REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

KUWAIT AIRWAYS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10107

Members:

RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 04 2023
11:28 a.m.

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RESOLUTION

***RINGPIS-LIBAN, J.*:**

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision promulgated 28 March 2023)** filed on May 12, 2023, with petitioner's **Comment to Motion for Reconsideration (Re: Decision Promulgated on March 28, 2023)** filed on June 26, 2023.

On March 28, 2023, the Court promulgated a Decision partially granting petitioner's claim for issuance of tax credit certificate for the overpayment of income tax on its Gross Philippine Billings (GPB), the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱12,398,319.19**, representing the latter's overpayment of income tax on its GPBs for fiscal year ended March 31, 2017.
>
> **SO ORDERED.**"

In his Motion, respondent asserts the Court erred in granting petitioner's claim for issuance of tax credit certificate since the latter failed to show that

Philippine carriers are actually enjoying the same income tax exemption in its home country, as required by Revenue Regulations (RR) 15-2013.[1] Respondent further argues that there is also no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. As such, respondent cannot be faulted for dismissing petitioner's administrative claim for refund following the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue.*[2]

On the other hand, in its comment, petitioner claims that respondent heavily relied on the provision of Section 4.2 (B) of RR No. 15-2013 in his attempt to disregard petitioner's entitlement to a tax credit certificate. Petitioner continues that respondent insists that the rule on reciprocity may only be invoked when an international carrier applies for an exemption from GPB, as there is an obligation on its part to establish that the same privilege is accorded to Philippine carriers operating in its home country. However, such is not the situation in the present case. Petitioner explains the rule on reciprocity is invoked only when an international carrier applies for an exemption from GPB and not in cases of claims for refund. Petitioner reiterates that it is merely seeking to use the preferential income tax rate of one and one-half percent (1 ½%) tax on the basis of the gross revenues it derived within the Philippines in its application for issuance of tax credit certificate.

Petitioner also points out that a Tax Treaty Relief Application (TTRA) was previously granted by the Bureau of Internal Revenue (BIR), which was even confirmed by then Commissioner of Internal Revenue (CIR) Caesar R. Dulay in BIR Ruling ITADD No. 034-17 dated November 6, 2017, declaring that petitioner is entitled to avail of the said preferential tax rate beginning January 1, 2014. And, to date, respondent has not initiated any action that would warrant the reversal of the said BIR Ruling.

The Court finds respondent's Motion for Reconsideration bereft of merit.

To stress, proof of actual enjoyment by Philippine carriers of income tax exemption in the home country of the international carrier is not required under Section 28 (A)(3)(a) of the National Internal Revenue Code of (NIRC) 1997, as amended by Republic Act (RA) No. 10378,[3] which states as follows:

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[1] SUBJECT: Revenue Regulations Implementing Republic Act No. 10378 Entitled "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed Thereon by Amending Sections 28 (A) (3) (A), 109, 118 and 236 of the National Internal Revenue Code (NIRC), as Amended, and for Other Purposes", dated September 20, 2013.

[2] G.R. No. 145526, March 16, 2007.

[3] "AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(a), 109, 118 AND 236 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES," dated March 7, 2013.

"**SEC. 28.** *Rates of Income Tax on Foreign Corporations.* —

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

(1) x x x

(2) x x x

(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.

(b) x x x

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.

xxx xxx xxx." *(Emphasis supplied)*

Evidently, the foregoing provision states that the existence itself of the law, **treaty** (which in this case is the Philippine-Kuwait Tax Treaty that took effect on January 1, 2014) or agreement to which the Philippines is a signatory already suffices. Accordingly, requiring the international carriers covered by any treaties or agreements to provide proof of actual enjoyment by Philippine carriers of income tax exemption in the home country of the international carrier unduly expands the law and, in turn, creates an additional burden upon international carriers which this Court cannot tolerate. Settled is the rule that tax regulations cannot impose additional requirements other than what is required under the law as a condition for tax exemption.[4] The case of *Philippine Bank of Communications v. Commissioner of Internal Revenue*[5] is instructive on this matter:

> "x x x 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.

Relative thereto, it is worth emphasizing that the obligation to comply with tax treaty must take precedence over BIR rulings, as demonstrated by the Supreme Court in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, [6] in this wise:

> "x x x We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.
>
> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

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[4] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.
[5] G.R. No. 112024, January 28, 1999.
[6] G.R. No. 18850, August 19, 2013.

> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**" *(Emphases supplied)*

Applying by analogy the *Deutsche Bank* case to the present case, it can be said that the third paragraph of Section 4.2 (B) of RR No. 15-2013, which requires actual proof of enjoyment by Philippine carriers of income tax exemption in the home country of the international carrier, should be invalidated as it negates the availment of the reliefs provided for under international agreements. More so, respondent seems to be asking for the impossible, for it cannot be expected that petitioner could have access to the records of Philippine carriers operating in Kuwait that could have verified the latter's actual enjoyment of the exemption on income tax provided for by its home country in favor of Philippine carriers.

Henceforth, the existence of the treaty or agreement by itself is considered by this Court as sufficient basis for the grant of petitioner's request for the issuance of tax credit certificate on its overpayment of income tax on its GPB for fiscal year ended March 31, 2017.

With regard to respondent's allegation of non-submission by petitioner of complete documents during the administrative proceedings, it is worth stressing that it was the inaction of respondent which prompted petitioner to seek judicial recourse with this Court as respondent did not bother to send any written notice to petitioner, informing the latter that the documents it submitted were incomplete or at least require petitioner to submit additional documents.

Moreover, considering that the administrative claim was never acted upon, as there was no decision for the CTA to review on appeal *per se*, this Court is not precluded from considering evidence that was not presented in the administrative claim with the BIR pursuant to RA No. 1125, which states:

> "Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may

> be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**[7]

Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.[8]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on March 28, 2023.

WHEREFORE, in light of the foregoing disquisitions, respondent's Motion for Reconsideration (Re: Decision promulgated 28 March 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[7] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.
[8] *Ibid.*