REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC. (PAL), Petitioner,	**C.T.A. E.B. NO. 55 (C.T.A. CASE NO. 6465)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 05 2006

x- -x

DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on January 17, 2005 under Republic Act No. 9282, seeking a review of the Decision and Resolution by the then Court of Tax Appeals[1], which under Republic Act No. 9282, is now a Division of the current Court of Tax Appeals,

---

1 The original Court was composed of Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr. and Lovell R. Bautista

in CTA Case No. 6465, entitled "Philippine Airlines, Inc. vs. Commissioner of Internal Revenue", to wit:

1) Decision promulgated on July 26, 2004 denying petitioner's claim for refund in the aggregate amount of THREE MILLION FIVE HUNDRED EIGHTY THOUSAND TWO HUNDRED FIFTY FIVE AND 24/100 PESOS (P3,580,255.24) for lack of merit; and

2) Resolution promulgated on November 17, 2004 denying petitioner's Motion for Reconsideration of the aforesaid Decision.

The factual antecedents of the case are as follows:

Petitioner, Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal address at the 9th Floor, PAL Center, Legaspi St., Legaspi Village, Makati City; while respondent Commissioner of Internal Revenue is in charge of the assessment and collection of all national internal revenue taxes, fees and charges, including the 20% final income tax on interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations, as well as, the 7 ½% final income tax on interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system, imposed under Section 27(D)(1) of the National Internal Revenue Code (NIRC) of 1997 with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Believing that it is entitled to the refund of the withheld final income taxes from its interest income by virtue of its franchise, more particularly Section 13 of PD 1590, petitioner, through its AVP for Financial Planning and

Analysis, Ma. Stella L. Diaz, filed with the office of the respondent on September 6, 2001, a written request for refund of the amounts of Php16,244.02 and US$ 70,406.00 representing the total amount of final withholding taxes alleged to be erroneously withheld from the petitioner by Security Bank Corporation and China Banking Corporation, respectively, for the period covering March 31, 1999 to March 31, 2001, attaching thereto certifications from the said banks of the subject withheld taxes.

Unable to obtain an immediate relief from the respondent, petitioner filed before the then Court of Tax Appeals a "Petition for Review" on April 24, 2002 (docketed as C.T.A. Case No. 6465) seeking for a refund of the amount of THREE MILLION FIVE HUNDRED EIGHTY THOUSAND TWO HUNDRED FIFTY FIVE PESOS AND TWENTY FOUR CENTAVOS (₱3,580,255.24) broken down as follows:

> "1. The amount of **US$69,956.19 or Php 3,560,070.50** (Php50.890 to US$1.00) allegedly representing the **7 ½% final income tax** erroneously withheld by the China Banking Corporation from the interest income of petitioner for the period covering September 10, 1999 to October 18, 2000 and remitted to the respondent;
>
> 2. The amount of **Php 9,195.05** allegedly representing the **20% final income tax** erroneously withheld by the Security Bank Corporation from the interest income of petitioner for the period covering March 31, 2000 to March 31, 2001 and remitted to the respondent;
>
> 3. The amount of **US$ 215.95 or Php 10,989.69** (Php 50.890 to US$1.00) allegedly representing the **7 ½% final income tax** erroneously withheld by the Security Bank Corporation from the interest income of petitioner for the period covering March 31, 2000 to December 31, 2000."[2]

---

2 Decision, CTA Case No. 6465, July 26, 2004, p. 1; rollo, p. 36.

257

On July 26, 2004, the then Court of Tax Appeals rendered its assailed Decision denying the petition for lack of merit. It ruled that petitioner failed to present evidence showing that it had paid either the basic corporate tax or the franchise tax as required under Section 13 of P.D. No. 1590, ("An Act Granting a New Franchise To Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In the Philippines And Other Countries"). Thus, it cannot be considered as entitled to the benefits allowed by said law.

Finding no compelling reasons to either modify or alter the assailed Decision, the then Court of Tax Appeals denied petitioner's Motion for Reconsideration thereof in the Resolution dated November 17, 2004.

Hence, this recourse before the Court *En Banc* praying that: (a) the Decision dated July 26, 2004 and the Resolution dated November 17, 2004 be reversed; (b) petitioner be declared exempt from the 7 ½% and 20% final taxes on its interest income from its bank deposits for the calendar year 2001 by virtue of its franchise, P.D. No. 1590; and (c) respondent be ordered to refund the amount of ₱3,580,255.24 representing the total amount of 7 ½% and 20% final taxes deducted from its interest income from its bank deposits for the calendar year 2001.

Petitioner presents the following assignments of errors allegedly committed by the then Court of Tax Appeals, to wit:

> "1. Under Section 13 of P.D. No. 1590, it is an indispensable requirement before PAL may enjoy the exemption from all other taxes granted therein under the 'in lieu of' provision, to first show proof that it had paid either of the two taxes provided thereunder, citing in support thereof

the case of *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, CTA Case No. 5824, dated June 13, 2001*;

2. Petitioner failed to convince the Court that it had already opted for a preference given in the franchise for the year wherein such refund is being sought for; and

3. Through Justice Juanito C. Castañeda, Jr., in his Separate Concurring Opinion of the July 26, 2004 Decision, that had petitioner opted to avail of the 2% franchise tax, the 7 ½% and 20% final withholding taxes collected on said earnings of PAL by its depository banks cannot be classified as 'other taxes' and therefore cannot be the subject of a claim for refund."

In amplification and discussion of its assigned errors, petitioner argues that:

"a. The question of whether or not the 'in lieu of all taxes' provision in petitioner's franchise applies only if petitioner paid the taxes under subsections (a) and (b) of P.D. No. 1590 is not an issue in this petition;

b. The decision in CTA Case No. 5824 relied upon by the 1st (sic) Division of this Honorable Court was already reversed by the Court of Appeals:

c. Petitioner is exempt from 7 ½% and 20% final withholding tax because they are not one of those taxes enumerated in its charter for which it is liable;

d. Petitioner is exempt from 7 ½% and 20% final withholding tax because they fall under the phrase 'in lieu of all other taxes, xxx of any kind, nature or description imposed established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, not or in the future' provided under Section 13 of PD 1590; and

e. By quoting from its earlier decision, the Honorable Court is saying that before PAL may be entitled to the refund of the final withholding taxes collected on interest income, PAL must show proof first that it opted to avail of the second alternative under Section 13 of P.D. No. 1590, that is, the 2% franchise tax."

258

Relative to petitioner's failure to convince the then Court of Tax Appeals that it had already opted for a preference given in the franchise for the year wherein such refund is being sought for, petitioner submits that:

> "a. While the petitioner did not present during the hearing of this case its income tax returns which would prove that it had chosen to be taxed under Section 13(a) of its franchise, this Honorable Court should have taken judicial notice of the various Petitions for Review filed by petitioner with the Honorable Court which show that petitioner had chosen to be taxed under Section 13(a) of its franchise for the same fiscal year subject of this case; and
>
> b. It is of common knowledge and should also be given judicial notice, that during the fiscal year ended 31 March 2000, petitioner stopped its operations because of continuing losses exacerbated by the strike of its pilots."

Respondent filed his "Comment (Re: Petition for Review *En Banc* dated January 14, 2005)" on March 21, 2005 and prayed for the dismissal of the present petition for lack of merit as petitioner raised issues that have been extensively and sufficiently resolved by the then Court of Tax Appeals in the assailed Decision and in the separate concurring opinion of Senior Associate Justice Juanito C. Castañeda, Jr.

The Court *En Banc* gave due course to the present petition and required the parties to submit their respective memoranda.[3] Petitioner filed its Memorandum on May 20, 2005[4]; while respondent did not file his Memorandum within the given thirty (30) day period. Hence, this case was

---

[3] *En Banc* Resolution dated April 18, 2005, rollo, p. 188.
[4] Petitioner's Memorandum and annexes, rollo, pp. 190-220.

260

considered submitted for decision in the Resolution promulgated on June 22, 2005[5] .

This Court finds no merit in the petition.

Petitioner anchored its claim on Section 13 of P.D. No. 1590, in relation to Section 229 of the NIRC of 1997, to wit:

> "SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise **whichever of subsections (a) and (b) hereunder will result in a lower tax**:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> The tax paid by the grantee under either of the above alternatives shall be **in lieu of all other taxes**, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> > (1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases

---

5 Resolution, rollo, p. 252.

261

> by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;
>
> (3) All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;
>
> (4) All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;
>
> (5) All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and
>
> (6) The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

XL1

a. To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and

b. To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss." (Underscoring ours)

"SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x"

In interpreting Section 13 as above-quoted, We adopt the reasoning of the Court of Appeals in *Philippine Airlines, Inc. vs. Honorable Court of Tax Appeals and the Commissioner of Internal Revenue*[6]. Thus,

"xxx **Since no tax payment was made, is petitioner required, as contended by the respondent, to pay the 2% franchise tax in order to be exempted from the payment of other taxes such as the 20% final withholding tax on interest income being claimed herein by the petitioner? We believe the law does not say so**. The provision of section 13 is explicit and unequivocal. The petitioner-grantee must choose between the two aforementioned alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability. **Obviously, zero tax liability is lower than 2% franchise tax; hence, the petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government**.

---

[6] CA-G.R. SP No. 67970, September 30, 2003.

263

> **Moreover, the law does not say that to avail of the exemption from payment of all other taxes, there must be, after the computation, a tax due coupled with an 'actual' payment thereof. The law simply states that the petitioner-grantee must choose between the two alternatives and such choice must be that whichever will result in a lower tax liability. Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law 'in lieu of all other taxes'**. In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of the exemption granted by the law." (Emphasis ours)

Prescinding from the above ruling, the 20% final tax on interest income from petitioner's bank deposits was treated as "other taxes" because the petitioner-grantee availed of the basic corporate income tax as basis for its tax liability pursuant to Section 13(a) of P.D. 1590.

We must emphasize the fact that under the above-quoted provision of Section 13, PAL shall pay either: (a) the basic corporate income tax based on its net taxable income computed in accordance with the provisions of the NIRC of 1997; or (b) the two percent (2%) franchise tax of gross revenues derived from all sources, whichever will result in a lower tax. As correctly pointed out by petitioner, Section 13 of P.D. No. 1590 does not say that there must be, after the computation, a tax due coupled with an actual payment before it can avail of the exemption from payment of all other taxes.

As a matter of fact, for purposes of computing the basic corporate income tax, the same law allows PAL to: (a) depreciate its assets to the

264

extent of not more than twice as fast the normal rate of depreciation; and (b) carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss. Clearly, the framers of P.D. 1590 recognize the scenario of PAL possibly incurring a net loss in its operations. Hence, this Court is persuaded to conclude that no "actual" payment is necessary before petitioner may avail of the exemption. It must simply choose between the two aforesaid alternatives and such choice must be that whichever will result in a lower tax liability.

Consequently, in the event that no basic corporate income tax is due (i.e. when PAL sustains a net loss), PAL is not liable for any other tax except for real properties, pursuant to the phrase "in lieu of all other taxes". Hence, it cannot be compelled to pay the 2% franchise tax when its operations result to a net loss.

Relevant to this discussion is Section 14 of P.D. No. 1590 which provides, that:

> "The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. **Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee**.
>
> **A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year**. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

265

> Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.
>
> The term **'gross revenues'** is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) **earnings realized from investments in** money-market placements, **bank deposits**, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources." (Emphasis ours)

The law itself requires that petitioner shall file at least three (3) quarterly franchise or income-tax returns and a final or adjustment franchise or income-tax return for the purpose of determining the income tax liability of the petitioner.

Likewise, the last paragraph of Section 14 expressly provides that "gross revenues" includes earnings realized from bank deposits. Indubitably, interest income from bank deposits is therefore an item of petitioner's gross revenues which is subject to the two percent (2%) franchise tax. Conversely, it is not a component of annual net taxable income computed in accordance with the pertinent provisions of the NIRC of 1997 because of Section 27(D) of the same Code which imposes a final tax on certain passive income, such as the aforesaid interest income from bank deposits. The taxability of interest income earned by the petitioner, pursuant to Sections 13 and 14 of P.D. No. 1590, would entirely depend upon the tax base chosen by petitioner – whether the net taxable income or gross revenues.

However, in the case under consideration, petitioner miserably failed to present any evidence to show that it has chosen to be taxed under either Section 13(a) or (b). As consistently admitted by petitioner[7], neither the quarterly franchise/income-tax returns nor the final or adjustment franchise/income-tax return was ever presented or offered in evidence.

Moreover, records would show that, petitioner has not submitted in evidence its returns for the taxable years 1999, 2000 and 2001 to show that it actually made an overpayment of either its annual franchise or income taxes for 1999 up to 2001. Petitioner also did not present any evidence that it filed returns for the taxable years 1999, 2000 and 2001 and that it has elected from the options of paying either: (a) the basic corporate income tax based on its annual net taxable income computed in accordance with the NIRC of 1997; or (b) the franchise tax of 2% of the gross revenues it derived from all sources. Therefore, this Court cannot determine with utmost certainty whether or not the interest income earned by petitioner on its peso and dollar/FCDU deposit accounts is subject to tax. If petitioner had chosen the two percent (2%) franchise tax on its gross revenues, the interest earned on peso and dollar/FCDU accounts shall form part of petitioner's gross revenues; hence, taxable.

The then Court of Tax Appeals was correct when it did not take judicial notice of the records of other cases pending with the Court. Courts are not authorized to take judicial notice in the adjudication of cases pending before

---

7 Petition for Review En Banc, pp.15-18; rollo, p.21-24; Petitioner's Memorandum, pp.11-16; rollo, pp.231-236.

267

them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge[8], with the exceptions that: (a) when in the absence of objection, with the knowledge of the opposing party, said other case is clearly referred to in a pending action and adopted or read into the record of the latter; or (b) when the original records of the other case or any part of it is actually withdrawn from the archives at the court's discretion, or at the request, or with the consent of the parties, and admitted as part of the record of the pending case.[9] In the present case, no reference was made for such purpose during trial and no part of the records of the other cases was admitted as part of the record of the above-captioned case then pending.

As pronounced by the Court of Appeals, "[t]he evidence shows, however, that after the computation, the petitioner appears to have no corporate income tax liability, which reasonably explains why the petitioner need not pay any corporate tax as there was nothing at all to pay because there was in fact no tax due to the government during the taxable year involved, after computations in accordance with the NIRC".[10] Such evidence to establish a similar ruling is absent in the case at bar.

The burden of proof is upon him who claims the exemptions in his favor and he must be able to justify his claim by the clearest grant of the

---

8 U.S. vs. Claveria, 29 Phil. 527 (1915).

9 Tabuena vs. Court of Appeals, 196 SCRA 650 (1991).

10 Philippine Airlines, Inc. vs. Honorable Court of Tax Appeals and the Commissioner of Internal Revenue; supra.

268

organic or statute law.[11] This is consistent with the well-established principle that tax refunds are in the nature of a tax exemption and should be construed strictissimi juris against the taxpayer.[12]

WHEREFORE, premises considered, the Petition for Review *En Banc* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Concurring and Dissenting
(With ~~Separate~~ Opinion)
ERNESTO D. ACOSTA
Associate Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

11 China Banking Corporation vs. Court of Appeals, 403 SCRA 634 (2003).

12 Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991)

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 55
(C.T.A. Case No. 6465)

Present:

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

Promulgated:

JUL 0 5 2006 Gix Apolinario

x--x

Concurring and Dissenting Opinion

I agree with the finding of the Court of Tax Appeals *En Banc* that due to the failure of petitioner to satisfy the evidentiary requirements of its claim for refund, particularly, its neglect to submit its return for the taxable years 1999, 2000, and 2001, to show that it actually made an overpayment of either its annual franchise or income tax for 1999 up to 2001 and its failure to present evidence regarding its elected option of paying either (a) the basic corporate income tax based on its annual net taxable income computed in accordance with the 1997 Tax Code or (2) the franchise tax of 2% of the gross revenues it derived from all sources, its Petition for Review *En Banc* merits dismissal for lack of merit. However, with due respect to my distinguished colleagues, I take exception to the portion of the CTA *En Banc* Decision which states that petitioner's franchise does not require payment of tax due before it can avail of the exemption from payment of all other taxes provided in the said franchise of petitioner.

The relevant portions of **Sections 13 and 14 of Presidential Decree No. 1590** are hereunder quoted for ready reference, inasmuch as their proper interpretation is the basis of my Dissenting Opinion, to wit:

> "**Sec. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax**:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
>
> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to the transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.
>
> **The tax paid by the grantee under either of the above alternatives** shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:
>
> (1) All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchase by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;
>
> (2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by

the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.

(3) All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

(4) All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

(5) All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

(6) The corporate development tax under Presidential Decree No. 1158-A. xxx" *(Emphasis supplied)*

The pertinent parts of **Section 14 of P.D. No. 1590** provides as follows:

"**The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue.** Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee. xxx" (*Emphasis supplied*)

Based on the above-quoted provisions of petitioner's franchise, it is evident that herein petitioner, Philippine Airlines, is given the option to pay to the Philippine Government during the life of the franchise whichever will result in lower tax, either (a) the basic corporate tax in accordance with the provisions of the National Internal Revenue Code, or (b) a franchise tax of two per cent (2%) based on the gross revenue

273

derived from all sources. Likewise manifest in the said provisions are the two requirements prior to the enjoyment of the preferential tax treatment or privilege, namely: (1) a choice must be made between the two above-mentioned options and (2) after the choice is made, the chosen option of either the basic corporate tax or the two percent (2%) franchise tax must subsequently be paid. In other words, the franchisee or grantee, in this case petitioner PAL, is not only given the privilege to choose between what will give it the benefit of lower tax, but also the responsibility to pay its share of tax burden to compensate for the gamut of tax-related benefits enumerated in its franchise.

The phrase "in lieu of" denotes instead of; in the place of; or on substitution for (**Black vs. Barnes**. *46p.2d 625, 626, 142 Kan. 381*; **Rutherland vs. Oroville-Wyandotte Irr. Dist.**, *22 P. 2d 505, 218 Cla.242*; **Words and Phrases**, *Vol. 21, p.472*). And this Court in the case of **Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue**, *CTA Case No. 5824, June 13, 2001*, explained the phrase in this manner, to wit:

> **The "in lieu of" implies the existence of something for which a substitution is being made. Analyzing, therefore, the wordings of the franchise more particularly the last paragraph of Section 13 of PD 1590, it is clear that Petitioner has the option to pay either a corporate income tax or 2% franchise tax to avail of the incentive. Had Petitioner paid the 2% franchise tax, then the final withholding taxes withheld may be considered as "other taxes" as it falls under income tax. However, should it choose to avail of the first alternative, then final withholding tax on income may not be considered as "other taxes."** In other words, should PAL opt to avail of the first alternative, that is, to pay corporate income tax, payment of final withholding tax is deemed part of its corporate income tax liability, therefore, not refundable." (*Emphasis supplied*)

Long established is the legal principle that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application (**Republic vs. Court of Appeals**, *299 SCRA 199*). This rule rests on the opinion that the words employed by the legislature in a statute correctly express its intent or will, and precludes the Court from construing it differently.

Clearly, it is indispensable that petitioner pay first, either the basic corporate tax or the franchise tax, before it can avail of the incentive provided in **Section 13 of P.D. No. 1590**. Well settled in our jurisprudence is that tax refunds are in the nature of tax exemptions, thus, are construed *strictissimi juris* against the person or entity claiming the exemption (**Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.**, *309 SCRA 87*). Accordingly, the petitioner has the burden of proof to establish the factual and legal bases of its claim for refund. As correctly found by the Court *En Banc*, unfortunately, herein petitioner fell short of proving the veracity of its claim for refund. Nothing was presented or offered to show proof that petitioner had paid either of the two options granted to it by the said franchise. Petitioner failed to convince this Court that it had already opted for a preference of either alternative given in the franchise for the year wherein such refund is being sought for. Petitioner may have offered documents to prove that the amount withheld were remitted by the banks to respondent. However, the vital evidence necessary to prove that it had already paid either the corporate or franchise tax is missing. Hence, the petitioner cannot be considered as entitled to the benefits allowed by the said franchise.

To recapitulate, the finding that herein petitioner failed to present the necessary evidence to prove its entitlement to the tax refund justify the dismissal of the present Petition for Review for being unmeritorious.

ERNESTO D. ACOSTA
Presiding Justice

275