REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CONTINENTAL MICRONESIA, INC. – PHILIPPINE BRANCH, Petitioner,	**C.T.A. CASE NO. 6232**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 11 2007; 1:00 PM

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DECISION

ACOSTA, *P.J.:*

Before Us is a Petition for Review seeking the cancellation and withdrawal of the disputed income, common carrier's, and documentary stamp tax assessments for taxable year 1997 in the amount of P1,194,923.46, P13,178,340.79, and P104,587.50, respectively.

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 Philippine laws to do business in the Philippines. Its business address is at Ground Floor, SGV II Bldg., 6760 Ayala Avenue, Makati City.[1]

Respondent 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

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[1] Joint Stipulation of Facts and Issues, paragraph 1, *Rollo*, page 55

thereto. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[2]

For taxable year 1997, petitioner filed its Annual Income Tax Return[3] on April 15, 1998, showing the amount of P6,002,173.00, which is the tax paid on its Gross Philippine Billings.

Petitioner also filed its Quarterly Percentage Tax Return, with the pertinent data hereunder quoted for easy reference, to wit:

Exhibit	Date of Filing	Taxable Quarter	Common Carrier's Tax 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			**P15,050,224.10**

On August 15, 2000, respondent issued to petitioner three (3) Assessment Notices covering taxable year 1997 with Assessment No. 000193-97-00-625 and the corresponding Details of Discrepancies for alleged deficiency income tax, common carrier's tax, and documentary stamp tax (DST), inclusive of increments, in the amount of P1,194,923.46, P13,178,340.79, and P104,587.50, respectively.[4]

The disputed deficiency income, common carrier's, and documentary stamp tax assessments for taxable year 1997 were computed as follows:[5]

Deficiency Income Tax

Gross Philippine Billing (per audit)	P	451,152,727.44
Gross Philippine Billing (per return)		400,144,931.00
Billing not subjected to 1.5% Income Tax		51,007,796.44
Tax Due thereon (1.5%)		765,116.93
Add: Interest 04-16-98 to 09-15-2000		369,806.53
Suggested compromise penalty		60,000.00
Total Amount Due	**P**	**1,194,923.46**

[2] Joint Stipulation of Facts and Issues, paragraph 2, *Rollo*, page 55
[3] Exhibit "G"
[4] Annexes "A", "B", "C", "D", and "E" of the Petition for Review, *Rollo*, pages 10-13
[5] Joint Stipulation of Facts and Issues, paragraph 6, *Rollo*, page 57

Deficiency Common Carrier's Tax

Revenue-Passenger	P	800,071,993.71
Non-Revenue Passenger		155,848,938.04
Total		955,920,931.75
Less:25% allowance		238,980,232.94
Taxable Revenue - Passenger		716,940,698.81
Cargo (based on cargo summary)		70,209,862.84
Taxable receipts per audit		787,150,561.65
Taxable receipts per return		501,674,137.37
Difference - not subjected to tax		285,476,424.28
Tax Due thereon		8,564,292.73
Add: Interest 02-26-98 to 09-15-2000		4,514,048.06
Suggested compromise penalty		100,000.00
Total Amount Due	**P**	**13,178,340.79**

Deficiency Documentary Stamp Tax

Total airway bills (based on cargo summary)		7,407.00
Tax due thereon (7,047.00 x P10.00)	P	74,070.00
Add: 25% surcharge		18,517.50
Suggested compromise penalty		12,000.00
Total Amount Due	**P**	**104,587.50**

On September 13, 2000, petitioner formally protested the above deficiency tax assessments through a letter dated September 12, 2000.

In a letter dated January 8, 2001, respondent denied petitioner's protest finding no basis, legal or factual, to justify the reversal or even modification of the deficiency tax assessments.

Aggrieved by respondent's decision, petitioner filed the instant Petition for Review on February 7, 2001.

In his Answer, admitted by this Court in a Resolution dated August 22, 2001, respondent alleged the following Special and Affirmative Defenses:

> "3. The questioned assessments were issued in accordance with law and regulations and are presumed correct and valid;
>
> 4. Petitioner is subject to Section 25 (a) (2) (A) of the Tax Code on its Gross Philippine Billings;

5. Petitioner failed to apply the Civil aeronautics Board (CAB) rates in the computation of their Gross Receipts subject to 3% Common Carriers tax in violation of Section 5, of Revenue Regulations No. 6-66 dated December 5, 1966, hence, subject to the deficiency Common Carriers Tax;

6. Petitioner likewise failed to collect documentary stamp tax on airway bills issued in violation of Section 191 of the Tax Code, hence, subject to the deficiency documentary stamp tax;"

Petitioner submitted testimonial as well as documentary evidence to support its claim. Meanwhile, respondent failed to file his formal offer of evidence.

This case was submitted for decision on February 26, 2007 after considering petitioner's Memorandum and Supplemental Memorandum sans respondent's Memorandum.

The parties interposed the following issues[6] for the Court's consideration:

"1. Whether or not Petitioner correctly computed its Gross Philippine Billings in accordance with Section 25(a)(2)(A) of the National Internal Revenue Code, as amended.

2. Whether or not Petitioner is liable for alleged deficiency income tax on its Gross Philippine Billings amounting to P1,194,923.46.

3. Whether or not Petitioner correctly computed its gross receipts for purposes of common carrier's tax in accordance with Section 5 of Revenue Regulations No. 6-66.

4. Whether or not Petitioner is liable for alleged deficiency common carrier's tax amounting to P13,178,340.79.

5. Whether or not Petitioner is liable for alleged deficiency documentary stamp tax amounting to P104,587.50."

The first and second issues are jointly discussed inasmuch as they are interrelated.

It is petitioner's position that respondent erroneously based his calculation of its Gross Philippine Billings on all passage documents issued, directly or through its sales agents, regardless of whether or not these passage documents were actually flown or refunded and whether or not they were actually uplifted by petitioner. Petitioner likewise claims that its deficiency income tax on Gross Philippine Billings arose from the alleged

[6] Joint Stipulation of Facts and Issues, *Rollo*, page 58

unreported revenue in the amount of P51,007,796.44, which actually represents the value of re-issued or exchanged and refunded tickets for the taxable year 1997.

The issues at hand revolve on the composition of petitioner's Gross Philippine Billings, in accordance with its definition under Section 25(2)(A) of the 1977 Tax Code, which was then in effect. This Court has already settled that what forms part of the Gross Philippine Billings are only those revenues earned from the sales of ticket that were actually flown by petitioner.

In fact the definition as stated in Section 25(2)(A) of the 1977 Tax Code confirms the foregoing opinion of the Court, to wit:

> "SECTION 25. Rates of tax on foreign corporations. – xxx
>
> (a) xxx
>
> (2) International carriers. xxx
>
> (A) International air carrier. — **'Gross Philippine Billings' means gross revenue realized from uplifts of passengers** anywhere in the world and excess baggage, cargo and mail originating from the Philippines, covered by passage documents sold in the Philippines: Provided, That documents sold outside the Philippines under a 'prepaid ticket advice' scheme for passengers originating from the Philippines shall be considered as documents sold in the Philippines. Gross revenue from chartered flights originating from the Philippines shall likewise form part of the 'Gross Philippine Billings' regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights, the term 'originating from the Philippines' shall include flights of passengers who stay in the Philippines' for more than forty-eight [48] hours prior to embarkation." (*Emphasis supplied*)

The only issue left for determination is factual, which is whether or not petitioner's Gross Philippine Billings consist only of revenues earned from the sale of tickets actually flown by passengers. Thus, it becomes imperative for petitioner to prove the fact that some of those tickets included by respondent in computing its Gross Philippine Billings, as basis for the tax, were actually exchanged or re-issued and refunded to ticket holders. At this point, the Court finds that petitioner's pieces of evidence were insufficient.

Petitioner presented the "Reconciliation of Audit vs. Books"[7] for the taxable year 1997 to account for the alleged unreported Gross Philippine Billings in the amount of P51,007,796.44, which is the basis of the assessment by the BIR for deficiency income tax. Although the exhibit contains a list of tickets that are allegedly re-issued and refunded, nonetheless it is merely a list and taken alone, the Court does not see how it can be relevant to prove that indeed there were tickets that were re-issued or exchanged and refunded. Also, the Court cannot accord weight to the testimony of petitioner's witness, Ms. Maxima Cabantog where she testified that the difference in the computation was due to re-issued or exchange and refunded. With no documentary evidence to back it up, such testimony does not hold water for being self-serving.

In assessments, the *onus probandi* is upon petitioner. In order to discharge the burden of proof sufficiently and satisfactorily, petitioner should have presented in evidence, among others, the plane tickets or any other passage documents to substantiate the allegations of re-issued or exchanged tickets and cancelled/returned tickets due to refunds. Without these documents, this Court cannot determine with particular certainty petitioner's actual Gross Philippine Billings for taxable year 1997. Consequently, it would also be impossible to determine if petitioner correctly computed its Gross Philippine Billings.

Noteworthy is the fact that even in the administrative level,[8] despite respondent's demand for petitioner to submit its source documents (tickets and coupons) for substantiation purposes, petitioner still failed to present those tickets that would have validated its allegations. This failure of petitioner subsisted until the elevation of this case before the Court.

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[7] Exhibit "A"
[8] BIR Records pages 778, 826, and 831.

Assessments cannot be cancelled based on mere allegations. There must be concrete proof, inasmuch as "taxes are the lifeblood of the Government and their prompt and certain availability are an imperious need"[9].

Accordingly, petitioner is 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**

There being no compromise agreement between the parties, the compromise penalty of P60,000.00 originally imposed by respondent is hereby excluded.

As to the third and fourth issues, petitioner claims that it offered and applied different fare rates for different types of passengers, with such rates being approved by the Civil Aeronautics Board (CAB), in accordance with Section 5 of Revenue Regulations (RR) No. 6-66. Petitioner further avers that respondent wrongly computed its gross receipts for purposes of determining its alleged deficiency common carrier's tax liability by applying a uniform rate prescribed by the Civil Aeronautics Board, without taking into consideration the different rates that should have been applied with respect to its different classes of passengers.

Section 5 of Revenue Regulations No. 6-66 reads in part as follows:

> "Sec.5. *Gross receipts 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. 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"

[9] Vera vs. Fernandez, No. L-31364, March 30, 1979; 89 SCRA 199, 204

Clearly from the above provision, the basis in computing the gross receipts would be the cost of tickets with fares approved by the CAB.

In support of its claim, petitioner submitted the following evidence:

1. Lists of Child Fare, New Fare Structure for Travel, Quick Reference Guide *(Exhibits "B-1" and "C-1")* to prove that there are special fare rate for children;

2. Letters of petitioner to Atty. Silvestre Pascual, Executive Director of Civil Aeronautics Board, seeking his approval of proposed fares with attached list thereof *(Exhibits "B", "C", and "L")* to prove that there are different fare rates for different classes of passengers as duly approved by the Civil Aeronautics Board.

3. Letter of Atty. Silvestre Pascual to petitioner's manager-sales dated May 25, 1995 approving petitioner's request for a fare increase in its Micronesia destination effective June 1, 1995 *(Exhibit "M")* to prove that petitioner's imposition and use of different fare rates for different classes of passengers is with the consent and knowledge of the CAB and;

4. Testimony of Ms. Maxima Cabantog.

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 fares corresponding to different classes of passengers, but still the assessment for the deficiency common carrier's tax cannot be cancelled because of several reasons. First, while it is true that petitioner submitted a letter[10] of the 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 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 of RR No. 6-66. Consequently, the Court cannot determine if petitioner's computation of its gross receipts corresponding to the deficiency common carriers tax was in accordance with Section 5 of RR No. 6-66.

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[10] Exhibit "M"

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Second, the Court cannot likewise verify from the evidence whether petitioner is actually using different 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 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 these "non-revenue passengers".

Accordingly, petitioner is liable to pay the common carrier's tax, excluding the compromise penalty of P100,000 imposed by respondent, there being no compromise agreement; details of which are as follows:

Revenue-Passenger	P 800,071,993.71
Non-Revenue Passenger	155,848,938.04
Total	P 955,920,931.75
Less: 25% allowance	238,980,232.94
Taxable Revenue – Passenger	P 716,940,698.81
Cargo (based on cargo summary)	70,209,862.84
Taxable receipts per audit	P 787,150,561.65
Taxable receipts per return	501,674,137.37
Difference - not subjected to tax	P 285,476,424.28
Tax Due thereon (3%)	P 8,564,292.73
Add: Interest	4,514,048.06
Total Amount Due	**P 13,078,340.79**

The Court will now tackle the fifth issue. Petitioner avers that contrary to the provision of Section 191 of the 1977 Tax Code[11], respondent failed to consider the existence

[11] SECTION 191. Stamp tax on bills of lading or receipts. — On each set of bills of lading or receipt (except charter party) for any goods, merchandise, or effects shipped from one port or plate in the Philippines to another port or place in the Philippines (except on ferries across rivers), or to any foreign port, three shall be collected a documentary stamp tax of fifty centavos, if the value of such goods exceeds P100 and does not exceed P1,000; one peso, if the value exceeds P1,000 and does not exceed P10,000; three pesos if the value exceeds P10,000; Provided however, That freight tickets covering goods, merchandise or effects carried as accompanied baggage of passengers on land and water carriers primarily engaged in the transportation of passengers are hereby exempt.

of goods whose value was lower than P1,000.00 that should be subject to the DST of P1.00. Accordingly, the assessment is erroneous and should be cancelled.

A review of the records of the case would show that no evidence other than the testimony of petitioner's witness was presented to prove the existence of goods whose value was lower than P1,000. Even the airway bills which respondent requested to be submitted so that the tax could be computed according to the value of each document were never offered. Without this evidence, the Court cannot sustain petitioner's allegations.

Hence, except for the compromise penalty of P12,000.00, the deficiency DST assessment must be upheld. Petitioner should pay the deficiency documentary stamp tax of P92,587.50, computed as follows:

Total airway bills (based on cargo summary)		7,407
Tax due thereon (7,047 x P10.00)	P	74,070.00
Add: 25% surcharge		18,517.50
Total Amount Due	**P**	**92,587.50**

At this juncture, this Court wishes to reiterate the principle that "tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the assessments"[12]. Here, petitioner failed to adduce evidence that would sufficiently overturn the "presumption of correctness of assessments". The records reveal that petitioner was already accorded by respondent ample opportunity to validate its claim by simply adducing pieces of evidence that are under its control, but petitioner still failed to do so. Thus, this Court's only resort is to concede to the presumption and affirm respondent's assessment.

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[12] Commissioner of Internal Revenue vs. BPI, G.R. No. 134062 , April 17, 2007, citing the case of Sy Po vs. CA, 164 SCRA 524, 530

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 1,134,923.46**	**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, computed from January 12, 2001 until full payment thereof, pursuant to Section 249(c)(3) of the 1977 Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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