REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CONTINENTAL MICRONESIA, INC. - PHILIPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 365
(C.T.A. CASE NO. 6232)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 19 2008

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DECISION

PALANCA-ENRIQUEZ, J.:

We have stressed time and again that allegations must be proven by sufficient evidence because mere allegations are not definitely evidence. It cannot be used as basis for a court's decision *(Rimbunan Hijack Group of Companies vs. Oriental Word Processing Corporation, 470 SCRA 665).*

THE CASE

This is a Petition for Review filed by Continental Micronesia, Inc.-Philippine Branch (hereafter "petitioner") under *Section 2 (a) (1) of Rule 4 of the Revised Rules of the Court of Tax Appeals,* in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended, which seeks to set aside the Decision dated September 11, 2007 rendered by the First Division of this Court in C.T.A. Case No. 6232, the dispositive portion of which reads as follows:

> "**WHEREFORE,** the Petition for Review is hereby **DENIED** for insufficiency of evidence. Accordingly, petitioner is hereby **ORDERED TO PAY** in favor of respondent the following taxes:
>
> | | Income Tax | Common Carrier's Tax | Documentary Stamp Tax | Total |
> |---|---|---|---|---|
> | Basic Tax | P 765,116.93 | P 8,564,292.73 | P 74,070.00 | P 9,403,479.66 |
> | Interest/Surcharge | 369,806.53 | 4,514,048.06 | 18,517.50 | 4,902,372.09 |
> | Total | P 1,134,923 | P 13,078,340.79 | P 92,587.50 | P 14,305,851.75 |
>
> In addition, petitioner is **ORDERED TO PAY** 20% delinquency interest per annum on the total amount of P14,305,851.75, as computed from January 12, 2001 until full payment thereof, pursuant to Section 249 (c) (3) of the 1977 Tax Code.
>
> **SO ORDERED.**"

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and the Resolution dated February 28, 2008 denying the Motion for Resolution, the dispositive portion of which reads as follows:

> "**WHEREFORE**, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is a Philippine branch of a foreign corporation duly incorporated in the State of Delaware, USA, to engage in the operation of air transportation in international traffic. It is duly licensed under Philippines. Its business address is at Ground Floor, SGV II Bldg., 6760 Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including the power to issue deficiency tax assessments against taxpayers, and to act upon and decide administrative protests filed in relation thereto and holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

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THE FACTS

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

On April 15, 1998, petitioner filed its Annual Income Tax Return for taxable year 1997, showing therein that it paid the amount of P6,002,173.00 on its Gross Philippine Billings (GPB).

Petitioner also filed its Quarterly Percentage Tax Return, reflecting the following pertinent data:

Exhibit	**Date of Filing**	**Taxable Quarter**	**Common Carrier's Paid**
H	April 21, 1997	First	P 3,176,637.90
I	July 21, 1997	Second	3,570,768.79
J	October 20, 1997	Third	3,948,674.37
K	January 20, 1998	Fourth	4, 354,143.04
Total			**P 15,050,224.10**

On August 15, 2000, respondent issued to petitioner three (3) assessment notices with Assessment No. 000193-97-00-625 covering the taxable year 1997, together with the corresponding Demand Letters and Details of Discrepancies for alleged deficiency income tax, common carrier's tax and documentary stamp tax (DST) in the amounts of P1,194,923.46, P13,178,340.79 and P104,587.50, respectively.

On September 13, 2000, petitioner filed a formal protest to the disputed assessments through a letter dated September 12, 2000.

Petitioner's protest was denied by respondent, thus, petitioner elevated the case before this Court by way of a Petition for Review, docketed as C.T.A. Case No. 6232.

In his Answer, respondent by way of special and affirmative defenses alleged that the questioned assessments were issued in accordance with law and regulations and are presumed correct; that petitioner is subject to *Section 25 (a)(2)(A) of the Tax Code* on its GPB; that petitioner failed to apply the Civil Aeronautics Board (CAB) rates in the computation of their Gross Receipts subject to 3% common carrier's tax, in violation of *Section 5 of Revenue Regulations No. 6-66* dated December 5, 1966, hence, it is subject to the deficiency common carrier's tax; that petitioner likewise failed to collect DST on airway bills issued, in violation of *Section 191 of the Tax Code*, hence, it is subject to the deficiency DST.

After trial on the merits, On September 11, 2007, the First Division rendered the assailed decision denying the Petition for Review for insufficiency of evidence.

On October 2, 2007, petitioner filed a "Motion for Reconsideration," which was denied by the First Division in its Resolution dated February 4, 2008.

ISSUES

Hence, the Present Petition for Review raising the following issues:

I

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THE DOCUMENTARY AND TESTIMONIAL EVIDENCE SUBMITTED BY PETITIONER WAS INSUFFICIENT TO ESTABLISH THAT THE ALLEGED UNREPORTED GROSS PHILIPPINE BILLINGS OF PHP51,007,796.44 ACTUALLY REPRESENTS THE VALUE OF REISSUED OR EXCHANGED TICKETS AND REFUNDED TICKETS FOR TAXABLE YEAR 1997.

II

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE LETTER OF ATTY. SILVESTRE M. PASCUAL, EXECUTIVE DIRECTOR OF THE CIVIL AERONAUTICS BOARD, DATED 25 MAY 1995 DOES NOT ADEQUATELY PROVE THAT THE FARE RATES USED BY PETITIONER IN COMPUTING THE GROSS RECEIPTS FOR THE YEAR 1997 WERE APROVED BY THE CAB.

III

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN UPHOLDING RESPONDENT'S CONTENTION THAT PETITIONER APPLIED A UNIFORM FARE RATE TO ALL ITS PASSENGERS FOR PURPOSES OF COMPUTING ITS GROSS RECEIPTS FOR THE YEAR 1997 WHICH WERE SUBJECTED TO COMMON CARRIER'S TAX.

IV

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THE EXISTENCE OF "NON-REVENUE PASSENGERS" IS PERTINENT TO THE ISSUE OF PETITIONER'S ALLEGED LIABILITY FOR DEFICIENCY COMMON CARRIER'S TAX.

V

THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN UPHOLDING RESPONDENT'S ASSESSMENT FOR DEFICIENCY DOCUMENTARY STAMP TAX AS IT IS BASED ON THE INCORRECT AND UNFAIR PRESUMPTION THAT ALL AIRWAY BILLS ISSUED BY PETITIONER SHOULD BE SUBJECT TO A UNIFORM TAX RATE, REGARDLESS OF THE VALUE OF THE UNDERLYING GOODS.

On April 2, 2008, without necessarily giving due course to the petition, We required the respondent to file her comment, not a motion to dismiss within (10) days from notice.

Respondent failed to file her comment thereto, despite notice.

Hence, this petition is now deemed submitted for decision.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is liable to pay deficiency income tax, common carrier's tax and documentary stamp tax for taxable year 1997 in the amounts of P1,194,923.46, P13,078,340.79 and P92,587.50 respectively.

THE COURT *EN BANC'S* RULING

The petition is without merit.

After a careful examination of the arguments raised in the present petition, the Court *En Banc* finds that the issues raised by petitioner are a rehash of its Petition for Review and Motion for Reconsideration filed with the First Division of this Court and present no new arguments nor new matters which have not been considered and passed upon by the First Division. Nonetheless, the Court En Banc will discuss the foregoing issues raised in the present petition.

Deficiency Income Tax Assessment

Respondent assessed petitioner of deficiency income tax in the amount of P1,194,923.46 on its GPB, pursuant to *Section 25 (a)(2)(A) of the Tax Code.*

Petitioner's Argument

Petitioner argues that respondent erred when it assessed petitioner for deficiency income tax on GPB in the amount of P1,134,923.46 which included the alleged unreported GPB of P51,007,796.44, which actually accounts for the value of re-issued or exchanged and refunded tickets for taxable year 1997. Petitioner did not receive any additional revenue from said tickets, and therefore the same should not form part of its taxable income.

Petitioner's argument is bereft of merit.

A review of the records shows that the pieces of evidence presented by petitioner failed to prove that the unreported GPB of P51,007,796.44 pertains to the value of re-issued or exchanged and refunded tickets for taxable year 1997.

Petitioner merely presented before this Court its "Reconciliation Book vs Audit for Taxable year 1997." A perusal of this document shows that it is a mere list of the alleged re-issued or exchanged tickets and cancelled/returned tickets due to refunds. Being as such, there is no way for the Court to ascertain whether or not there were indeed re-issued or refunded tickets. To adequately prove petitioner's allegations, concrete evidence, like plane tickets or other airline travel documents, should have been presented. However, petitioner failed to do so.

Basic is the rule that mere testimonies are self-serving if they are not supported by documentary evidence. Corollary thereto, is the settled rule that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is stronger when documents, writings, etc., would be conclusive in establishing his case. This is indeed an occasion to emphasize once again that the superiority of written evidence, compared with oral, is so pronounced, obvious and well known, that in most cases the deliberate and inexcusable withholding of written evidence, and effort to secure favorable consideration of oral testimony in the place of it, is an affront to the intelligence of the court *(Republic vs Sandiganbayan, 255 SCRA 473).*

It must be stressed that even at the administrative level *(BIR Records pp. 778, 826 and 831)*, petitioner failed to submit the source documents, such as the tickets and coupons, despite respondent's demands.

In the absence of said pertinent documents, the Court cannot give credence to petitioner's claim that the amount of P51,007,796.44 pertains to the value of re-issued or exchanged and refunded tickets and should, therefore, be excluded from the computation of its income tax on GPB.

At this point, the First Division correctly ruled that petitioner failed to discharge the burden of proof sufficiently and satisfactorily and found petitioner liable for deficiency income tax in the amount of P1,134,923.46, computed as follows:

Gross Philippine Billings (per audit)	P451,152,727.44
Gross Philippine Billings (per return)	400, 144,931.00
Billing not subjected to 1.5% Income Tax	P 51,007,796.44
Tax Due thereon (1.5%)	P 765,116.93
Add: Interest	369,806.53
Total Amount Due and Payable	**P 1,134,923.46**

Deficiency Common Carrier's Tax

Respondent assessed petitioner of deficiency common carrier's tax in the amount of P13,078,340.79 for petitioner's failure to apply the CAB rates in the computation of its gross receipts, subject to 3% common carrier's tax, in violation of *Section 5 of Revenue Regulations No. 6-66.*

Petitioner's Arguments

Petitioner claims that it has proven the fact that it offered different rates for different types of passengers, and such fare rates were duly approved by the CAB, in accordance with *Section 5 Revenue Regulations No. 6-66*. Hence, it was erroneous for the respondent to compute petitioner's gross receipts for purposes of determining its alleged deficiency common carrier's tax liability by applying a uniform rate, resulting to a deficiency common carrier's tax of P13,078,340.79. Petitioner further contends that respondent erred when it included the value of tickets issued to "non-revenue passengers" in computing petitioner's gross receipts.

To support the foregoing averments, petitioner presented its letter of request seeking the Civil Aeronautics Board's approval *(Exhibits "B",* *"C", and "L")*; reply letter of the Civil Aeronautics Board, approving petitioner's request for fare rate increase *(Exhibit "M")*; List of Child Fare, New Fare Structure for Travel *(Exhibits "B-1" and "C-1")*; and testimony of Ms. Maxima Cabantog.

After a careful consideration of the evidence adduced by petitioner, We cannot give credence to petitioner's allegations. First, as properly observed by the First Division, the reply-letter of the Civil Aeronautics Board only approved the fare rate increase requested by the petitioner, however, there is nothing in the letter which specifies any approved rate schedule for different classes of passengers. Considering that *Section 5, Revenue Regulations No. 6-66* provides that "the gross receipt shall be computed on the cost of the single one-way fare, as approved by the Civil Aeronautics Board on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail, as reflected on the plane manifest of the carrier. xxx", the basis of computing the gross receipt should be the fare rate, as approved by the CAB. Since petitioner failed to prove that the CAB indeed approved its request for rate schedule for different classes of passengers, the Court therefore upholds respondent's assessment.

Even granting for the sake of argument that petitioner used different rates for different types of passengers, still the pieces of evidence adduced by petitioner are not enough bases to conclude that petitioner actually imposed different fare rates to different classes of passengers. The Court cannot confirm the veracity of petitioner's allegations without any competent evidence, like the tickets themselves.

As to petitioner's allegation of the existence of "non-revenue passengers," the same cannot likewise be given credence, considering that petitioner failed to establish the existence of these "non-revenue passengers." Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules *(Manzano vs. Perez, 362 SCRA 439)*.

Thus, the First Division aptly ruled:

> "A closer evaluation of petitioner's submitted evidence reveals that none of them can adequately support its allegations. Petitioner may have proven that it has different fare rates corresponding to different classes of passengers, but still the assessment for the deficiency common carrier's tax cannot be cancelled for several reasons. First, while it is true that petitioner submitted a letter of CAB approving its fare rates, nevertheless the letter did not specify which list fare rate was approved. More so, no rate schedule was submitted that bears the approval of the CAB. Whether or not the fare rates used

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by petitioner in computing its gross receipts were indeed approved by CAB remained to be unanswered. This Court cannot verify from the above pieces of evidence whether petitioner's fare rates were approved by the CAB in compliance with Section 5, RR No. 6-66. Consequently, the Court cannot determine if petitioner's computation of its gross receipts corresponding to the deficiency common carrier's tax was in accordance with Section 5 of RR No. 6-66.

Second, the Court cannot likewise verify from the evidence whether petitioner is actually using different fare rates for different types of passengers. It should have presented the actual tickets or any other documents which may aid this Court in ascertaining the correctness of its allegations. The tickets would be the best proof to show that petitioner is really engaged in the practice of applying different fare rates for different classes of passengers.

Also, petitioner contends that respondent erroneously included the value of tickets issued to non-revenue passengers in the computation of petitioner's gross receipts that may be subject to common carrier's tax. However, the Court will not grant credence to such allegation, considering that petitioner again failed to establish the existence of non-revenue passengers."

Deficiency DST

Respondent assessed petitioner of deficiency DST in the amount of P92,587.50, for failure to collect DST on airway bills issued in violation of Section 191 of the Tax Code.

Petitioner's Arguments

Petitioner argues that respondent erred when it assumed that a uniform rate of P10.00 should apply to all airway bills issued by the petitioner and failed to consider the existence of goods, which value is lower than P1,000.00, subject to P1.00 DST only.

Petitioner's argument is unmeritorious.

A review of the evidence adduced by the petitioner shows that the bare testimony of petitioner that there are goods whose value was lower than P1,000.00 and therefore subject to the DST of P1.00, yield nothing but mere uncorroborated statements. Other than the testimony of the petitioner's witness, no other evidence was presented by the petitioner to prove the existence of goods whose value is lower than P1,000.00. We have stressed time and again that allegations must be proven by sufficient evidence. Mere allegations are definitely not evidence *(Coronel vs. Court of Appeals, 263 SCRA 35)*.

For all the foregoing, We affirm the findings of the First Division making petitioner liable for deficiency DST in the amount of P92,587.50.

By and large, the testimonial and documentary evidence presented by petitioner is not sufficient to prove its claim.

At this point, it must be emphasized that tax assessments by tax examiners are presumed correct and made in good faith, and all

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presumptions are in favor of the correctness of a tax assessment unless proven otherwise *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 522 SCRA 144)*. In short, the burden is on the petitioner to prove that the assessment made by respondent is incorrect.

Finding no reversible error, We affirm the assailed Decision dated September 11, 2007 and Resolution dated February 4, 2008 of the First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice