979 and March 12, 1981 for the years 1974 and 1975 to 1976, respectively: (Exh. "10", p. 142, BIR records; Exh. "12", p. 179, BIR records.)

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Net (loss) income per return . .		(₱1,475,657.61)
Add: Unallowable deductions:		
Reduced inc. tax -	₱2,471,800.13	
Prior year's unsupported exps.	29,076.75	2,500,876.88
Net income per investigation . . .		₱1,025,219.27
Tax due thereon		₱ 348,826.74
Less: Tax already assessed		-
B a l a n c e		₱ 348,826.74
Add: 14% int. fr. 4/16/75 - 4/16/78		146,507.23
TOTAL AMOUNT DUE AND COLLECTIBLE. .		₱ 495,333.97

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Net loss per return		(₱1,821,571.28)
Add: Unallowable expenses:		
Reduced income tax	₱2,125,784.44	
Prior year's unsupported expenses. .	9,918.39	
Tours expenses - unsupported . . .	1,000.00	2,136,702.83
Net income per investigation . . .		₱ 315,131.55
Tax due thereon		₱ 100,296.00
Add: 14% int. fr. 4-16-76 to 4-16-79		42,124.32
TOTAL AMOUNT DUE & COLLECTIBLE . .		₱ 142,420.32

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Net loss per return		(₱1,077,341.03)
Add: Unallowable deductions		
Reduced income tax	₱1,341,993.00	
Disallowed expenses .	20,883.21	
		1,362,826.21
Net income per investigation . . .		₱ 285,485.18
Tax due thereon		₱ 89,919.80
Add: 14% int. fr. 4-16-77 to 4-16-80		37,766.31
TOTAL AMOUNT DUE & COLLECTIBLE . .		₱ 127,686.11

In its letters dated December 11, 1979 and March 24, 1981, petitioner protested the foregoing deficiency income tax assessments. (Exh. "14", pp. 145-148, BIR records; Exh. "15", pp. 182-183, BIR records.) The said protests were however denied by respondent in a letter dated August 18, 1982. (Exh. "16", p. 196, BIR records.)

Hence the instant appeal.

The issue posed for resolution is whether petitioner is entitled to the reduced income tax incentives for the years 1974, 1975 and 1976 under Presidential Decree No. 535.

The applicable provisions of Presidential Decree No. 535 read:

> "SEC. 8. Incentives Available to a Registered Tourism Enterprise -
>
> (a) Fifty percent (50%) of foreign exchange earned in the first five years from the start of operations shall be deductible from net taxable income, subject to other provisions of Section 10 of Republic Act No. 6135 and rules and regulations to be promulgated by the Authority.
>
> xxx xxx xxx".

"SEC. 6. <u>Conditions for Availment of Tourism Incentives</u> -

xxx xxx xxx

(c) In the case of registered tourism enterprises located in or whose sphere of activity is in Greater Manila, an average of seventy percent (70%) of its revenues must be in foreign currency, never falling below fifty percent (50%) in any given year within the period for which the incentives are granted and in the case of registered tourism enterprises located outside Greater Manila, or whose sphere of activity is outside the same, an average of fifty percent (50%) of revenues shall be in foreign currency, never falling below thirty-five percent (35%) in any given year within the period for which incentives are granted.

xxx xxx xxx".

The incentives availed of by petitioner were disallowed by respondent on the ground that petitioner failed to meet the conditions for availment of tourism incentives under Section 6(c) above. Based on respondent's computation, petitioner's average foreign exchange earnings for the three years was only 49.02% of its gross revenues, which is way below the minimum of 70% required under Section 6(c), and in 1974 and 1975 its percentages of foreign exchange earnings to gross revenues of 40.22% and 46.70%, respectively, fell below 50% of its revenues.

Respondent arrived at the above figures as follows: (Exh. "5", p. 119, BIR records.)

	1974	1975	1976
Total Revenue per Income Statement	₱5,704,616.08	₱5,402,561.74	₱4,910,834.00
	50%	50%	50%
FX Minimum requirement per P.D. 535	₱2,852,308.04	₱2,701,280.87	₱2,455,417.00
FX Earnings per PTA Certificate	₱2,294,692.00	₱2,523,118.00	₱2,953,767.00
Short/Over of Minimum requirement	₱ 557,616.04	₱ 178,162.87	₱ 498,350.00
Rate of FX earnings to Gross Revenue	40.22%	46.70%	60.15%
Average FX for 3 yrs.	49.02%		

Petitioner, assailing respondent's computation, submitted the following computation showing that the percentages of its foreign exchange earnings to its gross revenues for the years 1974 to 1976 were 71%, 77% and 87%, respectively, or an average of 78.33% of its revenues, never falling below 50% in any of the years in question: (Exh. "J-1", p. 190, BIR records.)

	1974	1975	1976
Gross Revenue (all inclusive)	₱5,704,616.00	₱5,150,562.00	₱4,910,835.00
Less tour costs (hotels, restaurants, transportation, etc.)	2,462,254.00	1,888,350.00	1,507,901.00
Gross Revenue, TSI services	₱3,242,362.00	₱3,262,212.00	₱3,402,934.00
NET foreign exchange earnings (after deducting receipts which were for hotels, restaurants, etc.)	₱2,294,692.00	₱2,523,118.00	₱2,953,766.00
Percentage of foreign exchange earnings	71%	77%	87%

Thus the controversy centers on which one of the two computations correctly represents the percentages of petitioner's foreign exchange earnings to its gross revenues for purposes of availment of the reduced income tax incentives.

To obtain the percentage required in Section 6(c), respondent applied the formula - foreign exchange earnings over gross revenues.

For the foreign exchange earnings in his computation, respondent adopted the figures certified by the Authority as petitioner's foreign exchange earnings for the years 1974 to 1976 (see Exhibit "J") and for the gross revenues, the gross income from operations declared by petitioner in its income tax returns for the same years.

Applying the above formula, petitioner took up as its foreign exchange earnings, the same foreign exchange earnings as certified by the Authority but for its gross revenues, petitioner deducted tour costs, such as hotel room charges, transportation and restaurant costs, from its gross income from operations for these years.

Evidently, the point of disagreement between the contending parties is whether or not in the computation of gross revenues, tour costs should be excluded from gross income from operations.

Petitioner claims that the Philippine Tourism Authority in the course of its examination conducted in October or November 1977, excluded tour costs in the determination of petitioner's foreign exchange earnings as per the Authority's certification, although it subsequently provided petitioner with the figures for the tour costs. It is contended by petitioner that if tour costs were excluded from its foreign exchange earnings, the same should likewise be excluded from its gross revenues so as not to distort the proportion of its foreign exchange earnings to gross revenues. Thus in its computation, petitioner subtracted the tour costs from its gross income from operations.

Respondent maintains, however, that assuming that petitioner's contention is correct, petitioner nonetheless cannot deduct the alleged tour costs for lack of sufficient evidence that the figures for the tour costs were determined by the Authority itself, and in the certification, were excluded from petitioner's foreign exchange earnings. Other than the self-serving testimony of petitioner's lone witness, there is no evidence, documentary or otherwise, showing that portion of the gross income from operations allegedly intended for tour costs. As argued by respondent, there is no way of determining how much should be deducted from the gross income from operations in order to arrive at what petitioner claims as its true revenue.

We agree with respondent.

Petitioner's sole witness, its accounting manager, testified before the Court that the figures in petitioner's computation including those of the tour costs, were actually supplied by the Authority by telephone call only, because the Authority could not furnish the actual records as there should be a formal requirement from the Bureau of Internal Revenue. (t.s.n., pp. 31-33, June 13, 1985.) The testimony of petitioner's witness on the figures for the tour costs allegedly deducted from its foreign exchange earnings by the Authority is, at best, no more than hearsay and therefore has no probative value. No official of the Authority was presented to corroborate her statement. Neither was there any documentary evidence offered by petitioner to establish the correctness of said figures.

In availing of the reduced income tax incentives, petitioner made its own computation of its total foreign exchange earnings, and in its income tax returns, deducted 50% of these from its net taxable income for the years in question.

Annex "A", attached hereto, is a comparative analysis of the total foreign exchange earnings of petitioner as ascertained by it and as determined by the Authority in its certification. It will be noted that for the years 1974 to 1975 the total foreign exchange earnings of petitioner as found by it, compared to those determined by the Authority, were much more by ₱2,648,908.26 and ₱1,728,450.88, respectively. In its memorandum, petitioner, to bolster its claim, attributed these differences to its having computed its total foreign exchange earnings without any deduction for tour costs. (p. 54, CTA records.)

As shown for 1976, however, the determination by petitioner of its foreign exchange earnings was less by ₱269,781.00 than the findings of the Authority. If as petitioner contends, the foreign exchange earnings certified by the Authority were net of tour costs, then on the basis of petitioner's computation of its 1974 and 1975 foreign exchange earnings which include tour costs, petitioner's total foreign exchange earnings could not be less but should be much more than those found by the Authority, considering that the alleged tour costs for 1976 amounted to ₱1,507,901.00.

Clearly, petitioner's claim that its foreign exchange earnings as certified by the Authority were net of tour costs, is not amply supported by the evidence on record. Since petitioner's computation, showing that its foreign exchange earnings exceeded an average of 70% of its gross revenues for the years in question, is premised on the above claim, we find said computation to be erroneous.

Petitioner insists that lacking contrary evidence adduced by respondent, the certification by the Authority should be given full weight and credence since the Authority is the agency called upon to implement Presidential Decree No. 535.

As correctly pointed out by respondent, the "Certificate of Reduced Income Tax" issued by the Philippine Tourism Authority is conditional in character. In fact, it is stated therein that, "This certificate is subject to the provisions of Section 8(a) P.D. 535 and Section 10 of R.A. 6135". As aforequoted, Section 8(a) in turn provides that the deductibility of the 50% foreign exchange earnings from net taxable income is "subject to other provisions of Section 10 of Republic Act No. 6135 and rules and regulations to be promulgated by the Authority". Briefly stated, the certification is subject to petitioner's compliance with the rules and regulations promulgated by the Authority to implement the provisions of Presidential Decree No. 535, among which rules are the conditions for availment of incentives (Exh. "I", pp. 36-37, CTA records), thus the certification is not conclusive.

As to Annex "A" of petitioner's memorandum (p. 52, CTA records) which was issued by the Philippine Tourism Authority, certifying that petitioner has satisfactorily complied with the conditions of its registration and "has attained foreign exchange earnings of 70.8, 77.3 and 84.4 as percentages of its gross revenues for the years 1974, 1975 and 1976, respectively", this certification was not presented as evidence, having been allegedly received by petitioner after it rested its case. Then it does not even state the manner of how the percentages shown therein was arrived at, the basis thereof and the figures taken into account in the computation of such percentages. Moreover, the alleged certification was not properly identified and it does not bear the seal of the Philippine Tourism Authority. If petitioner received this certification, which is dated 6 September 1983, after it had rested its case on June 13, 1983 (p. 43, CTA records), why did not petitioner file a motion to present it as evidence when respondent produced his evidence only on March 14, 1984 (p. 50, CTA records)?

Undoubtedly, the Bureau of Internal Revenue has the authority to ascertain whether petitioner has complied with the conditions for availment of the incentive, by virtue of Section I of Presidential Decree No. 308 promulgated on October 9, 1973, amending the approved staffing pattern of the Bureau of Internal Revenue, which reads:

> "SECTION 1. An Investment Incentives Division is hereby created under the Enforcement Service which shall handle and process all applications for tax exemptions of industries operating under the Board of Investments or such other special laws granting incentives to taxpayers, and tax problems arising out of the operations of the Export Processing Zone Authority."

and the pertinent portion of Section 324 of the National Internal Revenue Code of 1977 as amended by Presidential Decree No. 1457, which provides:

> "SEC. 324. <u>Preservation of books of accounts, and other accounting records</u>. -
>
> xxx xxx xxx
>
> Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or entities shall be subject to examination by the Bureau of Internal Revenue for the purpose of ascertaining whether such organizations or entities are complying

with the conditions under which they have been granted tax exemptions and their tax liability, if any."

It was on the strength of this authority that respondent's examiners of the Investment Incentives Division investigated the accounting records of petitioner and ascertained that its foreign exchange earnings fell below the average minimum requirement of 70% provided by law as shown in respondent's computation. The burden rested on petitioner to prove otherwise, but petitioner failed to do so. The Court recognizes that in accordance with settled principles respondent's determination is presumptively correct and casts upon petitioner the burden of offering adequate and competent evidence that it is entitled to the reduced income tax incentive for the years 1974, 1975 and 1976 pursuant to Presidential Decree No. 535.

It is to be conceded, as argued by respondent, that tax incentives are in the nature of tax exemptions, they being limitations on the power of the state to tax. Since it has been the constant uniform holding that exemption from taxation is not favored and is never presumed, if granted, it must be strictly construed against the taxpayer and liberally in favor of the taxing authority. (Jai-Alai Corporation vs. Collector, 106, Phil., 345; Esso Standard Eastern vs. Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180.)

Having reached the conclusion that petitioner's computation is erroneous, it is thus clear that petitioner failed to meet the conditions for availment of the tourism incentives. It follows that petitioner Tours Specialists, Inc. is not entitled to the reduced income tax incentives for the years 1974 to 1976.

With respect to the claimed expenses in the amounts of ₱29,076.75, ₱10,918.39 and ₱20,833.21 for 1974 to 1976, respectively, these were disallowed by respondent on the ground that they were incurred in prior periods or were not properly supported. Petitioner was given ample opportunity to present its objection to the assessment in an informal conference on August 10, 1979 called for that purpose by respondent. No protest, however, was interposed by petitioner on these disallowed expenses. (p. 139, BIR records.) Nor was there any attempt to substantiate them. The regulations require that any claim for deduction must be substantiated by record showing in detail the amount and nature of the expenses

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incurred. (See Sec. 66, Rev. Regs. No. 2.)

In view of the foregoing, respondent's decision will have to be sustained. Accordingly, petitioner Tours Specialists, Inc. is hereby ordered to pay to respondent Commissioner of Internal Revenue the sum of ₱765,440.40 as deficiency income tax for taxable years 1974 to 1976, inclusive, plus surcharge and interest incident to delinquency pursuant to the provisions of Section 51(e) of the applicable National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 30, 1985.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

ANNEX "A"

FOREIGN EXCHANGE EARNINGS

	Petitioner		Philippine Tourism Authority per Certification (Exh. "J")	Difference	Tour Costs Exh. "J-1"
	Per Income Tax Returns 50%	100%	100%		
1974	₱2,471,800.13	₱4,943,600.26	₱2,294,692.00	₱2,648,908.26	₱2,462,254.00
1975	₱2,125,784.44	₱4,251,568.88	₱2,523,113.00	₱1,728,450.88	₱1,888,350.00
1976	₱1,341,993.00	₱2,683,986.00	₱2,953,767.00	(₱ 269,781.00)	₱1,507,901.00