REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GULF AIR COMPANY PHILIPPINE BRANCH, Petitioner,	CTA Case No. 9334
	Members:
-versus-	DEL ROSARIO, PJ, Chairperson, FABON-VICTORINO, and MANAHAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2020 ; 8:35 A.M.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review dated April 15, 2016, petitioner Gulf Air Company Philippine Branch, prays for the refund of the amount of ₱41,547,783.00, allegedly representing its erroneously paid income taxes on Gross Philippine Billings (GPB) for taxable years (TYs) 2013 and 2014.[1]

First, the facts.

Petitioner Gulf Air Company Philippine Branch is a resident foreign corporation registered under Philippine laws,[2] and licensed to do business in the country.[3] It is a registered taxpayer with Tax Identification Number (TIN) 000-587-856-000,[4] and holds office at Unit 8 Solemare

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1 Par. I, Summary of the Case, Pre-Trial Order dated January 16, 2017, Docket - Vol. 1, p. 258.

2 Par. 1, Additional Facts as Stipulated, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. I, p. 228.

3 Exhibit P-2, Docket - Vol. II, pp. 652 to 653.

4 Exhibit P-3, Docket - Vol. II, p. 654

Parksuites, Bradco Avenue, Aseana Business Park, Baclaran, Parañaque City.[5]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the public official tasked with the enforcement of the internal revenue laws, with office address at Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[6]

On May 11, 2004, petitioner[7] filed with Deputy Commissioner of the Large Taxpayers Service, Estelita Aguirre[8], a letter-application for relief from double taxation together with BIR Form No. 0901, which the BIR-International Tax Affairs Division (ITAD) granted through its Ruling No. DA-ITAD 91-04 dated August 31, 2004.[9]

On March 7, 2013, Republic Act (RA) No. 10378 was enacted, amending among others Section 28(A)(3) of the National Internal Revenue Code (NIRC). It took effect on March 29, 2013.

On April 24, 2013, petitioner filed with the BIR-ITAD a request for confirmation of its exemption from income taxes imposed on GPB, or the gross revenue derived from the transport of passengers and their excess baggage pursuant to the reciprocity rule under RA No. 10378.[10]

In a Letter-Reply dated June 26, 2013, the BIR-ITAD requested petitioner to submit documents in connection with its letter-application for confirmation of its exemption from income taxes imposed on GPB.[11] Petitioner complied via several letters, and even sent additional supporting documents to Attorney Ana Paula Borgonos of the BIR-ITAD.[12]

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5 See Note 2.
6 Par. 1, Admitted Fact, JSFI, Docket – Vol. I, p. 228.
7 through its former Acting Manager, Mr. Roberto A. Hukom.
8 Par. 2, Additional Facts as Stipulated, JSFI, Docket – Vol. I, pp. 228 to 229.
9 Exhibit P-39, Docket – Vol. II, pp. 920 to 922.
10 Par. 3, Additional Facts as Stipulated, JSFI, Docket – Vol. I, p. 229.
11 Par. 4, Additional Facts as Stipulated, JSFI, Docket – Vol. I, p. 229; Exhibit P-13-2, Docket – Vol. II, pp. 747 to 748.
12 Pars. 5, 6 and 7, Additional Facts as Stipulated, JSFI, Docket – Vol. I, p. 229.

In a letter dated April 21, 2015 filed with the Assistant Commissioner (ACIR), Large Taxpayers Service of the BIR, petitioner requested that the late payment penalty for its Annual Income Tax Return (AITR) covering TY 2014 be waived.[13]

On June 25, 2015, petitioner filed administrative claims both dated June 22, 2015[14] for the refund in the respective amount of ₱19,164,519.00 and ₱22,382,264.00 for TYs 2013 and 2014, representing its alleged overpayment of income taxes imposed on its GPB.[15]

On April 15, 2016, petitioner filed the instant Petition for Review,[16] originally raffled to the Second Division of the Court.

On July 25, 2016, respondent filed his Answer,[17] arguing that tax refunds are in the nature of tax exemptions, thus, petitioner, should prove clear entitlement thereto, lest denial thereof is in order. Since petitioner failed to establish by formidable proof compliance with all the preconditions for a valid refund of the alleged erroneously collected income taxes, its refund claim for TYs 2013 and 2014, anchored on the reciprocity rule under RA No. 10378, respectively amounting to ₱19,164,519.00 and ₱22,382,264.00, should entirely be rejected.

Further, petitioner's failure to sternly adhere to the provisions of Revenue Memorandum Order (RMO) No. 72-2010 also justifies denial of its refund claim.

On December 14, 2016,[18] the parties filed their Joint Stipulation of Facts and Issues (JSFI) which was approved in

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13 Par. 8, Additional Facts as Stipulated, JSFI, Docket – Vol. I, p. 229.
14 Exhibits P-26-1, and P-26-3, Docket – Vol. II, pp. 902 to 903, and 905 to 906, respectively.
15 Pars. 9 & 10, Additional Facts as Stipulated, JSFI, Docket – Vol. I, p. 229.
16 Docket – Vol. I, pp. 10 to 27.
17 Docket – Vol. I, pp. 149 to 153. This pleading was filed through registered mail.
18 Docket – Vol. I, pp. 228 to 238.

the Pre-Trial Order of January 16, 2017,[19] thereby terminating the pre-trial proceeding.

During trial, petitioner presented as witnesses its Country Manager, Adel Abbas Alsaleem,[20] its Financial Controller, Susan S. Banaag,[21] and the Court-commissioned Independent Certified Public Accountant (ICPA), Antonio V. Cruz.[22]

Witness **Adel Abbas Alsaleem** testified that petitioner is the Philippine branch of Gulf Air B.S.C., a juridical entity organized in Bahrain. It is a BIR-registered resident foreign corporation licensed to do business in the Philippines, particularly engaged in international commercial transport services to and from the Philippines and Bahrain. It is likewise licensed by the Civil Aviation Authority of the Philippines (CAAP) and Civil Aeronautics Board (CAB) to operate as international air carrier in Philippine territory.

In a letter dated April 23, 2013 filed with the BIR-ITAD, petitioner requested for confirmation of its exemption from income taxes imposed on GPB, or gains derived from transport of passengers and excess baggage. In response thereto, the BIR-ITAD, in a letter-reply dated June 26, 2013,[23] requested petitioner to submit additional supporting documents, which the latter complied *via* the several letters sent to the said office.

In another letter dated March 10, 2015, the BIR-ITAD made a similar request which petitioner also made compliance through a letter dated April 28, 2015. To date, the BIR-ITAD has yet to issue the requested confirmatory

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19 Docket – Vol. I, pp. 258 to 268.

20 Exhibit P-37, Docket – Vol. I, pp. 306 to 336; Minutes of the hearing held on, and Order dated March 22, 2017, Docket – Vol. I, pp. 457 to 458.

21 Exhibit P-38; Exhibit P-41, Docket – Vol. I, pp. 585 to 593; Minutes of the hearing held on, and Order dated March 22, 2017, Docket – Vol. I, pp. 457 to 458; Minutes of the hearing held on, and Order dated, February 12, 2018, Docket – Vol. II, pp. 616 to 618.

22 Exhibit P-30, Docket – Vol. I, pp. 487 to 513; Minutes of the hearing held on, and Order dated, July 3, 2017, Docket – Vol. I, pp. 517 to 518; Minutes of the hearing held on, and Order dated, August 2, 2017, Docket – Vol. I, pp. 524 to 526.

23 to petitioner's request for confirmation of income tax exemption relative to GPB.

ruling that petitioner is exempt from income taxes imposed on its GPB.

Apart from such request for confirmation, petitioner filed with the BIR-ITAD its first tax treaty relief application (TTRA) on May 11, 2004. Since it was not acted upon, petitioner filed a *second* TTRA with the same office on February 21, 2017, and subsequently, a Letter dated March 15, 2017 containing proof of registry of its aircrafts.

The witness further testified that the present claim for refund stemmed from the BIR's inaction on petitioner's two (2) administrative claims for refund of income taxes for TYs ending December 31, 2013 and December 31, 2014. For him, since Bahrain does not impose income taxes on gains realized by airlines operating within its territory, the gross revenue derived by petitioner from the transport of passengers and their excess baggage in the Philippines is free from income taxes imposed on GPB pursuant to reciprocity principle under RA No. 10378.

Witness **Susan S. Banaag** is petitioner's Financial Controller and as such, she records its sales and expenses, prepares its payroll, and files its tax returns.

In its 2013 *Original* AITR, petitioner reported two (2) types of income, to wit: a) revenues amounting to ₱1,874,480,997.00 subjected to 1.5% special income tax rate; and b) gains in the sum of ₱30,000.00 from which 30% regular income tax rate was imposed. By diminishing the foregoing items of net income with its certain tax credits/payments[24] for said year, the remainder thereof amounting to ₱6,152,366.00 as amount payable was fully settled by petitioner.

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[24] ₱23,206,479. This figure is composed of: a) IT payments from previous quarters amounting to ₱22,311,986.00; b) creditable tax withheld from previous quarters of ₱675,906.00; and c) creditable tax withheld for the 4th quarter of TY 2013 totalling ₱218,587.00. Item a. was the sum of IT payments for the 1st to 3rd Quarters of TY 2013 while item b. was the sum of creditable tax withheld covering 1st to 3rd Quarters of TY 2013.

Witness Banaag further testified that in petitioner's 2013 *Original* AITR, a fragment of its declared revenues amounting to ₱1,874,480,997.00 subjected to 1.5% special income tax rate specifically relates to its gross income derived from the transport of passengers and their excess baggage.

Subsequently, in petitioner's 2013 *Amended* AITR, it reported the amount of ₱19,164,519.00 as overpaid income taxes arrived at after subtracting its income tax due of ₱8,961,696.00[25] from its alleged excess income tax payments and credits in the amount of ₱28,126.215.00.

The Audited Statement of petitioner's GPB for the quarters ended March 31, 2014, June 30, 2014, and September 30, 2014, covering the 1st, 2nd and 3rd quarters of TY 2014, contained the respective breakdown of its GPB derived from transport of passengers, excess baggage, cargo, and mail.

Further, petitioner reflected the amount of ₱22,383,264.00 in its 2014 AITR as overpaid income taxes. The said amount was the difference between ₱24,368,741.00[26] as total tax credits/payments made, and ₱1,985,477.00[27] as its IT due for said year.

The witness also declared that petitioner was previously assessed for deficiency internal revenue taxes for TY 2008 amounting to ₱21,136,436.74, which it administratively protested. The said amount was significantly reduced to ₱7,844,270.11 in the Final Decision on Disputed Assessment (FDDA). Petitioner fully settled the same.

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25 This figure was arrived at after multiplying gains of ₱596,846,373.00 with the special IT rate of 1.5%, plus the gains of ₱30,000.00 multiplied by regular IT rate of 30%.

26 This comprises of: a) ₱22,985,319.00 as petitioner's IT payments; b) ₱912,763.00 as creditable tax withheld for the 1st to 3rd Quarters of TY 2014; and c) ₱470,659.00 as creditable tax withheld for the 4th Quarter of TY 2014.

27 This refers to the product after multiplying petitioner's net taxable income of ₱132,365,162.00 with the special IT rate of 1.5%. See petitioner's 2014 Audited Statement of GPB.

Finally, the witness rectified the erroneous information that the BIR-ITAD did not act on petitioner's *first* TTRA of May 7, 2004. There was actually a tax ruling on the first TTRA dated August 31, 2004 issued by the BIR-ITAD. On that account, she caused the withdrawal of the *second* TTRA through a Letter dated September 6, 2017.[28]

Antonio V. Cruz, the Court-commissioned ICPA, testified that he examined the pertinent documents in connection with petitioner's claim for refund of erroneously paid income taxes for TYs 2013 and 2014. The result of such examination is reflected in his Report dated May 2, 2017, which he submitted to the Court on May 3, 2017.

He explained that out of the ₱19,164,519.00 and ₱22,382,264.00 it claimed for refund of overpaid IT for TYs 2013 and 2014 respectively, a partial grant in the amount of ₱18,940,507.43 for TY 2013, and ₱22,342,771.55 for TY 2014 is in order.

After its last witness, petitioner was granted until February 26, 2018 to formally offer its exhibits, but failed.[29] Thus, petitioner was deemed to have waived its right to formally offer its evidence pursuant to the Resolution dated March 12, 2018.[30]

On March 15, 2018, the Court received petitioner's Formal Offer of Documentary Exhibits posted on February 26, 2018.[31] Precisely, its Motion for Reconsideration[32] of the Resolution of March 12, 2018 was granted.[33] Consequently, its Formal Offer of Documentary Exhibits was admitted.

In the Resolution dated August 16, 2018,[34] the Court partially[35] admitted the evidence offered by petitioner.

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28 Supplemental Judicial Affidavit of Susan S. Banaag dated November 24, 2017.
29 Records Verification dated March 6, 2018 issued by the Judicial Records Division of the Court, Docket – Vol. II, p. 622.
30 Docket – Vol. II, p. 624.
31 Docket – Vol. II, pp. 625 to 649.
32 Docket – Vol. II, pp. 925 to 928.
33 Resolution dated April 4, 2018, Docket – Vol. II, p. 956.
34 Docket – Vol. II, pp. 962 to 964.
35 Exhibits P-13-6, P-18-122, P-19-6, P-20-1 and P-29-3 were denied admission for failure to submit their originals for comparison.

In the Order dated September 24, 2018,[36] the case was transferred from Second to the First Division of the Court.

During the hearing on March 12, 2019[37], counsel for respondent manifested that she would not present any evidence, there being no investigation report submitted by the handling BIR personnel.

The case was deemed submitted for decision on May 20, 2019[38], after the parties filed their respective memoranda.

THE ISSUES

The parties stipulated the following issues for the Court's resolution, to wit:

> Whether Petitioner is entitled to the refund/tax credit in the amounts of:
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> a. Nineteen Million One Hundred Sixty-Four Thousand Five Hundred Nineteen Pesos (Php19,164,519.00) for taxable year 2013; and
> b. Twenty-two Million Three Hundred Eighty-three Thousand Two Hundred Sixty-four Pesos (₱22,383,264.00) for taxable year 2014.[39]

Petitioner's arguments:

Petitioner claims that it was able to establish all the requisites for the grant of the subject claim for refund under Sections 204(C) and 229 of the NIRC, as amended. Its administrative and judicial claims for refund were timely filed within two years from date of payment of tax. Further, the income tax law of Bahrain does not subject Philippine air

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36 Docket – Vol. II, p. 972.
37 Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. II, pp. 977 to 979.
38 Resolution dated May 20, 2019, Docket – Vol. II, p. 1025.
39 Issues to be Tried or Resolved, JSFI, Docket – Vol. 1, p. 230.

carriers to income taxes, hence, under the principle of reciprocity embodied in RA No. 10378, the Philippines must likewise exempt from income taxes its gains derived from transport of passengers and excess baggage in Philippine territory. With the concurrence of the foregoing conditions, petitioner believes that it is entitled to the prayed for refund of erroneously collected income taxes on GPB for TYs 2013 and 2014.

It further contends that respondent treaded in administrative law-making by including in the last paragraph of Section 4.2(B) of Revenue Regulations (RR) No. 15-2013 proof of actual enjoyment by Philippine carriers of income tax exemption in Bahrain which should not be permitted.

Finally, petitioner asserts that a confirmatory ruling from the BIR-ITAD is not a condition precedent for an international carrier to avail of the income tax exemption under Section 28(A)(3) of the NIRC, as amended by RA No. 10378.

Respondent's counter-arguments:

Respondent avers that under RR No. 15-2013, evidence of actual enjoyment by Philippine carriers of the income tax exemption in the home country of an international carrier such as petitioner is required for it to benefit from the alleged tax exemption based on the principle of reciprocity enshrined in Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378.

According to him, the Code Share and Block Space Agreement entered into by petitioner's parent company and Philippines Airlines, Inc. (PAL) shows that petitioner is actually maintaining flights to and from the Philippines while PAL is only conferred the right to market tickets for certain Gulf Air flights. Since it is not operating flights in the home country of petitioner, PAL does not actually enjoy the income tax exemption extended by Bahrain. On this account, petitioner may not seek refuge under the mantle of alleged reciprocity found in Section 28(A)(3) of the NIRC, as amended by RA No. 10378.

To cap his arguments, respondent invokes the principle that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer; and that the taxpayer must present convincing evidence to substantiate a claim for refund. With petitioner's failure to fully satisfy all the conditions for the grant of the subject refund, its claim must be rejected.

THE RULING OF THE COURT

The instant petition is impressed with merit.

For refund of erroneously or illegally paid internal revenue taxes, fees, and charges to prosper, stern adherence to the provisions of Sections 204(C) and 229 of the NIRC, as amended is imperative. The provisions provide:

> SEC. 204. - *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> 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: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Thus, for a claim for refund to prosper, the following requisites must be satisfied, to wit: *first,* an administrative claim for refund or credit is filed with respondent within two years from date of payment of internal revenue tax, or penalty; *second,* the suit or proceeding is instituted with the Court within two years from date of payment of internal revenue tax, or penalty; and *third,* the tax or penalty subject of the refund claim was illegally, erroneously, or excessively collected from the refund-claimant. All of these conditions are obtaining in the present case.

Petitioner timely filed its Administrative and Judicial Claims for Refund:

In refund of excessively collected income taxes, myriad of cases tells us that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[40] The two (2)-year prescriptive period should be reckoned from the time the Final Adjustment Return or the Annual Income Tax Return (ITR) was filed, since it is only at that

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[40] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968; *J. N. Sweeney, A. O. Baigrie, and Ramon Burgas vs. Collector of Internal Revenue*, G.R. No. L-12178, August 21, 1959; and *P.J. Kiener Company, Ltd. v. Saturnino David*, G.R. No. L-5163, April 23, 1953.

time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.[41]

Guided by the above precepts, petitioner's AITRs covering TYs 2013 and 2014 were respectively filed on April 16, 2014[42] and on April 16, 2015.[43] Counting two years from the said dates, petitioner had until April 16, 2016 for TY 2013, and April 16, 2017 for TY 2014 to institute *both* its administrative and judicial claims for refund. In fine, petitioner seasonably lodged its administrative, as well as judicial claims for refund on June 25, 2015[44] and April 15, 2016,[45] respectively.

Respondent erroneously collected from petitioner income taxes for TYs 2013 and 2014:

Prior to the advent of RA No. 10378, petitioner subjected its revenues generated from carriage of passengers, and excess baggage to the special income tax rate of 1.5% beginning January 1, 2004 consistent with Article 8 of the *Convention Between the Republic of the Philippines and the State of Bahrain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (RP-Bahrain Tax Treaty)* which reads:

Article 8
SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise which is a resident of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable in that State.

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41 *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

42 Exhibits P-15-1, P-15-2, and P-15-3, Docket - Vol. II, pp. 773 to 783.

43 Exhibits P-19-1 to P-19-2, Docket - Vol. II, pp. 818 to 828.

44 Exhibits P-26-1 and P-26-3, Docket – Vol. II, pp. 902 to 903 and 905 to 906, respectively.

45 Docket – Vol. I, p. 10.

> **2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed the lesser of:**
>
> a) **<u>one and one-half (1 1/2) per cent of the gross revenues derived from sources in that State</u>**; and
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> b) the lowest rate that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
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> xxx xxx xxx. (Emphasis supplied)

Pursuant to the foregoing, the BIR-ITAD issued Ruling No. DA-ITAD 91-04 dated August 31, 2004,[46] granting petitioner's application for relief from double taxation on its GPB, effective January 1, 2004, in this wise:

> Accordingly, since the Philippines, as of this date, has not yet granted to a resident of a third State a *most-favored-nation* tax rate on profits from the operation of aircraft in international traffic, such profits derived *by Gulf Air* from sources within the Philippines shall be subject to tax at 1½% tax of the gross amount of the profits. (BIR Ruling No. 22-96 dated February 22, 1996). **The 1½% tax shall cover profits derived by or which accrued to *Gulf Air* beginning January 1, 2004, the date on which the relevant Philippines-Bahrain tax treaty begins to take effect in the two countries** (as confirmed by the reply letter dated December 2, 2003 of this Bureau to the Department of Foreign Affairs). (Emphasis supplied)

Subsequently, RA No. 10378 was enacted,[47] and took effect on March 29, 2013.[48] Among the amendments introduced by the said Statute is the income tax (IT) exemption on GPB of international carriers moored on reciprocity. Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378 provides:

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46 Exhibit P-39, Docket – Vol. II, pp. 920 to 922.

47 Enacted on March 7, 2013.

48 Refer to Revenue Memorandum Circular No. 40-2013 dated May 2, 2013.

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SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

(A) *Tax on Resident Foreign Corporations.*-

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(3) *International Carrier* - An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:

(a) *International Air Carrier.* — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: *Provided,* That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: *Provided, further,* That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

xxx xxx xxx

Provided, **That international carriers doing business in the Philippines may avail of** a preferential rate or **exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage** on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or **on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision**. *(Emphasis supplied)*

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To put flesh in the amendments introduced by RA No. 10378 in Section 28(A)(3)(a) of the NIRC, Section 4 of RR No. 15-2013 states:

> SECTION 4. INCOME TAX
>
> xxx xxx xxx
>
> 4.2) *Preferential Income Tax Rate or Exemption of International Carrier with Flights or Voyage Originating from Philippine Ports.* — **Under Section 28(A)(3) of the NIRC, as amended by RA No. 10378, international carriers doing business in the Philippines may avail of** a preferential **income tax rate or income tax exemption on their gross revenues derived from the carriage of persons and their excess baggage on the basis of the following:**
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> xxx xxx xxx
>
> **B) Reciprocity. — This may be invoked by an international carrier as basis for Gross Philippine Billings Tax exemption when its Home Country grants income tax exemption to Philippine carriers.**
>
> **The domestic law of the Home Country granting exemption shall cover income taxes and shall not refer to other types of taxes that may be imposed by the relevant taxing jurisdiction.** The fact that the tax laws of the Home Country provide for exemption from business tax, such as gross sales tax, in respect of the operations of Philippine carriers shall not be considered as valid and sufficient basis for exempting an international carrier from Philippine income tax on account of reciprocity.
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> xxx xxx xxx. (Emphases supplied)

Pertinently, the term reciprocity means mutuality; an inter-change of favors between persons or nations.[49] It is the mutual concession of advantages or privileges for purposes of commercial or diplomatic relations.[50]

As currently formulated, for an international carrier to be excused from imposition of Philippine IT on its GPB,

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49 Words and Phrases, Permanent Edition – Volume 36, © 1940.

50 Black's Law Dictionary, Eight Edition, ©1999.

Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378 decrees that the IT law of the international carrier's home country exempts carriers of Philippine origin from such country's income taxes.

In this case, petitioner seeks exemption from IT on its GPB hinged on the reciprocity clause in Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378. To substantiate its claim, petitioner presented the following documents, to wit:

1. Consularized Registration Certificate of Bahrain Shareholding Company of Gulf Air B.S.C. (issued by the Ministry of Industry and Commerce, Kingdom of Bahrain);[51]
2. Consularized Commercial Registration Extract of Gulf Air B.S.C. (issued by the Ministry of Industry and Commerce, Kingdom of Bahrain);[52]
3. Consularized Certification on the Taxation of Gulf Air B.S.C. signed by Mr. Sami Mohammed Humaid of the Competent Authority, Foreign Economic Relations Director of the Ministry of Finance of the Kingdom of Bahrain;[53]
4. Consularized Certification: Amiri Decree No. 22 of 1979 – Bahrain Income Tax Law 1979 signed by Mr. Sami Mohammed Humaid of the Competent Authority, Foreign Economic Relations Director of the Ministry of Finance of the Kingdom of Bahrain with attestation on the attached English translation;[54]
5. Consularized Attestation (executed and signed by Shaika Noof Alkhalifa) on the English translation of Bahrain Income Tax Law of 1979;[55]
6. Certification from the Philippine Embassy stating that Shaika Noof Alkhalifa is a Legal Counselor at the Legal Affairs Office of the Ministry of Finance of the Kingdom of Bahrain and has legal custody of the original English translation of the 1979 Income Tax Law of Bahrain;[56] and
7. Certification from the Philippine Embassy stating that Shaika Noof Alkhalifa is a Legal Counselor at the Legal Affairs Office of the Ministry of Finance of the Kingdom of Bahrain and has legal custody of the original English

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51 Exhibits P-6-1 to P-6-2 and sub-markings, Docket – Vol. II, pp. 664 to 666.
52 Exhibits P-7-1 to P-7-2 and sub-markings, Docket – Vol. II, pp. 667 to 671.
53 Exhibits P-8-1 to P-8-2, Docket – Vol. II, pp. 672 to 674.
54 Exhibits P-9-1 to P-9-2 and sub-markings, Docket – Vol. II, pp. 675 to 687.
55 Exhibits P-9-3 to P-9-4, Docket – Vol. II, pp. 688 to 699.
56 Exhibit P-9-5, Docket - Vol. II, p. 700.

translation of the 1979 Income Tax Law of Bahrain;[57] and

The above documents collectively show that petitioner is a foreign entity organized under the laws of the State of Bahrain. Under the income tax law of the said State, income taxes are only imposed by Bahrain on gains realized by companies directly engaged in exploration or production of crude oil or other natural hydrocarbons from the ground in Bahrain for its own account or in refining crude oil owned by it or by others in its facilities in Bahrain. Evidently, no income tax is levied by Bahrain on the revenue of Philippine air carriers, or any other airlines navigating to and from Bahrain.

And just as petitioner's home country of Bahrain do not impose IT on air carriers of Philippine origin, so too must the Philippines accord similar relief to Bahraini air carriers like petitioner by sparing it from IT on its GPB on the strength of the reciprocity clause found in Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378.

We now proceed on the extent of the alleged erroneous or overpayment of IT by petitioner for the 2nd to 4th quarters of TY 2013; and TY 2014.

For the 2nd to 4th Quarters of TY 2013:

In its Original Annual ITR for TY 2013,[58] petitioner had a Total Amount Payable of ₱6,152,366.00, which stemmed from: a) revenues amounting to ₱1,874,480,997.00 subjected to 1.5% special tax rate; and b) gains in the sum of ₱30,000.00 subjected to 30% regular tax rate, computed as follows:

	Original Annual ITR for TY 2013		
	Total Special	**Total Regular**	**Total**
Net Taxable Income/Net Income	₱1,874,480,997	₱ 30,000	₱1,874,510,997

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57 Exhibit P-9-5, Docket - Vol. II, p. 700.
58 Exhibit P-15-1 and sub-markings, Docket – Vol. II, pp. 773 to 779.

Applicable Income Tax Rate	1.5%	30%	
Total Income Tax Due	₱ 28,117,215	₱ 9,000	₱ 28,126,215
Less: Total Tax Credits/Payments			
Income Tax Payments from Previous Quarter/s	₱ 22,311,986		₱ 22,311,986
Creditable Tax Withheld from Previous Quarter/s	675,906		675,906
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	218,587		218,587
Total	₱ 23,206,479	-	₱ 23,206,479
Net Tax Payable	**₱ 4,910,736**	**₱ 9,000**	**₱ 4,919,736**
Add: Total Penalties			1,232,630
Total Amount Payable			**₱ 6,152,366**

Per the Development Bank of the Philippines (DBP) Acknowledgement Receipt,[59] petitioner fully settled its IT payable of ₱6,152,366.00 for TY 2013 via Electronic Payment System on April 16, 2014.

On the other hand, petitioner's Audited Statement of GPB for the year ended December 31, 2013[60] reveals that the revenues subjected to 1.5% special tax rate in the amount of ₱1,874,480,997.00[61] is composed of GPB derived from transport of passengers and excess baggage from the 1st to 4th Quarters of TY 2013. Out of the said ₱1,874,480,997.00, a portion thereof in the sum of ₱1,277,634,623.94 corresponds to its GPB from carriage of passengers and excess baggage for the 2nd to 4th quarters of TY 2013[62] was exculpated from imposition of income taxes by virtue of the reciprocity principle, precisely petitioner erroneously paid the income taxes due thereon amounting to ₱19,164,519.36, *viz.*:

Month	Revenue Denomination in US$			Average BAP Rate	PhP Equivalent	Passenger Surcharge PhP	Grand Total in PhP
	Passenger	Excess baggage	Total				

59 Exhibit P-15-3, Docket – Vol. II, p. 783.

60 Exhibit P-15-6.5, Docket – Vol. II, p. 789. This was appended to petitioner's 2013 Original AITR.

61 This figure was reported in petitioner's 2013 Original AITR.

62 Extracted from the Audited Statement of GPB for the year ended 31 December 2013 (Exhibit P-15-6.5, Docket – Vol. II, p. 789).

April	3,890,531.00	2,232.00	3,892,763.00	41.18	160,303,980.34	289,356.50	160,593,336.84
May	4,200,346.70	1,684.00	4,202,030.70	41.33	174,510,334.97	342,749.00	174,853,083.97
June	3,556,641.45	5,031.00	3,561,672.45	42.81	152,475,197.58	203,756.00	152,678,953.58
July	3,105,164.00	1,824.00	3,106,988.00	43.37	134,750,069.56	201,432.00	134,951,501.56
August	3,335,966.00	1,580.00	3,337546.00	43.91	146,551,644.86	79,500.00	146,631,144.86
September	4,278,723.00	5,780.00	4,284,503.00	43.88	188,003,991.64	183,952.00	188,187,943.64
October	2,590,258.00	840.00	2,591,098.00	43.21	111,964,344.58	91,422.50	112,052,767.08
November	2,738,453.00	3,000.00	2,741,453.00	43.51	119,280,620.03	230,279.00	119,510,899.03
December	1,992,859.00	560.00	1,993,419.00	44.13	87,969,580.47	205,412.90	88,174,993.37
Total	**41,992,482.05**	**34,212.00**	**29,711,473.15**		**1,275,806,764.04**	**2,701,883.30**	**1,277,634,623.94**
Tax rate applied per Original Annual ITR							**1.5%**
Income tax due and paid							**19,164,519.36**

Accordingly, in its 2013 *Amended* AITR,[63] petitioner properly excluded from its Net Taxable Income the GPB derived from its carriage of passenger and excess baggage for the 2nd to 4th quarters, resulting in an overpayment of IT amounting to ₱19,164,519.00, to wit:

	Amended Annual ITR for TY 2013		
	Total Special	**Total Regular**	**Total**
Net Taxable Income/Net Income	[64]₱ 596,846,373	₱ 30,000	₱ 596,876,373
Applicable Income Tax Rate	1.5%	30%	
Total Income Tax Due	₱ 8,952,696	₱ 9,000	₱ 8,961,696
Less: Total Tax Credits/Payments			
Income Tax Payments from Previous Quarter/s	₱ 27,231,722	-	₱ 7,231,722
Creditable Tax Withheld from Previous Quarter/s	675,906	-	675,906
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	218,587	-	218,587

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63 Exhibit P-14-1 and sub-markings, Docket – Vol. II, pp. 754 to 761.

64 Total GPBs for TY 2013 in the amount of ₱1,874,480,997.00 less tax exempt GPBs on passenger and excess baggage in the amount of ₱1,277,634,623.94.

Total	₱ 28,126,215	-	₱ 28,126,215
Total Amount Payable (Overpayment)	**(₱19,173,519)**	**₱9,000.00**	**(₱19,164,519)**

<u>For TY 2014</u>:

In petitioner's Quarterly ITRs for the first three (3) quarters of TY 2014, it subjected all its revenues realized during the said periods to the special tax rate of 1.5%, as shown below:

	Q1 of TY 2014[65]	**Q2 of TY 2014**[66]	**Q3 of TY 2014**[67]
Sales/Revenues/Receipts/Fees	₱468,768,219.65	₱ 627,319,833.16	₱ 497,117,419.71
Taxable Income This Quarter	₱468,768,219.65	₱ 627,319,833.16	₱ 497,117,419.71
Add: Taxable Income from Previous Quarter(s)	-	468,768,219.65	1,096,088,052.81
Total Taxable income to Date	₱468,768,219.65	₱1,096,088,052.81	₱1,593,205,472.52
Tax Rate	**1.5%**	**1.5%**	**1.5%**
Income Tax Due	₱ 7,031,523.29	₱ 16,441,320.79	₱ 23,898,082.09
Less: Tax Credits/Payments			
Tax Payment(s) for the Previous Quarter(s) of the same taxable year other than MCIT		₱ 6,805,612.76	₱ 15,847,162.89
Creditable Tax Withheld for the Previous Quarter(s)		225,910.53	594,157.90
Creditable Tax Withheld per BIR Form No. 2307 for this Quarter	₱ 225,910.53	368,247.37	318,604.79
Total	₱ 225,910.53	₱ 7,399,770.66	₱ 16,759,925.58
Tax Payable/Total Amount Payable	**₱ 6,805,612.76**	**₱ 9,041,550.13**	**₱ 7,138,156.51**

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65 Exhibit P-23-1 and sub-markings, Docket – Vol. II, pp. 871 to 872.
66 Exhibit P-24-1 and sub-markings, Docket – Vol. II, pp. 881 to 882.
67 Exhibit P-25-1 and sub-markings, Docket – Vol. II, pp. 891 to 892.

Per various DBP Acknowledgement Receipts,[68] petitioner paid in full its tax payables covering the 1st,[69] 2nd,[70] and 3rd[71] Quarters of TY 2014 through the Electronic Payment System on May 28, 2014, August 28, 2014 and November 28, 2014, respectively.

Concomitantly, petitioner's Audited Statement of GPB for the quarters ended March 31, 2014,[72] June 30, 2014,[73] and September 30, 2014,[74] shows that among the revenues it subjected to 1.5% special tax rate amounting to ₱468,768,219.65, ₱627,319,833.16 and ₱497,117,419.71 covering the 1st, 2nd and 3rd quarters of TY 2014, a portion thereof pertains to petitioner's GPB derived from transport of passengers and excess baggage.

Given that petitioner's GPB derived from carriage of passengers and excess baggage relative to the 1st, 2nd and 3rd quarters of TY 2014 in the respective amounts of ₱434,995,472.16,[75] ₱594,367,080.01,[76] and ₱465,834,769.02[77] were relieved from IT because of reciprocity, the ITs due thereon in the respective sums of ₱6,524,932.08 for the 1st Quarter, ₱8,915,506.20 for the 2nd Quarter, and ₱6,987,521.54 for the 3rd Quarter, or in the aggregate sum of ₱22,427,959.82 corresponds to petitioner's erroneous payment of IT on its GPB for TY 2014, computed as follows:

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68 Exhibits P-23-3, P-24-3, and P-25-3, Docket – Vol. II, pp. 874, 884 and 894, respectively.

69 ₱6,805,612.76.

70 ₱9,041,550.13.

71 ₱7,138,156.51.

72 Exhibit P-23-5.4, Docket – Vol. II, p. 879. This was appended to petitioner's Quarterly ITR for the first quarter of TY 2014.

73 Exhibit P-24-5.4, Docket – Vol. II, p. 889. This was appended to petitioner's Quarterly ITR for the second quarter of TY 2014.

74 Exhibit P-25-5.3, Docket – Vol. II, p. 900. This was appended to petitioner's Quarterly ITR for the third quarter of TY 2014.

75 Extracted from the Audited Statement of GPBs for the quarter ended 31 March 2014 (Exhibit P-23-5.4, Docket – Vol. II, p. 879). This amount is a portion of ₱468,768,219.65, pertaining to petitioner's declared revenue for the 1st Quarter of TY 2014.

76 Extracted from the Audited Statement of GPBs for the quarter ended 30 June 2014 (Exhibit P-24-5.4, Docket – Vol. II, p. 889). Said figure is a portion of ₱627,319,833.16, corresponding to petitioner's declared revenue for the 2nd Quarter of TY 2014.

77 Extracted from the Audited Statement of GPBs for the quarter ended 30 September 2014 (Exhibit P-25-5.3, Docket – Vol. II, p. 900). This sum is a portion of ₱497,117,419.71, relating to petitioner's declared revenue for the 3rd Quarter of TY 2014.

Month	Revenue Denomination in USD			PhP Equivalent	Ave. BAP Rate	Passenger Surcharge PhP	Grand Total in Php
	Passenger	Excess Baggage	Total				
January	3,915,751.00	3,680.00	3,919,431.00	175,629,703.11	44.81	376,141.00	176,005,844.11
February	2,810,188.00	3,200.00	2,813,388.00	126,011,648.52	44.79	521,783.00	126,533,431.52
March	2,945,074.30	2,240.00	2,947,314.30	132,069,153.78	44.81	387,042.75	132,456,196.53
Subtotal Q1	**9,671,013.30**	**9,120.00**	**9,680,133.30**	**433,710,505.41**		**1,284,966.75**	**434,995,472.16**
April	3,899,875.70	2,920.00	3,902,795.70	174,767,191.45	44.78	561,779.00	175,328970.45
May	4,842,559.00	2,760.00	4,845,319.00	213,242,489.19	44.01	737,084.75	213,979,573.94
June	4,659,945.20	3,220.00	4,663,165.20	204,666,320.63	43.89	392,215.00	205,058,535.63
Subtotal Q2	**13,402,379.90**	**8,900.00**	**13,411,279.90**	**592,676,001.26**		**1,691,078.75**	**594,367,080.01**
July	3,013,520.00	2,920.00	3,016,440.00	131,305,633.20	43.53	546,355.00	131,851,988.20
August	4,368,033.30	4,900.00	4,372,933.30	191,140,914.54	43.71	326,534.00	191,467,448.54
September	3,215,728.00	3,080.00	3,218,808.00	142,142,561.28	44.16	372,771.00	142,515,332.28
Subtotal Q3	**10,597,281.30**	**10,900.00**	**10,608,181.30**	464,589,109.02		**1,245,660.00**	**465,834,769.02**
Total	**33,670,674.50**	**28,920.00**	**33,699,594.50**	**1,490,975,615.70**		**4,221,705.50**	**1,495,197,321.20**

	Q1 of TY 2014	**Q2 of TY 2014**	**Q3 of TY 2014**	**Total**
Total GPBs from passenger and excess baggage	₱434,995,472.16	₱594,367,080.01	₱465,834,769.02	₱1,495,197,321.20
Tax Rate applied per returns	1.50%	1.50%	1.50%	
Income taxes due and paid	**₱6,524,932.08**	**₱8,915,506.20**	**₱6,987,521.54**	**₱ 22,427,959.82**

As for the 4th quarter of TY 2014, petitioner did not declare its GPB derived from carriage of passengers and excess baggage in its AITR since the same is exempt from IT on GPB per reciprocity clause under Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378. Moreover, in its AITR for TY 2014,[78] petitioner as well omitted from its Net Taxable Income its GPB derived from carriage of passenger and excess baggage for the 1st to 3rd quarters of TY 2014, reflecting an IT overpayment of ₱22,383,264.00, to wit:

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[78] Exhibit P-19-1 and sub-markings, Docket – Vol. II, pp. 818 to 825.

Net Taxable Income/Net Income	₱ 132,365,162
Applicable Income Tax Rate	1.5%
Total Income Tax Due	₱ 1,985,477
Less: Total Tax Credits/Payments	
Income Tax Payments from Previous Quarter/s	₱ 22,985,319
Creditable Tax Withheld from Previous Quarter/s	912,763
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	470,659
Total	₱ 24,368,741
Net Tax Payable (Overpayment)	**(₱22,383,264)**

It must be stressed that while petitioner erroneously paid income taxes on its IT-exempt GPB for the 1st, 2nd and 3rd quarters of TY 2014 amounting to ₱22,427,959.82, such figure must be reduced by ₱44,696.16 as its income tax due originating from taxable GPB for the 4th quarter of TY 2014, leaving the balance of ₱22,383,264.00[79] as petitioner's *net* overpayment of IT for TY 2014, computed as follows:

Total taxes erroneously paid	₱ 22,427,959.82
Less: Tax Payable for Q4 of TY 2014	
Q4 GPBs from Cargo & Mail per Audited Statement of GPBs for the year ended 31 December 2014[80]	₱ 34,357,010.46
Tax Rate	1.50%
Income Tax Due from Q4 revenues	₱ 515,355.16
Less: Creditable Tax Withheld per BIR Form No. 2307 for Q4 per the Annual ITR of TY 2014	470,659.00
Net Amount due from Q4 revenues	₱ 44,696.16
Net Overpayment	**₱ 22,383,263.66**

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79 Rounded off amount of ₱22,383,263.66.

80 Exhibit P-19-7, Docket – Vol. II, p. 838.

October	₱11,646,756.55
November	13,395,497.68
December	9,314,756.24
Total	**₱34,357,010.46**

Having satisfactorily met all the requisites for refund anchored on Sections 204(C) and 229 of the NIRC, as amended, petitioner should be refunded of its erroneously paid income taxes covering TYs 2013 and 2014 amounting to ₱19,164,519.00 and ₱22,383,264.00, respectively.

Filing of TTRA is not necessary in refund claims falling under Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378:

Respondent is incorrect in insinuating that petitioner must first secure a confirmatory ruling from the BIR-ITAD pursuant to RMO No. 72-2010[81] to avail of the benefits of tax exemption under Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378.

Note that RMO No. 72-2010 provides the roadmap for processing of TTRA pursuant to existing Philippine Tax Treaties. Given that the refund claim pursued by petitioner is predicated under Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378, which is a domestic law, and not a Philippine tax treaty, such revenue issuance finds no application in this case.

Granting *arguendo* that petitioner moored its income tax exemption on a Philippine tax treaty, prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance.[82] To rule otherwise will defeat the purpose of Section 229 of the NIRC in providing the taxpayer a remedy for erroneously paid tax

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[81] SUBJECT: GUIDELINES ON THE PROCESSING OF TAX TREATY RELIEF APPLICATIONS (TTRA) PURSUANT TO EXISTING PHILIPPINE TAX TREATIES.

[82] *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013.

solely on the ground of failure to make prior application for tax treaty relief.[83] This cannot be permitted.

Proof of actual enjoyment by Philippine carriers of IT exemption in the home country of the international carrier is not required under Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378:

Case law has it that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.[84] The rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute.[85] Simply put, tax regulations cannot impose additional requirements other than what is required under the law as a condition for tax exemption.[86] To do so constitutes lawmaking, which is generally reserved for Congress.[87]

Adverting to our earlier discussion, an international carrier is absolved from Philippine IT on GPB under the reciprocity clause in Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378, on condition that the IT law of the international carrier's home country exempts carriers of Philippine origin from such country's ITs. Thus, the proof required to invoke said exemption is the *law evidencing IT*

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83 *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015.

84 See *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005.

85 See *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008.

86 *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016.

87 See *Soriano vs. Secretary of Finance,* G.R. No. 184450, January 24, 2017.

exemption conferred by the international carrier's home country in favor of Philippine carriers.

By respondent's attempt to unilaterally insert in Section 4.2(B) of RR No. 15-2013, *proof of actual enjoyment* by Philippine carriers of the IT exemption endowed by the home country of the international carrier as precondition for reciprocity, he impermissibly engrafted requirements not found in RA No. 10378, which should not be tolerated. On this point, the ruling in *University Physicians Services, Inc. – Management, Inc. vs. Commissioner of Internal Revenue*[88] is *apropos*:

> It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.

Apart from the foregoing, the policy in rationalizing taxes on international carriers like petitioner is to improve the competitiveness of the Philippine Tourism Industry by encouraging more international carriers to maintain flight and shipping operations in the country and by the eventual reduction of international plane and ship fares. These are intended to facilitate the movement of goods and services and to attract more foreign tourists and investments.[89] Certainly, these laudable objectives may not be achieved should the BIR unduly impose upon petitioner additional requirements not found in RA No. 10378.

Besides, it is unreasonable, if not illogical for the BIR to demand petitioner to establish actual enjoyment of IT exemption of all concerned Philippine carrier/s operating in Bahrain since it entails submission of books of account and/or accounting record to which petitioner has no ready access to, or be automatically permitted to obtain the same. Note that undesirable consequences were never intended by

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88 G.R. No. 205955, March 7, 2018.
89 See Section 1, RR No. 15-2013.

a legislative measure and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences.[90]

WHEREFORE, the Petition for Review dated April 15, 2016, filed by petitioner Gulf Air Company Philippine Branch is **GRANTED**. Consequently, respondent is **DIRECTED** to **REFUND** in favor of petitioner, the amounts of **₱19,164,519.00** and **₱22,383,264.00 (or a total amount of ₱41,547,783.00)**, representing erroneously paid income taxes for TYs 2013 and 2014.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

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90 See *Ursua vs. Court of Appeals, et al.*, G.R. No. 112170, April 10, 1996.

CERTIFICATION

Pursuant to Section 13 of 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice