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

Promulgated:
MAR 28 2023
12:30 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This resolves the Petition for Review filed by Kuwait Airways Corporation praying that the Court render judgment:

1. Declaring petitioner entitled to the issuance of tax credit certificates (TCCs) in the amount of ₱12,508,611.74, for the fiscal year ended March 31, 2017; and

2. Directing respondent Commissioner of Internal Revenue (CIR) to issue TCCs in favor of petitioner in the amount of ₱12,508,611.74 for the same fiscal year.[1]

THE PARTIES

Petitioner Kuwait Airways Corporation is a corporation organized and existing under the laws of Kuwait.[2] It has been granted a license to transact business in the Philippines by the Securities and Exchange Commission.[3] It is

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[1] Statement of the Case, Pre-Trial Order dated January 14, 2020, Docket – Vol. 2, p. 665.
[2] Exhibit "P-2", Docket – Vol. 1, pp. 71 to 108; Exhibit "P-2-1", Docket – Vol. 2, pp. 804 to 834.
[3] Exhibits "P-3" and "P-4", Docket – Vol. 1, pp. 109 to 111.

registered with the Bureau of Internal Revenue (BIR) under TIN 001-482-624-00000, with address at G/F Corporate Plaza, 150 Legaspi Street, Legaspi Village, San Lorenzo, City of Makati, NCR, Fourth District, Philippines 1223.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with authority to carry out all the functions, duties and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia*, the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Quezon City.[5]

THE FACTS OF THE CASE

On June 5, 2015, petitioner filed an *Application For Relief From Double Taxation on Shipping and Air Transport* (BIR Form No. 0901T),[6] accompanied by certain documents,[7] with the BIR – International Tax Affairs Division (ITAD).

On January 11, 2018, petitioner received, via registered mail, a copy of the BIR Ruling No. ITAD 034-17 dated November 6, 2017 signed by then Commissioner Cesar R. Dulay.[8] Pertinent portions of the said BIR Ruling read:

> "Under Article 8, international carriers of Kuwait doing business in the Philippines are subject to income tax on their GBP[9] at the rate of 1 ½%, or the lowest rate imposed on the GPB of international carriers of a third country (the so-called **'most-favored-nation treatment'**).
>
> Accordingly, since the Philippines, to date, has not granted a most-favored-nation treatment to any international air carrier of a third country, **Kuwait Airways** is subject to income tax of 1 ½% on its GPB earned **beginning January 1, 2014**, pursuant to paragraph 2(b), Article 8 of the Philippines-Kuwait tax treaty[10].
>
> Furthermore, under Section 118(A) of the Tax Code, Kuwait Airways is subject to common carriers' tax of 3% on its quarterly gross receipts imposed, thus:
>
> *'SEC. 118. Percentage Tax on International Carriers. –*

[4] Exhibit "P-5", Docket – Vol. 1, p. 112.
[5] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, pp. 630 to 637.
[6] Exhibit "P-12", Docket – Vol. 1, p. 120.
[7] Exhibit "P-12-2", Docket – Vol. 1, p. 121.
[8] Exhibit "P-33-1", Docket – Vol. 2, p. 835; Exhibit "P-33", Docket – Vol. 1, pp. 355 to 358.
[9] That is, "Gross Philippine Billings".
[10] Referring to the *Convention between the Government of the Republic of the Philippines and the Government of the State of Kuwait for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.*

> (a) *International air carriers doing business in the Philippines on their gross receipts derived from transport of cargo from the Philippines to another country shall pay a tax of three percent (3%) of their quarterly gross receipts.'*
>
> This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned."

On March 21, 2018, petitioner then filed an Amended Annual Income Tax Return (ITR) for the fiscal year ended March 31, 2017,[11] which reflected the application of the 1½% preferential income tax rate.

Thereafter, on May 16, 2018, petitioner filed with the BIR – Regular LT-Audit Division 2, an *Application for Tax Credits / Refunds* (BIR Form No. 1914),[12] and the letter of even date,[13] applying for the issuance of TCCs in its favor in view of its overpaid taxes for taxable fiscal year ended March 31, 2017, amounting to ₱12,508,611.74.

Due to inaction of respondent, petitioner filed the present *Petition for Review* on July 10, 2019.[14]

On August 20, 2019, respondent filed his *Answer*,[15] interposing the following special and affirmative defenses, to wit:

> "SPECIAL AND AFFIRMATIVE DEFENSES"
>
> 4. Respondent adopts the abovementioned admissions and denials as part of his Special and Affirmative Defenses.
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> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 6. The amount of P12,508,611.74 allegedly representing overpayment of income tax on petitioner's Gross Philippine Billings for the fiscal year ended 31 March 2017, was not properly documented.

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[11] Exhibits "P-34" and "P-35", Docket – Vol. 1, pp. 359 to 368.
[12] Exhibit "P-56", Docket – Vol. 1, p. 188.
[13] Exhibit "P-55", Docket – Vol. 1, pp. 186 to 187.
[14] Docket – Vol. 1, pp. 11 to 32.
[15] Docket – Vol. 1, pp. 243 to 247.

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

8. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

9. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. *145526, 16 March 2007*:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review if a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' (emphasis and underscoring supplied)

10. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to the cause.

11. Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

12. The claimant has burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).**"

On August 27, 2019, respondent transmitted to this Court the *BIR Records* of the case,[16] consisting of 841 pages.

Respondent filed his Pre-Trial Brief on September 13, 2019,[17] while petitioner filed its *Pre-Trial Brief* on November 15, 2019.[18] Thereafter, the Pre-Trial Conference was set and held on November 21, 2019,[19] wherein counsel

[16] *Compliance* dated August 23, 2019, Docket – Vol. 1, pp. 251 to 252.
[17] Docket – Vol. 1, pp. 256 to 258.
[18] Docket – Vol. 1, pp. 261 to 286.
[19] Notice of Pre-Trial Conference dated August 27, 2019, Docket – Vol. 1, pp. 249 to 250; Minutes of the hearing held on, and Order dated, November 21, 2019, Docket – Vol. 2, pp. 623, and 627 to 629, respectively.

for respondent manifested that since there is no report for investigation, respondent will no longer present evidence.

On December 10, 2019, the parties submitted their *Joint Stipulations of Facts and Issues*,[20] which the Court admitted and approved in the Resolution dated December 20, 2019.[21] Thereafter, the Court issued the Pre-Trial Order dated January 14, 2020.[22]

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Maria Carmen S. Tiansay,[23] District Sales Manager of petitioner; (2) Ms. Ana Marie M. Molina,[24] petitioner's Accounts Manager – Finance; and (3) Ms. Maria Christina Josefina Berces-Ocampo,[25] the Court-commissioned independent certified public accountant (ICPA).[26]

The ICPA *Report* was submitted on June 22, 2020.[27]

Petitioner filed its *Formal Offer of Evidence* on November 17, 2020.[28] Then, on December 21, 2020, respondent filed a *Motion to Admit Attached Comment*,[29] which the Court granted in the Resolution dated January 7, 2021,[30] thereby admitting, as part of the record of the case, respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)* attached to the said *Motion*.[31]

In the Resolution dated September 6, 2021,[32] the Court granted petitioner's offered exhibits, *except* for Exhibit "P-90-671", for not being found in the records.

Respondent filed his *Memorandum* on November 9, 2021.[33]

On November 22, 2021, petitioner filed a *Motion To Reconsideration Re: Resolution dated September 6, 2021*,[34] praying that the it be allowed to amend its

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[20] Docket – Vol. 2, pp. 630 to 637.
[21] Docket – Vol. 2, p. 640.
[22] Docket – Vol. 2, pp. 665 to 675.
[23] Exhibit "P-83", Docket – Vol. 2, pp. 420 to 435; Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. 2, pp. 698 to 700.
[24] Exhibit "P-84", Docket – Vol. 1, pp. 287 to 309; Minutes of the hearing held on, and Order dated, September 23, 2020, Docket – Vol. 2, pp. 764 to 766.
[25] Exhibit "P-85", Docket – Vol. 2, pp. 734 to 761; Minutes of the hearing held on, and Order dated, October 28, 2020, Docket – Vol. 2, pp. 767 to 769.
[26] Oath of Commission dated January 28, 2020, Docket – Vol. 2, p. 681; Minutes of the hearing held on, and Order dated, January 28, 2020, Docket – Vol. 2, pp. 680, and 682 to 623, respectively.
[27] Exhibit "P-86", Docket – Vol. 2, pp. 712 to 732.
[28] Docket – Vol. 2, pp. 772 to 799.
[29] Docket – Vol. 2, pp. 898 to 900.
[30] Docket – Vol. 2, pp. 906 to 907.
[31] Docket – Vol. 2, pp. 902 to 904.
[32] Docket – Vol. 2, pp. 918 to 920.
[33] Docket – Vol. 2, pp. 921 to 925.

Formal Offer of Evidence to reflect the markings of Exhibits "P-83-1", "P-84-1", and "P-85-1", and to replace the unclear and unreadable documents. The said *Motion* was granted by the Court in the Resolution dated April 5, 2022.[35]

In meantime, petitioner's *Memorandum* was submitted on December 15, 2021.[36]

On May 19, 2022, the present case was deemed submitted for decision.[37]

THE ISSUE RAISED BY THE PARTIES

The parties have stipulated the following issue to be tried or resolved by this Court, to wit:

> "Whether or not petitioner is allegedly entitled to the issuance of tax credit certificate in the amount of Twelve Million Five Hundred Eight Thousand Six Hundred Eleven Pesos and 74/100 (P12,508,611.74) representing alleged overpayment of income tax on petitioner's Gross Philippine Billings for the year ended March 31, 2017."[38]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that it is entitled to use the preferential rate of 1½% on its Gross Philippine Billings (GPBs) beginning January 1, 2014 pursuant to the Philippines-Kuwait Tax Treaty as confirmed by the CIR in the BIR Ruling No. ITAD 034-17 dated November 6, 2017; that petitioner has met all the qualifications and requirements to warrant the claim for the issuance of the tax credit certificate (TCC); and that it filed the application for TCC within the period prescribed by law.

Respondent contends that petitioner did not submit complete documents to substantiate its administrative claim for refund; that petitioner has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

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[34] Docket – Vol. 2, pp. 928 to 931.
[35] Docket – Vol. 2, pp. 956 to 959.
[36] Docket – Vol. 2, pp. 933 to 947.
[37] Resolution dated May 19, 2022, Docket – Vol. 2, p. 1076.
[38] Issues To Be Tried and Resolved, JSFI, Docket – Vol. 2, p. 630.

THE COURT'S RULING

Petitioner anchors its claim on Sections 204(c) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> 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." *(Emphasis added)*
>
> "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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[39]

Moreover, from the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[40] Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due.[41]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject income tax paid is an erroneous or wrongful payment.

Timeliness of the Petition for Review

Petitioner filed its Annual ITR for the fiscal year ended March 31, 2017 on July 14, 2017, and paid the corresponding income tax in the amount of ₱11,581,473.00 on the basis of the special tax rate of 2½%.[42] After receipt by petitioner of BIR Ruling No. ITAD 034-17 dated November 6, 2017, confirming its entitlement to the preferential tax rate of 1½% on its GPBs,[43] it filed an Amended Annual ITR on March 21, 2018, to reflect the application of the said preferential tax rate, thereby showing an "overpayment" of income tax in the amount of ₱12,508,612.00.[44]

Considering that it is only in petitioner's Amended Annual ITR, which was filed on March 21, 2018, that an overpayment of income tax was shown, upon application of the 1½% preferential tax rate, the logical conclusion is that the two-year prescriptive period should be reckoned from the said date. Thus, counting two (2) years from March 21, 2018, petitioner had until March 21, 2020, within which to file its administrative and judicial claims. Since petitioner

[39] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[40] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[41] *Id.*
[42] Exhibits "P-28" and "P-31", Docket – Vol. 1, pp. 339 to 350.
[43] Exhibit "P-33-1", Docket – Vol. 2, p. 835; Exhibit "P-33", Docket – Vol. 1, pp. 355 to 358.
[44] Exhibits "P-34" and "P-35", Docket – Vol. 1, pp. 359 to 368.

filed its administrative claim on May 16, 2018,[45] and the judicial claim on July 10, 2019,[46] the same were both filed within the two-year prescriptive period.

Whether or not petitioner is entitled to refund in the aggregate amount of ₱12,508,611.74

Section 28(A)(3)(a) of the NIRC of 1997, as amended by Republic Act No. 10378,[47] reads as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> (A) *Tax on Resident Foreign Corporations.* –
>
> xxx xxx xxx
>
> (3) *International Carrier.* – **An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) 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

[45] Exhibits "P-55" and "P-56", Docket – Vol. 1, pp. 186 to 188.
[46] Docket – Vol. 1, pp. 11 to 32.
[47] 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.

> **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." *(Emphases added)*

Based on the foregoing provision, it is clear that an international air carrier doing business in the Philippines shall pay a tax of two and one-half percent (2½%) on its GPBs. However, such international air carrier may, *inter alia*, avail of a preferential rate from the said tax on its 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.

As it is recognized, the application of the provisions of the NIRC must be subject to the provision of tax treaties entered into by the Philippines with foreign countries.[48]

Relative to the instant case, Article 8 of the Philippines-Kuwait Tax Treaty,[49] which are applicable to income derived or which accrued beginning January 1, 2014,[50] provides, in part, as follows:

> "Article 8
> SHIPPING AND AIR TRANSPORT
>
> 1. Profits from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
>
> 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:**

[48] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.

[49] Formally known as the AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

[50] Revenue Memorandum Circular No. 37-2014 dated May 8, 2014 (SUBJECT: Entry into Force, Effectivity, and Applicability of the Philippines-Kuwait Double Taxation Agreement).

a) **one and one-half per cent of the gross revenue derived from sources in that State; and**

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.**

xxx xxx xxx." *(Emphasis added)*

Thus, beginning January 1, 2014, profits from sources within the Philippines derived by an enterprise of Kuwait from the operation of ships or aircraft in international traffic shall be subject to income tax, either at: (1) 1½% of the gross revenue derived from the Philippines; or (2) the lowest rate that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

Apropos, the Government of the Philippines is obligated to observe the terms and conditions of the Philippines-Kuwait tax treaty under the rule of *pacta sunt servanda*, a fundamental maxim of international law that requires the parties to keep their agreement in good faith.[51]

Furthermore, it must be pointed out that the purpose of tax treaties is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two (2) different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.[52]

Respondent issued BIR Ruling No. ITAD 034-17 dated November 6, 2017,[53] wherein then Commissioner Cesar R. Dulay ruled, *inter alia*, that since the Philippines, as of the said date, has not granted a most-favored-treatment to any international air carrier of a third country, petitioner is subject to income tax of 1½% on its GPBs earned beginning January 1, 2014, pursuant to the aforequoted Article 8 of the Philippines-Kuwait tax treaty.

Bearing in mind the rationale of tax treaties/conventions, there is no reason to deprive petitioner of its availment of the preferential tax rate of 1½% on its GPBs, in accordance with Article 8 of the Philippines-Kuwait Tax Treaty, especially that its entitlement to the same had already been confirmed by no less than the Office of respondent via BIR Ruling No. ITAD 034-17 dated November 6, 2017.

[51] Refer to *Land Bank of the Phils. vs. Atlanta Industries, Inc.*, G.R. No. 193796, July 2, 2014, citing *Secretary of Justice vs. Hon. Lantion*, 379 Phil. 165, 212 (2000).
[52] Refer to *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, supra.
[53] Exhibit "P-33", Docket – Vol. 1, pp. 355 to 358.

Having resolved the foregoing matter, this Court shall now determine whether petitioner is entitled to the issuance of a tax credit certificate in the aggregate amount of ₱12,508,611.74, as prayed for in the present *Petition for Review*.

As can be gleaned from its Audited Statement of GPBs for the Quarters ended June 30, 2016, September 30, 2016, December 31, 2016, and the fiscal year ended March 13, 2017, petitioner derived its GPBs, in the respective amounts of ₱302,921,802.55, ₱176,686,309.89, ₱296,000,824.11 and ₱1,250,861,174.00, from passenger and cargo sales, excess baggage and other income for the said periods.[54]

In its Quarterly ITRs for the fiscal year ended March 31, 2017, and original Annual ITR for the same fiscal year, petitioner subjected its GPBs for the said corresponding periods to the income tax rate of 2½%, as shown below:

ITRs for FY ended March 31, 2017	1st Quarter (Exhibit "P-13")[55]	2nd Quarter (Exhibit "P-18")[56]	3rd Quarter (Exhibit "P-23")[57]	Annual (Exhibit "P-28")[58]
Sales/Revenues/Receipts/Fees	₱302,921,802.55	₱176,686,309.89	₱296,000,824.11	₱1,250,861,174.00
Taxable Income This Quarter/ Net Taxable Income	₱302,921,802.55	₱176,686,309.89	₱296,000,824.11	₱1,250,861,174.00
Income Tax Rate	**2.50%**	**2.50%**	**2.50%**	**2.50%**
Income Tax Due	₱ 7,573,045.06	₱ 4,417,157.75	₱ 7,400,020.60	₱ 31,271,529.00
Less: Tax Credits/Payments				
Income Tax Payments from Previous Quarter/s				₱ 18,950,147.00
Creditable Tax Withheld from the Previous Quarter/s		₱ 103,925.82[59]		440,076.00
Creditable Tax Withheld per BIR Form No. 2307 for this Quarter/the 4th Quarter	₱ 124,942.56		₱ 211,207.41	299,869.00
Total	₱ 124,942.56	₱ 103,925.82	₱ 211,207.41	₱ 19,690,092.00
Total Amount Payable	**₱7,448,102.50**	**₱4,313,231.93**	**₱7,188,813.19**	**₱ 11,581,437.00**

The *Total Amount Payable* for the periods indicated above, in the respective amounts of ₱7,448,102.50, ₱4,313,231.93, ₱7,188,813.19 and ₱11,581,437.00, or a total of ₱30,531,584.62, were accordingly paid by petitioner *via* the BIR's Electronic Filing and Payment System (eFPS) on August 26, 2016, November 28, 2016, February 27, 2017 and July 14, 2017, as evidenced by the corresponding Land Bank of the Philippines confirmation

[54] Exhibits "P-17", "P-22", "P-27" and "P-32", Docket – Vol. 1, pp. 127 to 130, 326 to 329, 335 to 338 and 351 to 354.
[55] Docket – Vol. 1, pp. 122 to 123.
[56] Docket – Vol. 1, pp. 321 to 322.
[57] Docket – Vol. 1, pp. 330 to 331.
[58] Docket – Vol. 1, pp. 339 to 347.
[59] This amount pertains to *Creditable Tax Withheld per BIR Form No. 2307 for this Quarter* (2nd Quarter) but may have been inadvertently indicated under *Creditable Tax Withheld from the Previous Quarter/s* line.

receipts and BIR eFPS payment confirmations, with stamped received by the BIR.[60]

In view of its receipt of the aforementioned BIR Ruling No. ITAD No. 034-17, confirming its entitlement to the preferential tax rate of 1 ½% on its GPBs, petitioner filed an Amended ITR for fiscal year ended March 31, 2017 on March 21, 2018, reflecting the 1 ½% preferential income tax rate, which resulted to an overpayment in the amount of ₱12,508,612.00, as shown below:[61]

Net Taxable Income		₱ 1,250,861,174.00
Income Tax Rate		**1.50%**
Income Tax Due		₱ 18,762,918.00
Less: Tax Credits/Payments		
Income Tax Payments from Previous Quarter/s	₱18,950,148.00	
Creditable Tax Withheld from the Previous Quarter/s	440,076.00	
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	299,869.00	
Tax Paid in Return Previously Filed, if this is an Amended Return	11,581,437.00	31,271,530.00
Overpayment		**(₱12,508,612.00)**

Since petitioner's GPBs for the fiscal year ended March 31, 2017 amounting to ₱1,250,861,174.00 were actually subjected to the 2½% income tax rate, albeit only subject to 1½% preferential income tax rate, the income tax due paid thereon amounting to ₱12,508,611.74 (₱1,250,861,174.00 x 1%), representing the 1% difference between the 2½% and 1½% income tax rates, constitutes erroneously or excessively paid tax, which may be the subject of a claim for issuance of TCC.

To prove its creditable taxes withheld (CWT) in the aggregate amount of ₱739,945.00 (total of ₱440,076.00 and ₱299,869.00), petitioner presented its *Certificates of Creditable Tax Withheld at Source* (BIR Forms No. 2307)[62] and *Summary Alphalist of Withholding Taxes* for fiscal year 2017.[63] However, verification of the said documents reveals that the taxes withheld amounting to ₱110,292.43, broken down below, shall be disallowed for reasons stated hereunder, and therefore, shall be deducted from petitioner's refundable amount, *viz*:

[60] Exhibits "P-15" to "P-16", "P-20" to "P-21", "P-25" to "P-26" and "P-30" to "P-31", Docket – Vol. 1, pp. 125 to 126, 324 to 325, 333 to 334 and 349 to 350, respectively.
[61] Exhibits "P-34" and "P-35", Docket – Vol. 1, pp. 359 to 368.
[62] Exhibits "P-102-2" to "P-102-54", "P-102-56" to "P-102-104", "P-102-107" to "P-102-163' and "P-102-166" to "P-102-236", as found in Exhibit "P-86-1" (USB dated 2021-05-17).
[63] Exhibits "P-102-1", "P-102-55", "P-102-105" to "P-102-106" and "P-102-164" to "P-102-165", as found in Exhibit "P-86-1" (USB dated 2021-05-17).

Exhibit No.	Payor's Name	Tax Withheld
CWT Certificates dated outside the period of claim		
"P-102-6"	DHL GLOBAL FORWARDING (PHILS) INC	₱ 7,700.10
"P-102-7"	DHL GLOBAL FORWARDING (PHILS) INC	199.12
"P-102-8"	DHL GLOBAL FORWARDING (PHILS) INC	9,665.93
"P-102-9"	DHL GLOBAL FORWARDING (PHILS) INC	12,287.01
"P-102-12"	DIMERCO EXPRESS PHILS INC	60.53
"P-102-17"	FIRST IMPERIAL CARGO INC	714.13
"P-102-18"	FIRST IMPERIAL CARGO INC	657.45
"P-102-19"	FIRST IMPERIAL CARGO INC	172.72
"P-102-20"	HANKYU HANSHIN EXPRESS PHILS INC	31.86
"P-102-34"	SDV (SCAC) PHILS INC	684.20
"P-102-35"	SDV (SCAC) PHILS INC	735.53
"P-102-36"	SDV (SCAC) PHILS INC	735.85
"P-102-38"	SKY FREIGHT FORWARDERS INC	3,397.09
"P-102-39"	SKY FREIGHT FORWARDERS INC	142.20
"P-102-51"	UTI GLOBAL LOGISTICS INC	91.98
"P-102-61"	BOLLORE LOGISTICS PHILIPPINES INC	15,622.62
"P-102-62"	BOLLORE LOGISTICS PHILIPPINES INC	2,677.37
CWT Certificates issued not in petitioner's name (as payee)		
"P-102-140"	KUEHNE AND NAGEL INC	13,702.14
"P-102-141"	KUEHNE AND NAGEL INC	2,459.58
"P-102-205"	KUEHNE AND NAGEL INC	1,986.39
"P-102-206"	KUEHNE AND NAGEL INC	5,926.39
"P-102-207"	KUEHNE AND NAGEL INC	2,687.01
"P-102-208"	KUEHNE AND NAGEL INC	7,835.41
"P-102-209"	KUEHNE AND NAGEL INC	4,943.08
CWT Certificates with incorrect or without the TIN of petitioner indicated therein		
"P-102-46"	TRANS-GLOBAL CONSOLIDATORS INC	5,918.22
"P-102-47"	TRANS-GLOBAL CONSOLIDATORS INC	1,123.97
"P-102-48"	TRANS-GLOBAL CONSOLIDATORS INC	154.66
"P-102-49"	TRANS-GLOBAL CONSOLIDATORS INC	3,190.29
"P-102-95"	TRANS-GLOBAL CONSOLIDATORS INC	532.75
"P-102-96"	TRANS-GLOBAL CONSOLIDATORS INC	166.32
"P-102-97"	TRANS-GLOBAL CONSOLIDATORS INC	785.17
"P-102-98"	TRANS-GLOBAL CONSOLIDATORS INC	101.02
"P-102-144"	ORIENT FREIGHT INTERNATIONAL Inc	245.66
"P-102-212"	ORIENT FREIGHT INTERNATIONAL Inc	86.69
"P-102-229"	TRANS-GLOBAL CONSOLIDATORS INC	222.75
"P-102-230"	TRANS-GLOBAL CONSOLIDATORS INC	440.17
CWT Certificates lacking the signature of the authorized signatory of the issuer		
"P-102-24"	PACIFIC AIR EXPRESS INC	521.54
"P-102-100"	UTI GLOBAL LOGISTICS INC	760.91
"P-102-107"	AIRLIFT ASIA INC	926.62
	Total	**₱110,292.43**

In sum, out of the claimed amount of ₱12,508,611.74, representing the 1% difference between the 2½% income tax rate used, and the 1 ½%

applicable income tax rate on petitioner's GPBs amounting to ₱1,250,861,174.00 for fiscal year ended March 31, 2017, petitioner has sufficiently proven entitlement to the issuance of TCC, but only to the extent of ₱12,398,319.19, computed as follows:

Income Tax Due (@ 1.5% of GPBs)			₱ 18,762,918.00
Less: Tax Credits/Payments			
Income tax payments for fiscal year ended March 31, 2017		₱30,531,584.62	
CWT for fiscal year ended March 31, 2017	₱739,945.00		
Less: CWT disallowances per Court's verification	110,292.43	629,652.57	31,161,237.19
Excessive payment of income tax			**₱12,398,319.19**

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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.

ROMAN G. DEL ROSARIO
Presiding Justice