REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SINGAPORE AIRLINES, LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5325

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 05 2001

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DECISION

Case before Us stems from the decision of the Re^pondent Commissioner denying the protest filed by the Petitioner on the issued assessments involving deficiency income and expanded withholding taxes covering fiscal years ended March 31, 1989 and March 31, 1990 in the aggregate amount of P5,054,570.58. Petitioner believes that the assessments lack legal and factual bases.

Stripped of peripheral matters, the antecedent facts giving rise to the controversy at bar are as follows:

Petitioner is a resident foreign corporation organized and existing under and by virtue of the laws of Singapore. It is licensed to engage in business in the Philippines as an online international carrier with branch office at Singapore Airlines House, 138 H.V. Dela Costa St., Salcedo Village, Makati City.

Records show that on March 12, 1992, Respondent issued to Petitioner assessment notices covering alleged deficiency income and expanding withholding taxes for fiscal year 1989 in the amounts of P2,815,856.10 and P698,433.50, respectively, and deficiency income tax of P1,540,280.98 for fiscal year ended March 31, 1990, computed as follows:

Deficiency Income Tax – 1989

Basic Tax	P1,514,255.27
Surcharge	378,563.86
Interest	898,036.77
Compromise	25,000.00
Total	P2,815,856.10

Deficiency Withholding Tax - 1990

Principal	P 358,782.28
Surcharge	89,695.57
Interest	233,955.65
Compromise	16,000.00
Total	P 698,433.50

Deficiency Income Tax – 1990

Basic Tax	P 954,319.21
Surcharge	238,579.80
Interest	327,383.97
Compromise	20,000.00
Total	P1,540,280.98

Evidence forwarded to this Court reveal that Petitioner reported an amount of P465,702,560.38 Gross Philippine Billings (Exhibit P-3) and net rental income of P47,116.02 in its income tax return for fiscal year 1989. Petitioner paid the corresponding 1 ½% income tax of P6,985,538.41 and 35% income tax of P16,490.61 due thereon or a total income tax of P7,002,029.02 (Exhibits H, I, K, L, N, O, Q & R).

In its income tax return for fiscal year ending March 31, 1990 (Exhibit AB), Petitioner declared the amount of P487,183,175.09 Gross Philippine Billings and paid the corresponding 1 ½% income tax of P7,307,747.63 (Exhibits T, U, W, X, Z, AA, AC and AD).

The assessments issued by Respondent arose from the alleged discrepancies between the amounts of Gross Philippine Billings reflected on Petitioner's return and the Gross Philippine Billings computed by the Respondent based on the gross value of the passage documents or ticket sales as reflected in Petitioner's Bank Settlement Plan Account and Cash Sales Account for the fiscal years involved. As testified to by Petitioner's witness, the Bank Settlement Plan Account represents tickets sold through travel agencies accredited with International Air Transport Association (IATA) while the Cash Sales Accounts pertains to tickets sold directly through Petitioner's Offices. After evaluation of the aforesaid documents the BIR examiner ended up with the following detailed computation of Petitioner's tax liabilities:

Gross Philippine Billings	Fiscal Year 1989	Fiscal Year 1990
Bank Settlement Plan Account		
PHD	P267,436,753.18	P315,756,130.90
USD	83,212,958.36	57,327,154.59
ADM-Php	523,083.88	730,919.55
Commissions	7,175,655.64	9,736.123.20
Cash Sales Account		
Passenger- Php	50,032,542.58	41,548,983.38
USD	14,949,874.71	12,982,700.32
Cargo-Php	96,353,273.83	93,263,659.39
USD	43,261,319.40	16,303,452.54
Excess Baggage	2,069,862.52	2,214,943.99
Mail	974,524.00	830,901.00
Total	P566,652,925.12	P550,804,455.86
Income Tax Due	8,499,793.88	8,262,066.84
Less: Income Tax Paid	6,985,538.41	7,307,747.63
Balance	1,514,255.47	954,319.21
25% Surcharge	378,563.86	238,579.80
Interest	898,036.77	327,383.97
Compromise Penalty	25,000.00	20,000.00
Total	P 2,815,856.10	P 1,540,282.98

For alleged deficiency expanded withholding tax, Respondent assessed the Petitioner in the amount of P698,433.50, allegedly by reason of its failure to withhold 5% tax on the commissions paid to travel agencies, computed as follows:

Commission	**P7,175,645.64**
Rate of EWT	5%
Withholding Tax Due	P 358,782.28
25% Surcharge	89,695.57
Interest	233,955.65
Compromise Penalty	16,000.00
Total	**P 698,433.50**

Believing as it does that Respondent erred in using as its tax base the Bank Settlement Plan and Cash Sales Accounts in the computation of its alleged tax liabilities, Petitioner filed a protest against the assessments on April 14, 1992. The protest was, however, denied by Respondent with finality on December 29, 1995. Hence, this appeal.

In an Answer filed on March 27, 1996, Respondent denies Petitioner's assertions and by way of Special and Affirmative Defenses, interposed the following:

> "5. The gross Philippine billings of petitioner is the gross value of the passage documents sold or issued in the Philippines as contemplated in Section 25(a)(2)(A) of the National Internal Revenue Code (NIRC), as amended, hence, the assessments of the deficiency income taxes for the years 1989 and 1990 are legal and proper;
>
> 6. Petitioner failed to withhold the expanded withholding tax on the alleged overriding commissions which are actually travel agent's commissions for fiscal year ended March, 1989 which are subject to the expanded withholding tax of 5% pursuant to Section 1(g) of Revenue Regulations No. 6-85, as amended, otherwise known as the Revised and Consolidated Expanded Withholding Tax Regulations implementing Section 50(b) of the NIRC, thus, the assessment of the expanded withholding tax for the said taxable year has legal and factual basis;
>
> 7. All told, the petition states no cause of action."

The two issues legal and factual, posed for the resolution of this Court are as follows:

1. Whether or not the Respondent erred in assessing the Petitioner for deficiency income tax for fiscal years ended March 31, 1989 and 1990 in the aggregate amount of P4,356,137.80; and

2. Whether or not the Respondent erred in assessing the Petitioner for deficiency expanded withholding tax for fiscal year ended March 31, 1990 in the amount of P698,433.50.

In assailing the validity of the assessments, Petitioner in its Memorandum contends that the Respondent erred in using as tax base its Bank Settlement Plan and Cash Sales Accounts since the said documents do not, in any way, reflect its actual flown revenue. Moreover, Petitioner avers that the Respondent's computation failed to consider the following:

a. those airline tickets that were sold/issued by Petitioner but actually flown by another airline;

b. airline tickets purchased in a given year but were used or honored the following year; and

c. airline tickets which were not used within its validity of one year and were refunded to ticket holders.

It is Petitioner's submission that in order for the proceeds to be considered as part of its Gross Philippine Billings, the passenger and/or cargo covered by the ticket must have been actually flown by the airline company issuing the ticket pursuant to Section 25(a)(2)(A) of the 1997 Tax Code. Petitioner maintains that the Gross Philippine Billings as submitted by Petitioner's office in Singapore and testified on by its witness, is accurate and truly reflective of its income.

Anent the alleged deficiency expanded withholding tax on commissions for fiscal year 1985, Petitioner makes the following submissions:

a.) the disposition of the said commissions was not under its control since under the Bank Settlement Plan, a designated bank received from the travel agents the entire ticket sales proceeds but remitted the same to Petitioner net of commissions;

b.) the overriding commissions paid to other airline companies cannot be considered as commissions paid to a commercial broker;

c.) the overriding commissions paid to other airline companies when the latter acted as agents for Petitioner are not one of those enumerated under RR 6-85 as subject to withholding; and

d.) 90% of its tickets sales during the subject fiscal years were sold to travel agents on a "net-net basis", meaning, the travel agents sold the tickets to the public at a higher price than the cost of the tickets quoted by Petitioner. It is only from the remaining 10% of its ticket sales where the travel agents received commissions.

Apropos to the resolution of the first issue at hand are the provisions of Section 25(a)(2)(A) of the 1977 Tax Code reproduced hereunder thus:

> (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 the 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 revenue 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 ours)

There is no dispute that what forms part of the Gross Philippine Billings are only those proceeds from ticket sales that were actually flown by the Petitioner. Hence, it is this Court's belief that proof must be shown to establish the fact that some of those tickets issued by the Petitioner were actually flown by other airline companies or refunded to ticket holders or were honored only in the following year that they were sold. On this score, Petitioner's evidence on record is scanty. Thus, in the absence of any proof to the contrary, the gross freight charges in the airway bills, bills of lading, and/or value of tickets sold by each international carrier doing business in the Philippines shall be prima facie evidence of its gross lifted revenue (Section 2, Revenue Regulations No. 6-78).

Other than the testimony of its witnesses, Petitioner, in the course of the trial utterly failed to prove that some of the recorded ticket sales in the Bank Settlement Plan Account and Cash Sales Account were actually flown by other airline companies or refunded to ticket holders or were honored only in the following year that they were sold. In this respect, We cannot accord weight to the testimony of its witness, Ms. Paz S. King, since it merely showed and established the fact that the Bank Settlement Plan Account reflected the original ticket sales. In the same breath, this Court finds no relevance with the testimonies of Ms. Lorna Sandiko and Ms. Ang May Hong inasmuch as they tend to explain only Petitioner's manner of accounting/reporting of its actual flown revenue without showing any documentary evidence to corroborate their respective declarations.

Our analysis and evaluation of the pleadings and evidence on record reveals that Petitioner, in order to discharge the onus satisfactorily, should have presented in evidence, among others, the cancelled/returned tickets due to refunds, reports/billings from other airline companies or receipts of remittances made by Petitioner to other airline companies with regard to the tickets that were actually flown by the latter, the 1989 and

1990 Flown Revenue Reports and a schedule, that would reconcile the ticket sales reported under the Bank Settlement Plan and Cash Sales Accounts with those reflected in Petitioner's income tax returns. In the absence of these documents, this Court cannot determine with particular certainty Petitioner's actual flown revenues for 1989 and 1990. On the basis only of the testimonies of Petitioner's witnesses, this Court is not inclined to strike down the income tax assessments since the evidence on record veers toward the direction that the same must be sustained.

We now proceed to the issue on expanded withholding tax.

Petitioner posits the view that overriding commissions paid by it to other airline companies should not be equated with the travel agent's commission subject to the expanded withholding tax under BIR Revenue Regulations No. 6-85. This was allegedly due to the fact that only payments made to persons enumerated in the said regulation are subject to the expanded withholding tax. And considering that the overriding commission was paid by Petitioner to another airline company when the latter acted as agent for Petitioner where the ticket sold covered several legs and part thereof was covered by its online operation, Petitioner submits that other airlines act only as "agents" because of the peculiar nature of the industry. Hence any commissions paid by it do not constitute commissions paid to persons contemplated under Revenue Regulations No.6-85.

In addition, Petitioner argues that those travel agencies/airlines which sold tickets for the Petitioner cannot be considered as "commercial brokers" for purposes of the expanded withholding tax. For not being such, Petitioner should not be required to withhold since only payments to commercial brokers require withholding under the same regulation.

Moreover, Petitioner makes capital of the arrangement under the Bank Settlement Plan where a designated bank undertakes to receive the entire proceeds from the travel agent's ticket sales and holds the same in trust for the carrier net of travel agent's commissions. According to the Petitioner, it cannot be a withholding agent since, under the scheme, commissions accruing to travel agents do not pass to nor come under its control.

We do not find Petitioner's ratiocinations plausible.

For purposes of discussion, Section 1(g) of Revenue Regulations is quoted hereunder, thus:

> **SECTION 1**. Income payments subject to creditable withholding tax and rates prescribed thereon. – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
>
> x x x x x x x x x
>
> (g) Amounts paid to certain Brokers and Agents. – On gross payments to customs, insurance, real estate and commercial brokers and agents of professional entertainers – five per centum (5%)

While we agree with the Petitioner that payments only to those persons enumerated under Revenue Regulations No. 6-85 are subject to expanded withholding tax, this Court wonders with puzzlement why Petitioner asserts that travel agencies selling Petitioner's tickets should not be treated as "commercial brokers" under the 1977 Tax Code. Under the said code, commercial broker is defined as:

> "Commercial broker" includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means)f transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants."

From the foregoing definition, it is quite unequivocal that "all persons xxx, who for profit or compensation, sell or bring about sales or purchase of merchandise for other persons, or bring proposed buyers and sellers together xxx" shall be considered as commercial broker. And it is of general acceptance that travel agencies sold Petitioner's tickets with the aim in view of receiving commissions therefrom. Thus, We sustain Respondent's findings that Petitioner is subject to the 5% withholding tax on gross commissions paid by it to travel agencies.

Similarly, this Court rejects Petitioner's submission that under the Bank Settlement Plan it does not have the control or disposition of the travel agent's commission since the designated banks merely remit to it the proceeds of the ticket sales net of commission. Worthy of mention is the fact that under the said scheme the designated collecting bank only acts as an agent of the Petitioner and We find it unacceptable why the Petitioner, being the principal, claims that it does not have any control of the said banks. As principal, this Court finds no cogent reason why the Petitioner did not instruct the collecting bank to withhold the 5% tax from the travel agents commission in the year 1989 when it was unearthed, upon our scrutiny of pertinent documents forwarded to this Court, that travel agent's commissions in fiscal year 1990 were subjected to withholding tax, apparently under instructions by Petitioner.

Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties an assessment will not be disturbed. All presumptions are in favor of the assessments (**Bonifacia Sy Po vs. CTA and Commissioner, G.R. No. 81446, August 18, 1988**). Failure to present proof of error in the assessments will justify judicial affirmance of paid assessment (**Delta Motor Co. vs. Commissioner, CTA Case No. 3782, May 21, 1986**).

Having, thus, held that Petitioner's assertions lack legal and factual bases, accordingly, We sustain the assessments on deficiency income and expanded withholding taxes. However, this Court strikes down the compromise penalties imposed by the Respondent since a compromise implies mutual agreement. Such being the case, in the absence of a showing that Petitioner consented thereto, the compromise penalties cannot be validly imposed (**UST vs. Collector, 104 Phil 1962**).

After considering the above premises, Petitioner should be held liable to pay deficiency income and expanded withholding taxes, computed as follows:

	Deficiency Income Tax		Deficiency Expanded W/holding Tax	
	1989	1990	1989	Total
Basic Tax	P 1,514,255.47	P 954,319.21	P 358,782.28	
Surcharge	378,563.86	238,579.80	89,695.57	
Interest	898,036.77	327,383.97	233,955.65	
	P 2,790,856.10	P 1,520,282.98	P 682,433.50	P 4,993,572.58

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, Petitioner is hereby **ORDERED** to pay to the Respondent the aggregate amount of P4,993,572.58 representing deficiency income and expanded withholding taxes for fiscal years 1989 and 1990 inclusive of surcharge and deficiency interest plus 20% delinquency interest computed from April 23, 1992 until fully paid pursuant to Section 249(c)(3) of the 1989 Tax Code.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13. Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge