REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GULF AIR COMPANY, PHILIPPINE BRANCH (GF),
Petitioner,

C.T.A. EB NO. 302
(C.T.A. Case No. 7030)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 3 0 2008

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

[1] *Rollo*, pp. 7 – 43 with Annexes.

1. the Decision dated March 21, 2007 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7030, which dismissed petitioner's Petition for Review and affirmed the Final Decision on Disputed Assessment of the Bureau of Internal Revenue ("BIR") dated June 30, 2004, demanding the payment of deficiency Percentage Tax assessment issued against petitioner in the amount of ₱33,864,186.62 for the first, second and fourth quarters of the year 2000; and
2. the Resolution of the Court in Division promulgated on June 29, 2007, which denied the Motion for Reconsideration of petitioner.

Antecedent Facts

Based on the parties' "Joint Stipulation of Facts and Issues"[2] and the Decision of the Court in Division[3], the facts of this case follows.

Petitioner is a branch of Gulf Air Company, a foreign corporation organized in accordance with the laws of The Kingdom of Bahrain, with principal office at the Ground Floor, Don Chua Lamko Building, Leviste St. corner Dela Costa St., Salcedo Village, Makati City.

Respondent is the Commissioner of the BIR, which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the 3% Percentage Tax imposed under Sec. 118 of the National Internal Revenue Code ("NIRC") on

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[2] *Records*, C.T.A. Case No. 7030, pp. 272 – 280.
[3] C.T.A. Case No. 7030, March 21, 2007, pp. 3 – 11.

international air carriers doing business in the Philippines, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 25, 2001, petitioner availed of the Voluntary Assessment Program ("VAP") under Revenue Regulations 8-2001, for its 1999 and 2000 Income Tax, 3rd Quarter of 2000 Percentage Tax, and 1999 and 2000 Documentary Stamp Tax, with a total VAP payment of ₱11,964,648.00.

On October 4, 2002, petitioner received a Letter of Authority dated September 30, 2002, authorizing Revenue Officers Reynoso Jovero and Welita Quimson to examine petitioner's books of accounts and other accounting records in connection with petitioner's claim for refund of percentage taxes for the 1st, 2nd, and 4th quarters of year 2000.

On April 25, 2003, Revenue Officer Jovero requested petitioner, thru Ms. Aida N. Florencio, Chief, LT Audit and Investigation Division I, to submit a summary of daily passenger uplifts for each month, and sample copies of tax coupons of locally issued tickets showing net net fares actually realized by petitioner. Petitioner received said letter on April 28, 2003.

On May 8, 2003, petitioner, through its Tax Agent, Moises M. Visperas, Jr., submitted a formal written reply, dated May 8, 2003, to Revenue Officer Jovero, thru Ms. Aida Florencio, Chief, LT Audit and Investigation Division I, attaching thereto the requested summary of daily passenger uplifts for each month of the quarters involved, and sample copies of tax coupons of locally issued tickets showing net revenues. As stated by petitioner in its reply, the claim for refund was based on the following:

> "1. That passenger revenue reflected on original tax returns was based on one gross CAB fare of USD674.00 multiplied by the number of passenger uplifts for the quarter, reduced by 25% allowable deduction. When the amended tax returns were filed on October 25, 2001, correct passenger revenues were computed considering correct respective net net revenues realized from uplifts of passengers up to their final destination. This definition of taxable gross receipts was in fact later carried and ratified when Revenue Regulations 15-2002 was issued on March 31, 2002 (date should have read May 30, 2002 but which took effect only on October 26, 2002).
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> 2. Another type of computation error with respect to Taxable Passenger Revenue was noted in the Percentage Tax Return for the 2nd quarter of 2000 wherein the 25% allowable deduction was erroneously not claimed as a deduction and thus accordingly overstating its tax payment by 25%.
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> 3. On the other hand, cargo and mails revenues reflected on the original tax returns were understated as the figures thereon were merely based on amounts actually received from its General Sales Agent that is already net of the GSA override commission. Thus, the amended tax return corrects the understatement by reflecting the correct Cargo and Mails taxable revenue. (This translates to an additional taxable revenue base of PHP16,760,620.46 when the amended tax returns were filed).
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> 4. Kindly note that the claim for refund was limited to 1st, 2nd, and 4th quarters of 2000 as we noted that for the 3rd quarter of 2000, there was an overall understatement. As an honest gesture on my client's part, it had availed of VAP for the 3rd quarter of 2000 which was duly accepted and qualifying certificate being duly issued by the BIR. . . . ."

On July 2, 2003, in compliance with the verbal request of Revenue Officer Jovero, petitioner provided the latter a comparative analysis of cargo revenue per original return with that of the amended tax returns which resulted in additional taxable revenue of ₱16,760,620.46 or the equivalent 3% tax of ₱502,819.00.

On July 14, 2003, petitioner received a letter from Ms. Armi S. Linsangan, Chief LT Audit and Investigation I, dated July 1, 2003, notifying it of a proposed assessment of deficiency percentage tax or common carriers tax amounting to ₱32,740,472.03. The same letter requested petitioner to appear before an informal conference scheduled on July 24, 2003 at 10:00 A.M.

In compliance with the July 14, 2003 letter, petitioner's Tax Agent, Mr. Visperas, together with its Finance Controller -- Manila, Armand Bautista and Accounts Assistant Divina Talla, attended the informal conference on July 24, 2003 and submitted thereat petitioner's initial comments on the proposed deficiency percentage tax assessment.

On November 4, 2003, petitioner received a Preliminary Assessment Notice ("PAN"), issued by Deputy Commissioner Estelita C. Aguirre dated August 20, 2003, assessing petitioner deficiency percentage tax amounting to ₱32,745,141.93, broken down as follows:

Gross Receipts per return	₱	753,210,516.78
Add: Adjustments:		
1. Special Commission on Passengers		804,280,176.93
2. Special Commission on cargo originally reported in US$		116,185,504.63
3. Special commission on cargo originally reported in ₱		91,403,076.47
Total Adjustment		1,011,868,758.63
Gross Receipts per Audit		1,765,079,274.81
Tax Per Audit		52,952,378.24
Amount paid per return		32,588,593.00
Basic		20,363,785.24
Interest up to 9-30-03		12,381,356.69
Total	₱	32,745,141.93

On the same date, petitioner also received together with the PAN, a letter issued by Deputy Commissioner Estelita C. Aguirre dated October 14, 2003, denying petitioner's claim for tax credit/refund of excess percentage tax remittance covering the 1st, 2nd, and 4th quarters of taxable year 2000, and requesting the immediate settlement of the ₱32,745,141.93 deficiency percentage tax assessment.

On November 12, 2003, petitioner filed with the Office of the Deputy Commissioner – Large Taxpayers Service through its Tax Agent, a letter dated on the same day, protesting the above-mentioned PAN, and requesting for reconsideration of the denial of its request for refund.

On December 16, 2003, petitioner received a Formal Letter of Demand dated December 10, 2003, demanding the payment of the total amount of ₱33,864,186.62, the details of which are as follows:

Gross Receipts per return	₱ 753,210,516.78
Add: Adjustments:	
1. Special Commission on Passengers	804,280,176.93
2. Special Commission on cargo originally reported in USD	116,185,504.63
3. Special Commission on cargo originally reported in PHP	91,403,076.47
Total Adjustment	1,011,868,758.03
Gross Receipts per Audit	1,765,079,274.81
Tax Per Audit	52,952,378.24
Amount paid per return	32,588,593.00
Basic Deficiency Percentage Tax	20,363,785.24
Interest up to 01-09-04	13,500,401.38
Total	₱ 33,864,186.62

On December 29, 2003, petitioner filed a letter, dated on the same day, addressed to the Deputy Commissioner, protesting the aforementioned deficiency percentage tax assessment and reiterating its request for reconsideration of the denial of its request for refund.

On January 24, 2004, a Tax Verification Notice dated January 8, 2004 was received by petitioner authorizing Revenue Officer Jovero to verify supporting documents and/or pertinent records relative to the Request for Reinvestigation of Deficiency Percentage Tax Protest Letter dated December 29, 2003 covering the 1st, 2nd, and 4th quarters of taxable year 2000.

On July 8, 2004, petitioner received a Final Decision on Disputed Assessment from the Deputy Commissioner, OIC, Large Taxpayers Service dated June 30, 2004, denying its December 29, 2003 written protest "for lack of factual and legal basis" and requesting the immediate payment of the ₱33,864,186.62 deficiency percentage tax assessment.

On August 6, 2004, petitioner filed a Petition for Review with this Court, appealing the said Final Decision. In his Answer, respondent alleged, by way of special and affirmative defenses, that petitioner is liable for the deficiency percentage tax for the 1st, 2nd, and 4th quarters of taxable year 2000 under Revenue Regulations 6-66 dated December 1, 1966, providing for the computation of gross receipts of international air carriers based on the cost of single one-way fare on a continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail as reflected on the plane manifest of the carriers as approved by the Civil Aeronautics Board ("CAB"); Revenue Regulations 6-66 was never amended, until the issuance of Revenue Regulations 15-2002 on May 30, 2002; Revenue Regulations 15-2002 has no retroactive application; it is well settled that laws have no retroactive application unless it is provided for by the law itself, and presumptions are in favor of the correctness of tax assessments.

Petitioner presented Moises M. Visperas, Jr., its Tax Agent, and Divina Talla, its Accounts Assistant, as witnesses, and formally offered documentary evidence.

On the other hand, counsel for respondent waived his right to present evidence and moved for thirty (30) days to file his memorandum. Both parties were granted thirty (30) days from September 28, 2005 to file their simultaneous memoranda. Upon compliance therewith by both parties, the case was deemed submitted for decision on December 04, 2006.

The Ruling of the Court in Division

On March 21, 2007, the Court in Division rendered its Decision dismissing the Petition for Review. It ruled that the correct basis of the 3% Percentage Tax imposed under Section 118 (A) of the 1997 NIRC on the quarterly gross receipts of international air carriers doing business in the Philippines is the fare approved by the CAB pursuant to Revenue Regulations 6-66.

The Court in Division held that Revenue Regulations 6-66 is the applicable implementing regulation and it is clearly provided therein that gross receipt shall be computed on the cost of the single one way fare as approved by the CAB on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo including mail, as reflected on the plane manifest of the carrier.

The Court in Division likewise noted that petitioner admitted that it did not include in its gross receipts the special commissions on passengers and cargo. Neither did it prove that such commissions are not subject to taxation. Thus, the Court in Division concluded that respondent was correct in adding back the said commissions to the gross receipt per return of petitioner in order to come up with the gross receipts subject to tax under Section 118 (A) of the 1997 NIRC.

The Court in Division further ruled that Revenue Regulations 15-2002 cannot be given retroactive application. It emphasized that the said regulations took effect only on October 26, 2002, while petitioner's amended tax returns were filed on October 25, 2001.

Lastly, the Court in Division imposed the 25% penalty under Section 248 of the NIRC, as well as the 20% deficiency and delinquency interest under Section 249(B) and (C) of the same Code.

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. With the above modification, the decision dated June 30, 2004 of the Deputy Commissioner, OIC, Large Taxpayers Service of the Bureau of Internal Revenue, is hereby **AFFIRMED** in all other respects. Accordingly, petitioner is ordered to pay the respondent the total amount of Forty One Million One Hundred Seventeen Thousand Seven Hundred Thirty Four and 01/100 Pesos (P41,117,734.01), plus twenty percent (20%) delinquency interest thereon computed from July 8, 2004 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*
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> SO ORDERED."

Aggrieved, petitioner moved for reconsideration which was denied by the Court in Division in its Resolution dated June 29, 2007.

Hence, the present recourse.

The Issue

The main issue submitted for resolution in the Petition for Review is whether or not the Court in Division erred in ruling that the gross receipts for purposes of computing the 3% Percentage Tax under Section 118(A) of the 1997 NIRC shall be based on the rates approved by the CAB, thus warranting the inclusion of the special commissions on passengers and special commissions on cargo in the computation of gross receipts.

Petitioner's Arguments

Petitioner questions the validity of Revenue Regulations 6-06 and posits that CAB-approved fares are notional and are not reflective of the actual revenue or receipts derived or received by petitioner or its agents from its business as an international carrier. While CAB fares may likewise be indicated in a ticket, it is an airline industry practice that tickets are actually sold to passengers at a lower rate, ranging from 31% to as much as 43% only of the CAB-approved fares.

Petitioner also disagrees with the application to the instant case of the jurisprudential definition of gross receipts as the total income as opposed to the net income. It submits that the CAB-approved rate can never be considered the total income of petitioner as it never received the same, whether actually or constructively.

Petitioner also avers that while its treatment of the special commissions might be contrary to Revenue Regulations 6-66, such treatment is not contrary to the definition of gross receipts that it is the whole amount received without any deduction. The CAB-approved price of the plane ticket is not the whole amount received by petitioner. The entire amount received by petitioner is the "net net fare" appearing in the remittance area of the audit, tax and agent's coupon of the plane ticket. The special commissions are the difference between the amounts actually received, collected or realized by petitioner and the price ticket fixed by the CAB. Thus, said commissions were never actually received, collected or realized by petitioner and should be excluded from its gross receipts.

Petitioner further asserts that the decision to charge its sales agents the CAB-approved fare is not discretionary on the part of petitioner. It is an industry practice not to charge such fare. If petitioner strictly imposes the same, it would not be able to sell plane tickets since its competitors would be selling the same tickets at a lower rate.

Lastly, petitioner claims that it did not apply Revenue Regulations 15-2002 and even on the assumption that it did, the same is allowed under Section 246 of the 1997 NIRC since the revocation or modification of the definition of "gross receipts" under Revenue Regulations 6-66 by Revenue Regulations 15-2002 is beneficial to the taxpayer.

Respondent's Counter-arguments

Respondent failed to file her Comment and Memorandum within the periods prescribed by the Court. Consequently, this case was submitted for decision on December 18, 2007.

The Ruling of the Court En Banc

The Petition for Review is not impressed with merit.

It is undisputed that petitioner is liable for the 3% Percentage Tax or Common Carrier's Tax imposed on the quarterly gross receipts of international air carriers doing business in the Philippines which is provided under Section 118 (A) of the 1997 NIRC, *to wit*:

> "SEC. 118. Percentage Tax on International Carriers. —
>
> (A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.
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> xxx xxx xxx."

In this case, the bone of contention is the determination of "gross receipts" in the afore-quoted provision. While there is no provision in the 1997 NIRC on this matter, there are two implementing regulations which prescribe what to include in computing said gross receipts.

The first is Revenue Regulations 6-66 dated December 1, 1966 or the "Regulations for Percentage Tax Purposes on International Air Transport Services" and the second is Revenue Regulations 15-2002 dated May 30, 2002 or the "Revenue Regulations Governing the Imposition of Income Tax on the Gross Philippine Billings, Other Income of International Air Carriers and Common Carrier's Tax Pursuant to Sections 28(A)(3)(a), 28(A)(1), and 118 of the National Internal Revenue Code of 1997..."

Under Section 10 of Revenue Regulations 15-2002, Gross Philippine Billings, which is the basis for computing the 2 1/2% Gross Philippines Billings Tax, is likewise used as basis in computing the 3% Common Carrier's Tax imposed on international air carriers under Section 118(A) of the 1997 NIRC. Thus:

> "SECTION 10. Common Carrier's Tax Liability Of International Airline Companies. — For purposes of determining the Common Carrier's Tax liability of international airline companies pursuant to Section 118 of the Code, gross receipts shall be the same as the tax base for computing Gross Philippine Billings Tax as prescribed by these Regulations."

It is clear from Section 5 of Revenue Regulations 15-2002 that the basis now of the 3% Common Carrier's Tax is the "net net rate", *viz*:

SECTION 5. Determination Of Gross Philippine Billings. –

(a) In computing for "Gross Philippine Billings", there **shall be included the total amount of gross revenue** derived from passage of persons, excess baggage, cargo and/or 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 passage documents:

The **gross revenue** for passengers whose tickets are sold in the Philippines shall be **the actual amount derived for transportation services**, for a first class, business class or economy class passage, as the case may be, on its continuous and uninterrupted flight from any port or point in the Philippines to its final destination in any port or point of a foreign country, **as reflected in the remittance area of the tax coupon forming an integral part of the plane ticket.** For this purpose, the Gross Philippine Billings shall be determined by computing the monthly average net fare of all the tax coupons of plane tickets issued for the month per point of final destination, per class of passage (i.e., first class, business class, or economy class) and per classification of passenger (i.e., adult, child or infant), and multiplied by the corresponding total number of passengers flown for the month as declared in the flight manifest.

For tickets sold outside the Philippines, the gross revenue for passengers for first class, business class or economy class passage, as the case may be, on a continuous and uninterrupted flight from any port or point in the Philippines to final destination in any port or point of a foreign country shall be determined **using the locally available net fares applicable to such flight** taking into consideration the seasonal fare rate established at the time of the flight, the class of passage (whether first class, business class, economy class or non-revenue), the classification of passenger (whether adult, child or infant), the date of embarkation, and the place of final destination. Correspondingly, the Gross Philippine Billings for tickets sold outside the Philippines shall be determined in the manner as provided in the preceding paragraph.

Passage documents revalidated, exchanged and/or endorsed to another on-line international airline shall be included in the taxable base of the carrying airline and shall be subject to Gross Philippine Billings tax if the passenger is lifted/boarded on an aircraft from any port or point in the Philippines towards a foreign destination.

xxx xxx xxx

The gross revenue for freight or cargo and mail shall be determined based on the revenue realized from the carriage thereof. **The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting therefrom the amount of discounts granted which shall be validated using the monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS) for airway bills issued through their cargo agents or the monthly reports prepared by the airline themselves or by their general sales agents for direct issues made.** The amount realized for mails shall, on the other hand, be determined based on the amount as reflected in the cargo manifest of the carrier.

xxx xxx xxx"
(Emphasis supplied)

However, Revenue Regulations 15-2002 which took effect on October 26, 2002, expressly amends Revenue Regulations 6-66 pursuant to the former's repealing clause which provides:

"SECTION 11. Repealing Clause. – **The provisions of these Regulations expressly amend Revenue Regulations No. 6-66** as well as all other existing rules and regulations which are inconsistent herewith." *(Emphasis supplied)*

The foregoing clause shows that prior to the issuance and effectivity of Revenue Regulations 15-2002, the applicable and valid rule on determining gross receipts for purposes of the 3% Common Carrier's Tax is still Revenue Regulations 6-66. When the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[4]

Here, since the period involved in the subject assessment covers the 1st, 2nd and 4th quarters of year 2000 and petitioner's amended percentage tax

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[4] Fagel Tabin Agricultural Corporation v. Jacinto, G.R. No. 55393, October 28, 1991, 203 SCRA 189.

returns for the said quarters were filed on October 25, 2001, Revenue Regulations 6-66 must be applied to petitioner's case.

Moreover, the Court in Division, in ruling that Revenue Regulations 15-2002 cannot be applied retroactively, reasoned as follows:

> "It cannot be gainsaid by the petitioner that its computation of the common carrier tax based on "net net rate" is the correct basis considering that it is in accord with the computation prescribed by Revenue Regulations No. 15-2002. It must be emphasized that Revenue Regulations No. 15-2002 took effect only on October 26, 2002, whereas, as admitted by the petitioner in its Memorandum dated October 10, 2005, the amended tax returns were filed on October 25, 2001, or one (1) year and one (1) day after. Well settled is the rule that laws, as well as rules and regulations, cannot be given retroactive application. Accordingly, Revenue Regulations No. 15-2002 cannot be made applicable in determining petitioner's common carriers tax for the 1st, 2nd and 4th quarters of 2000."

The Court *En Banc* agrees. Furthermore, petitioner's contention that the said regulations can be applied retroactively as to do so will be favorable to the taxpayer as provided in Section 246 of the 1997 NIRC, is untenable. On the retroactivity of administrative rules, the Supreme Court has ruled that "an administrative rule interpretative of a statute and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of effectivity of the statute."[5] Revenue Regulations 15-2002 provided a different rule in determining gross receipts. In effect, it vests a new right to common and international carriers which was not previously granted under Revenue Regulations 6-66. Hence, being declarative of a new right, Revenue Regulations 15-2002 cannot be given retroactive effect.

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[5] Commissioner of Internal Revenue v. Azucena T. Reyes and vice versa, G.R. Nos. 159694 and 163581, January 27, 2006, 480 SCRA 385, *citing Agpalo, Statutory Construction, (4th ed., 1998) p. 375.*

Considering that the provisions of Revenue Regulations 6-66 must be applied to petitioner's case, the determination of gross receipts of international air carriers doing business in the Philippines mandated under Section 5 thereof, is controlling:

> "SEC. 5. **Gross receipts, how determined.** -- The total amount of gross receipts derived from passage of persons, excess baggage, freight or cargo, including mail cargo, 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, shall be subject to the common carrier's percentage tax (Sec. 192, Tax Code). **The gross receipts shall be computed on the cost of the single one way fare as approved by 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.**
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> xxx xxx xxx." *(Emphasis supplied)*

As aptly pointed out by the Court in Division, the foregoing provision is explicit. When the law is clear, no interpretation is needed.[6] It may be said that the law may be harsh or unfair but that is the law and it must be followed. The duty of courts is to apply the law. *Dura lex, sed lex.*[7] It is the CAB-approved fares which should be used by petitioner in determining its gross receipts for year 2000. Since the special commissions on passenger and cargo are the difference between the amounts actually received, collected or realized by the petitioner and the price of the ticket fixed by the CAB, such commissions must be included in the gross receipts of petitioner for the 1st, 2nd, and 4th quarters of 2000 subject to the 3% Common Carrier's Tax under

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[6] Ablan, Sr. v. Madarang, G.R. No. L-32963, September 30, 1971, 41 SCRA 213.
[7] Everett Steamship Corp. v. Commissioner of Customs, C.T.A. Case No. 3061, June 25, 1981.

Section 118(A) of the 1997 NIRC. Therefore, the Court in Division correctly affirmed the decision dated June 30, 2004 of the Deputy Commissioner, OIC, Large Taxpayers Service of the BIR.

In fine, the Court *En Banc* sees no reason to reverse the assailed Decision promulgated on March 21, 2007 and the Resolution dated June 29, 2007.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 this Court.

ERNESTO D. ACOSTA
Presiding Justice