REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAPAN AIR LINES,
Petitioner,

versus

Nov. 29/68

CTA CASE NO. 1634

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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AMENDED DECISION

Petitioner filed a motion seeking reconsideration of our decision in the above-entitled case, dated January 27, 1968, denying its claim for refund of the amount of ₱39,877.99, paid as common carrier's tax for the period from May, 1963 to September, 1964 (pp. 123-136, CTA rec.). Upon consideration of said motion, this Court, in the interest of justice, reopened the case for the reception of additional evidence to clarify material points allegedly obscured by the incompleteness of the evidence advanced on the matter. The evidence presented in this connection consist of testimony of a witness, and documents, namely, the IATA Agreement and tickets showing the terms thereof which petitioner failed to present during the previous hearing. Had petitioner's counsel presented these evidence during the trial on the merits, there would have been no occasion for the instant motion, which has unnecessarily prolonged this case.

Petitioner, Japan Air Lines (or JAL for short), is a foreign corporation engaged in the business of international air carriage. JAL did not have planes that lifted or landed passengers and cargo in the Philippines during the period under review. It had not been granted by the Civil Aeronautics Board (CAB) a certificate of public convenience and necessity to operate here (Exh. A, p. 19, CTA rec.). However, on two occasions, JAL's planes landed here on chartered flights - one on September 23-26, 1963 carrying the Prime Minister of Japan on a state visit and the other a small plane, Beechcraft, that came here on January 14-17, 1964 (see pp. 24-25, t.s.n.; Exhs. B, B-1 & B-2, pp. 20-22, CTA rec.). In November, 1967 its application to operate in the Philippines was finally approved by the CAB (see Petitioner's Reply Memo.).

Since mid-July, 1957, JAL had maintained an office at the Filipinas Hotel, Roxas Boulevard, Manila. Said office did not sell tickets but was maintained merely for the promotion of the company's public relations and to hand out brochures, literature and other information playing up the attractions of Japan as a tourist spot and the services enjoyed in JAL planes (Exh. I, p. 54, BIR rec.).

On July 17, 1957, JAL constituted the Philippine Air Lines (PAL for short) its general sales agent in the Philippines (Exh. E, pp. 51-57, CTA rec.; pp. 12 & 21, t.s.n.). As an agent, PAL, among other things, sold for and in behalf of JAL, plane tickets and reservations for cargo spaces which were used by the passengers or customers on the facilities of JAL. Although PAL was the exclusive general sales agent in the Philippines, sales of JAL tickets were done also by travel agencies but all such sales were under the direct supervision of PAL which was responsible to JAL for the settlement, accounting and liquidation of said sales.

For the period from January, 1959 to September, 1964, PAL paid, for and in behalf of JAL, 2% common carrier's tax based on the "on line" portion of the fares on the tickets sold by PAL on behalf of JAL. The "on line" portion refers to the fares corresponding to the leg carried on a JAL plane (Exh. 1, pp. 1-3, BIR rec.; pp. 17-19, t.s.n.).

On May 13, 1965, petitioner, through counsel, filed a claim for refund of the total amount of ₱84,197.83, representing the 2% common carrier's tax paid on various dates between February 20, 1959 and September 21, 1964 (Exh. 1, supra.).

On May 17, 1965, or four (4) days later and before respondent could act on its claim for refund, petitioner filed the present petition for review seeking the refund of only ₱39,877.99 paid as common carrier's tax on various dates between May 20, 1963 and September, 1964. On March 14, 1967, petitioner filed a motion to amend its petition for review by increasing its claim for refund to ₱42,168.97 (p. 44, CTA rec.). In a resolution dated June 14, 1967, this Court denied petitioner's motion to amend on the ground that the amount to be added was not included in the claim for refund before the Bureau of Internal Revenue and such amendment would amount to an action for refund filed beyond the two-year prescriptive period (p. 46, CTA rec.). The present petition for review, therefore, involves only the amount of ₱39,877.99.

The sole issue involved in this case is whether or not petitioner is a common carrier in the Philippines subject to the 2% common carrier's tax imposed by Section 192 of the Revenue Code.

There is no dispute as to the fact that petitioner is engaged in the business of international air transportation or as a common carrier. The only point of disagreement is whether or not it is engaged as such in the Philippines.

Petitioner contends that its activity or business as a common carrier was confined outside the Philippines and as such it was not liable for common carrier's tax. Respondent, however, counters that petitioner was engaged in the business of common carrier in the Philippines through its agent, the Philippine Air Lines.

In the light of the additional evidence it now appears that, for its survival and proper regulation, the airline industry has formed an organization known as the International Air Transport Association (IATA for short). IATA has promulgated agreements and resolutions to implement the practices of the industry which become binding upon all its members once approved by their respective government. In the Philippines, they are submitted to the Civil Aeronautics Board for approval. Some of these agreements or resolutions are the Traffic Conference Resolutions (Exh. M) and the Interline Agreements (Exh. S). For the administration of air traffic, IATA has divided the world into three traffic conference areas; actions of each traffic conference are done in the form of resolutions known as Traffic Conference Resolutions. JAL and PAL belong to Traffic Conference No. 3 (see Exh. T-2; pp. 182-184, t.s.n.).

With respect to the activity of carrying passengers and cargo, there has evolved in the airline business, primarily for the convenience of passengers, the practice of honoring tickets issued by other airlines. This means that a passenger buying a ticket from one particular airline could be accepted as a passenger in the planes of other airlines by simply using the ticket of the issuing airline (Exhs. F, N-2-a, N-2-b & Q-1). This practice is governed by a binding agreement among IATA airline members, designated as Traffic Conference Resolution No. 850, otherwise known as the Interline Traffic Agreement (Exhs. M-3 & S-5; pp. 171-181, t.s.n.). The airline which carries a passenger holding ticket of another airline is designated as the "carrying airline", while the airline to which the ticket belongs is known as the "issuing airline" (Exhs. L to L-6-a & M-3; pp. 188-189, t.s.n.). Hereunder we quote the pertinent provisions of IATA Resolution No. 850, Interline Traffic Agreement, Exhibit M-3:

I. Definitions

(1) 'Ticket' means the form issued to passenger(s) by a party hereto <u>for transportation</u> for hire of the passenger(s) and his (their) baggage <u>over the routes of one or more such parties</u>.

x x x x x

(4) 'Issuing Airline' means a party hereto which issues a ticket or exchange order or completes a consignment note <u>for transportation over the routes of another party(ies) to this agreement</u>.

(5) 'Carrying Airline' means a <u>party</u> hereto <u>over whose routes a passenger</u>, baggage or cargo <u>is transported</u> or is to be transported pursuant to a ticket actually issued or to be issued in exchange for an exchange order or pursuant to a consignment note.

x x x x x

II. Issuance of Tickets and Exchange Orders and Completion of Consignment Notes

(1) Each party hereto is hereby authorized to issue or complete:

(a) <u>tickets</u> . . . <u>for transportation of passengers</u> . . .

x x x x x

all in the form approved by, and in accordance with the tariffs and the terms, provisions, and conditions <u>of the tickets</u> . . . <u>of the party over whose routes the passenger</u> . . . <u>is to be carried</u>.

(2) <u>Each party agrees to accept each such ticket</u>. . . <u>honour each exchange order issued by any other party hereto and to transport passengers</u> . . . <u>as specified therein, subject to its applicable tariffs</u>. . .

x x x x x

(4) No party shall issue tickets . . . covering connecting transportation over the lines of IATA and non-IATA air carriers at less than the applicable IATA through fares, rates or charges.

III. Claims and Indemnities

(1) The carrying airline, as principal, indemnifies the issuing airline . . . as agent, against all claims . . . and liability arising from the issue, completion or acceptance of any ticket . . . or from the carriage effected in pursuance thereof: provided that such indemnification shall not cover claims caused solely by the negligence or willful misconduct of the issuing airline; and provided further, that, in respect to claims resulting from tickets . . . improperly issued . . . by an issuing airline, such issuing carrier indemnifies the carrying airlines . . .

x x x x x

(4) Each party agrees to hold harmless and indemnify all other parties hereto from all claims . . . and liability arising from or in connection with death or injury to passengers . . . while such passengers . . . are, pursuant to this agreement, under the control or in the custody of, or being transported by, such party.

V. General

(1) On issuing or completing tickets . . . for transportation over the routes of other parties hereto, the issuing airline shall be deemed to act only as an agent of the carrying airline(s).

x x x x x

As stated earlier JAL did not have planes that lifted or landed passengers and cargo in this country. It however maintained an office in Manila for the promotion of the company's public relations and to hand out brochures, literatures and other informations playing up the attractions of Japan as a tourist spot and the services enjoyed in JAL planes. JAL did not sell tickets in said office. Instead, taking advantage of the IATA agreements, on July 17, 1957, JAL constituted the Philippine Air Lines (PAL for short) its general sales agent in the Philippines (Exh. E, pp. 51-57, CTA rec.; pp. 12 & 21, t.s.n.). As an agent, PAL, among other things, sells for and in behalf of JAL, plane tickets and reservations for cargo spaces which are used by the passengers or customers on the facilities of JAL. Although PAL was the exclusive general sales agent in the Philippines, sale of JAL tickets was done also by travel agencies but all such sales were under the direct supervision of PAL which was responsible to JAL for the settlement, accounting and liquidation of said sales. As general sales agent, PAL issued JAL tickets in which case JAL was the issuing airline. When PAL carried the passenger in its leg of the flight from the Philippines to the country where JAL planes took over, it became the carrying airline for said leg. In this connection, PAL, like other airlines, performed dual functions: (a) the activity of selling transportation of other airlines and (b) the activity of transporting in its own planes passengers and cargo from one place to another. One deals with the sale of tickets and travel documents, for and in behalf of other airlines, and the other deals with the physical act of transporting passengers and cargo from one place to another by means of aircraft (pp. 228-238, t.s.n.).

The "Conditions of Contract" found on page 2 of JAL tickets issued by PAL (which was not presented during the trial on the merit) provides partly as follows:

> (4) Subject to the foregoing:
>
> (a) Liability of carrier for damages shall be limited to occurrences on its own line, except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier. A carrier issuing a ticket or checking baggage for carriage over the lines of others does so only as agent. (Underscoring supplied)

The foregoing provision is uniform among all airline members of the IATA, being embodied in Traffic Conference Resolution No. 275b (Exhs. L to L-6, M-1; pp. 110-115, t.s.n.) and is in consonance with the following Resolution No. 850, Interline Traffic Agreement, Exhibit M-3:

> III. x x x
>
> (4) Each party agrees to hold harmless and indemnify all other parties hereto from all claims . . . and liability arising from or in connection with death or injury to passengers . . . while such passengers . . . are, pursuant to this agreement, under the control or in the custody of, or being transported by, such party.

We predicated our decision on a finding that PAL was an agent carrier of JAL for its leg of the trip, that is, from Manila to the place where JAL planes take over, in the light of Exhibit F. We made this finding on the bases of said document which was presented without incorporating therein the terms and conditions of the carriage. All that was presented during the trial on the merit was the page of the JAL ticket containing the itinerary of the passenger starting from Manila. With the presentation of the pertinent stipulations and conditions of the ticket and portions of the IATA Agreement perforce we have to change the aforesaid finding. It now appears that PAL acted merely as a sales agent when it issued JAL tickets and that when it carried passengers with JAL ticket on its leg of the trip, it acted as principal with sole responsibility for the trip and not as an agent carrier of JAL. This is obvious in the stipulation of the JAL ticket that the "liability of carrier for damages shall be limited to occurrences in its own line" and that "a carrier issuing a ticket or checking baggage for carriage over the lines of others does so only as agent", that is, agent for the sale of JAL tickets.) This is also obvious from the pertinent provisions of the IATA Agreement herein above quoted.

The practice of, and arrangement between, JAL and PAL is well exemplified in the situation represented by Exhibit F. The passenger, Ong Sin, bought a JAL ticket from a PAL office in Manila bound for Seoul via Taipeh and Tokyo. From Manila to Taipeh, the first leg, he was lifted by a PAL plane under the JAL ticket. In Taipeh, a JAL plane took over and carried him to Tokyo, Seoul and then back to Tokyo under the same JAL ticket. The situation created by the JAL ticket aforesaid may be stated this wise: When Passenger Ong Sin boarded the PAL plane in Manila, bearing a JAL ticket, his contract of transportation was with PAL, the "carrying airline", up to the end of the first leg of the flight - Taipeh. From Taipeh, where JAL plane took over, his contract of transportation was transferred to JAL, the new carrying airline, and also up to the particular line of the flight - Tokyo. The clear intent of the arrangement is to save the passenger the trouble of purchasing tickets at the point of departure of every leg of the entire trip. Under this set-up the conclusion is obvious that JAL did not engage in the business of a carrier in the Philippines either directly or with the intervention of another carrier that may be considered its extension.

The practice in the airline industry on the apportionment of commissions between the issuing and the carrying airline reflects the foregoing legal relationship between them. In the sale of tickets for and in behalf of JAL, PAL is entitled to two commissions, namely: (a) 7% sales commission if it itself sold the ticket, based on the fare for the whole ticket; and (b) 3% overriding commission, based on the "on-line" portion or legs actually carried by JAL planes. In turn, JAL for issuing the ticket and giving business to PAL, gets the 7% interline commission, based on the fare pertaining to those legs actually carried by PAL (Exhs. E, N to N-2-b, O to O-5, U & V; pp. 63-64, 127-137 & 146-156, t.s.n.). The issuing airline obviously acts as a mere sales agent of tickets for the leg covered by the plane of the carrying airline which is the sole carrier.

We find no merit in respondent's contention that international air transportation companies should be considered engaged in business wherever they derive fares or freight and are taxable as carrier in said place, that is, for purposes of taxation the situs is said place.

The carrier's tax provided in Section 192 of the Revenue Code is an excise tax being a tax on the activity of transporting, conveying or removing passengers and cargo from one place to another. It purports to tax the business of transportation (Comm. of Int. Rev. v. U. S. Lines Co., G.R. No. L-16850, May 30, 1960), a charge imposed for the performance of an act, the enjoyment of a privilege, or the engaging in an occupation (51 Am. Jur. 61). Being an excise tax, the same can be levied by the State only when the acts, privileges or business are done or performed within the jurisdiction of the Philippines. Thus in the case of Philippine Air Lines v. Collector of Internal Revenue, CTA Case No. 45, February 8, 1956) we held that in regard to the gross receipts for transportation of passengers and freight in foreign countries the transactions were exclusively foreign and the gross receipts thereof cannot be reached by taxation in the Philippines. Needless to say, the transportation in question was performed in foreign countries and hence, cannot be subject to the tax imposed upon carriers by Section 192 of the Revenue Code. There is nothing in the law that makes the mere sale of tickets, unaccompanied by physical act of carriage or transportation, subject to the common carrier tax and if there were, the same would seem to be in conflict with the well-recognized principles governing the situs of the tax.)

Lastly, Section 1 of Revenue Regulations No. 2-66 issued December 1, 1966, provides as follows:

> SECTION 1. Definitions: When used in these regulations.—
>
> x x x x x
>
> (b) The term "off-line air line" means an airline having no flight operations to and from the Philippines;

Section 2 of the same Revenue Regulations provides as follows:

> SEC. 2. International airline companies without flights starting from or passing through any point in the Philippines.—

> (a) An off-line international airline having a branch office or a sales agent in the Philippines which sells ticket for compensation or commission to cover off-line flights of its principal foreign airline or for other airlines, is not considered engaged in business as a common carrier in the Philippines, and, therefore, not subject to common carriers fixed and percentage taxes provided for in Sections 182 and 192 of the Tax Code.
>
> However, the branch offices or sales agents are subject to the fixed and percentage taxes as commercial broker in accordance with Sec. 182(a) and 195 of the Tax Code, respectively, for the commissions received by them.

The aforequoted provisions can well apply to the present case although of subsequent date because they reflect correctly the legal significance and consequence of the IATA Agreements and the provisions of the JAL tickets in question in regard to the tax liabilities of JAL and PAL posed before us.

WHEREFORE, our decision dated January 27, 1958 is hereby lifted and respondent's appealed decision is hereby reversed. Respondent is hereby ordered to refund the sum of ₱39,877.99 to petitioner as prayed for by the latter. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 29, 1968.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

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Presiding Judge Umali took no part.