Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

GULF AIR COMPANY, PHILIPPINE BRANCH (GF),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 182045

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
ABAD,
PEREZ,* and
MENDOZA, *JJ.*

Promulgated:

19 September 2012

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DECISION

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the January 30, 2008 Decision[1] and the March 12, 2008 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in C.T.A. E.B. No. 302 (C.T.A. Case No. 7030) entitled "*Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue.*"

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* Designated Additional Member, per Special Order No. 1299, dated August 28, 2012.
[1] *Rollo*, pp. 35-53; penned by Associate Justice Loveli R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova and Associate Justice Olga Palanca-Enriquez.
[2] Id. at 54-56.

The Facts

Petitioner Gulf Air Company Philippine Branch *(GF)* is a branch of Gulf Air Company, a foreign corporation duly organized in accordance with the laws of the Kingdom of Bahrain.[3]

On October 25, 2001, GF availed of the Voluntary Assessment Program of the Bureau of Internal Revenue (*BIR*) under Revenue Regulations 8-2001 for its 1999 and 2000 Income Tax and Documentary Stamp Tax and its Percentage Tax for the third quarter of 2000, paying a total of ₱11,964,648.00.[4]

GF also made a claim for refund of percentage taxes for the first, second and fourth quarters of 2000. In connection with this, a letter of authority was issued by the BIR authorizing its revenue officers to examine GF's books of accounts and other records to verify its claim.[5]

After its submission of several documents and an informal conference with BIR representatives, GF received its Preliminary Assessment Notice on November 4, 2003 for deficiency percentage tax amounting to ₱32,745,141.93. On the same day, GF also received a letter denying its claim for tax credit or refund of excess percentage tax remittance for the first, second and fourth quarters of 2000, and requesting the immediate settlement of the deficiency tax assessment.[6]

GF then received the Formal Letter of Demand, dated December 10, 2003, for the payment of the total amount of ₱33,864,186.62. In response, it

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[3] Id. at 4.
[4] Id. at 37.
[5] Id. at 37.
[6] Id. at 39-40.

filed a letter on December 29, 2003 to protest the assessment and to reiterate its request for reconsideration on the denial of its claim for refund.[7]

On June 30, 2004, the Deputy Commissioner, Officer-in-Charge of the Large Taxpayers Service of the BIR, denied GF's written protest for lack of factual and legal basis and requested the immediate payment of the ₱33,864,186.62 deficiency percentage tax assessment.[8]

Aggrieved, GF filed a petition for review with the CTA.[9] On March 21, 2007, the Second Division of the CTA dismissed the petition, finding that Revenue Regulations No. 6-66 was the applicable rule providing that gross receipts should be computed based on the cost of the single one-way fare as approved by the Civil Aeronautics Board *(CAB)*. In addition, it noted that GF failed to include in its gross receipts the special commissions on passengers and cargo. Finally, it ruled that Revenue Regulations No. 15-2002, allowing the use of the net net rate in determining the gross receipts, could not be given any or a retroactive effect. Thus, the CTA affirmed the decision of the BIR and ordered the payment of ₱41,117,734.01 plus 20% delinquency interest.[10]

GF elevated the case to the CTA *En Banc* which promulgated its Decision on January 30, 2008 dismissing the petition and affirming the decision of the CTA in Division. It found that Revenue Regulations No. 6-66 was the applicable rule because the period involved in the assessment covered the first, second and fourth quarters of 2000 and the amended percentage tax returns were filed on October 25, 2001. Revenue Regulations No. 15-2002, which took effect on October 26, 2002, could not be given

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[7] Id. at 41.
[8] Id.
[9] Id.
[10] Id. at 43-44.

retroactive effect because it was declarative of a new right as it provided a different rule in determining gross receipts.[11]

GF subsequently filed a motion for reconsideration but the same was denied by the CTA *En Banc* in its March 12, 2008 Resolution.

Hence, this petition.

The Issue

GF relies upon the following grounds for the allowance of its petition:

> **The honorable CTA En Banc erred in affirming the ruling of the Court in Division summarized on pages 8 to 9 of the January 30, 2008 decision, as follows:**
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> 1. **That the correct basis of the 3% Percentage Tax imposed under Section 118(A) of the 1997 NIRC on the quarterly gross receipts of international air carriers doing business in the Philippines is the fare approved by the CAB pursuant to Revenue Regulations 6-66; that Revenue Regulations 6-66 is the applicable implementing regulation and it is clearly provided therein that gross receipt shall be computed on the cost of the single one way fare as approved by the CAB on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo including mail, as reflected on the plane manifest of the carrier; and**
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> 2. **That the respondent was correct in adding back the special commissions on passengers and cargo to the gross receipt per return of petitioner in order to come up with the gross receipts subject to tax under Section 118(A) of the 1997 NIRC.**[12]

The sole issue to be resolved by the Court, as identified by the tax court, is whether the definition of "gross receipts," for purposes of

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[11] Id. at 49-50.
[12] Id. at 11-12.

computing the 3% Percentage Tax under Section 118(A) of the 1997 National Internal Revenue Code *(NIRC)*, should include special commissions on passengers and special commissions on cargo based on the rates approved by the CAB.[13]

The Court's Ruling

The petition has no merit.

GF questions the validity of Revenue Regulations No. 6-66, claiming that it is not a correct interpretation of Section 118(A) of the NIRC, and insisting that the gross receipts should be based on the "net net" amount – the amount actually received, derived, collected, and realized by the petitioner from passengers, cargo and excess baggage. It further argues that the CAB approved fares are merely notional and not reflective of the actual revenue or receipts derived by it from its business as an international air carrier.[14]

GF also insists that its construction of "gross receipts" to mean the "net net" amount actually received, rather than the CAB approved rates as mandated by Revenue Regulations No. 6-66, has been validated by the issuance of Revenue Regulations No. 15-2002 which expressly superseded the former.

Finally, GF contends that because the definition of gross receipts under the questioned regulations is contrary to that given under the other sections of the NIRC on value-added tax and percentage taxes, the legislative intention was to collect the percentage tax based solely on the actual receipts derived and collected by the taxpayer. Given that Revenue Regulations No. 6-66 allegedly conflicts with Section 118 of the NIRC as

[13] Id. at 11 and 44.
[14] Id. at 13-15.

well as with the other sections on percentage tax, GF concludes that the former was effectively repealed, amended or modified by the NIRC.[15]

Section 118(A) of the NIRC states that:

> Sec. 118. Percentage Tax on International Carriers. –
>
> (A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.

Pursuant to this, the Secretary of Finance promulgated Revenue Regulations No. 15-2002, which prescribes that "gross receipts" for the purpose of determining Common Carrier's Tax shall be the same as the tax base for calculating Gross Philippine Billings Tax.[16] Section 5 of the same provides for the computation of "Gross Philippine Billings":

> Sec. 5. Determination of Gross Philippine Billings. –
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> (a) In computing for "Gross Philippine Billings," there shall be included the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or 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 passage documents.
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> **The gross revenue for passengers whose tickets are sold in the Philippines shall be the actual amount derived for transportation services, for a first class, business class or economy class passage, as the case may be, on its continuous and uninterrupted flight from any port or point in the Philippines to its final destination in any port or point of a foreign country, as reflected in the remittance area of the tax coupon forming an integral part of the plane ticket. For this purpose, the Gross Philippine Billings shall be determined by computing the monthly average net fare of all the tax coupons of plane tickets issued for the month** per point of final destination, per class of passage (i.e., first class, business class, or economy class) and per classification of passenger (i.e., adult, child or infant) and multiplied by the corresponding total number of passengers flown for the month as declared in the flight manifest.
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> For tickets sold outside the Philippines, the gross revenue for passengers for first class, business class or economy class passage, as the case may be, on a continuous and uninterrupted flight from any port of point in the Philippines to final destination in any port

[15] Id. at 24-26.
[16] Section 10, Revenue Regulations No. 15-2002.

> or point of a foreign country shall be determined using the locally available net fares applicable to such flight taking into consideration the seasonal fare rate established at the time of the flight, the class of passage (whether first class, business class, economy class or non-revenue), the classification of passenger (whether adult, child or infant), the date of embarkation, and the place of final destination. Correspondingly, the Gross Philippine Billing for tickets sold outside the Philippines shall be determined in the manner as provided in the preceding paragraph.
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> Passage documents revalidated, exchanged and/or endorsed to another on-line international airline shall be included in the taxable base of the carrying airline and shall be subject to Gross Philippine Billings tax if the passenger is lifted/boarded on an aircraft from any port or point in the Philippines towards a foreign destination.
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> The gross revenue on excess baggage which originated from any port or point in the Philippines and destined to any part of a foreign country shall be computed based on the actual revenue derived as appearing on the official receipt or any similar document for the said transaction.
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> The gross revenue for freight or cargo and mail shall be determined based on the revenue realized from the carriage thereof. The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting therefrom the amount of discounts granted which shall be validated using the monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS) for airway bills issued through their cargo agents or the monthly reports prepared by the airline themselves or by their general sales agents for direct issues made. The amount realized for mails shall, on the other hand, be determined based on the amount as reflected in the cargo manifest of the carrier.
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> xxx [Emphasis and underscoring supplied]

This expressly repealed Revenue Regulations No. 6-66 that stipulates a different manner of calculating the gross receipts:

> Sec. 5. Gross Receipts, how determined. – The total amount of gross receipts derived from passage of persons, excess baggage, freight or cargo, including, mail cargo, 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, shall be subject to the common carrier's percentage tax (Sec. 192, Tax Code). **The gross receipts shall be computed on the <u>cost of the single one way fare as approved by the Civil Aeronautics Board</u> on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail, as reflected on the plane manifest of the carrier.**

> Tickets revalidated, exchanged and/or indorsed to another international airline are subject to percentage tax if lifted from a passenger boarding a plane in a port or point in the Philippines.
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> In case of a flight that originates from the Philippines but transhipment of passenger takes place elsewhere on another airline, the gross receipts reportable for Philippine tax purposes shall be the portion of the cost of the ticket corresponding to the leg of the flight from port of origin to the point of transhipment.
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> In case of passengers, the taxable base shall be gross receipts less 25% thereof. [Emphasis and underscoring supplied]

There is no doubt that prior to the issuance of Revenue Regulations No. 15-2002 which became effective on October 26, 2002, the prevailing rule then for the purpose of computing common carrier's tax was Revenue Regulations No. 6-66. While the petitioner's interpretation has been vindicated by the new rules which compute gross revenues based on the actual amount received by the airline company as reflected on the plane ticket, this does not change the fact that during the relevant taxable period involved in this case, it was Revenue Regulations No. 6-66 that was in effect.

GF itself is adamant that it does not seek the retroactive application of Revenue Regulations No. 15-2002.[17] Even if it were inclined to do so, it cannot insist on the application of the said rules because tax laws, including rules and regulations, operate prospectively unless otherwise legislatively intended by express terms or by necessary implication.[18]

Although GF does not dispute that Revenue Regulations No. 6-66 was the applicable rule covering the taxable period involved, it puts in issue the wisdom of the said rule as it pertains to the definition of gross receipts.

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[17] *Rollo*, pp. 23-24 and 197.
[18] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 460 (2003).

GF is reminded that rules and regulations interpreting the tax code and promulgated by the Secretary of Finance, who has been granted the authority to do so by Section 244 of the NIRC, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."[19]

As such, absent any showing that Revenue Regulations No. 6-66 is inconsistent with the provisions of the NIRC, its stipulations shall be upheld and applied accordingly. This is in keeping with our primary duty of interpreting and applying the law. Regardless of our reservations as to the wisdom or the perceived ill-effects of a particular legislative enactment, the court is without authority to modify the same as it is the exclusive province of the law-making body to do so.[20] As aptly stated in *Saguiguit v. People*,[21]

> xxx Even with the best of motives, the Court can only interpret and apply the law and cannot, despite doubts about its wisdom, amend or repeal it. Courts of justice have no right to encroach on the prerogatives of lawmakers, as long as it has not been shown that they have acted with grave abuse of discretion. And while the judiciary may interpret laws and evaluate them for constitutional soundness and to strike them down if they are proven to be infirm, this solemn power and duty does not include the discretion to correct by reading into the law what is not written therein.[22]

Moreover, the validity of the questioned rules can be sustained by the application of the principle of legislative approval by re-enactment. Under the aforementioned legal concept, "where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."[23] Thus, there is tacit approval

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[19] *Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 639-640.
[20] *Romualdez v. Marcelo*, 529 Phil. 90, 111 (2006) and *Paredes v. Manalo*, 313 Phil. 756, 762 (1995).
[21] 526 Phil. 618 (2006).
[22] Id. at 624.
[23] *Howden v. Collector of Internal Revenue*, 121 Phil. 579, 587 (1965).

of a prior executive construction of a statute which was re-enacted with no substantial changes.[24]

In this case, Revenue Regulations No. 6-66 was promulgated to enforce the provisions of Title V, Chapter I (Tax on Business) of Commonwealth Act No. 466 (National Internal Revenue Code of 1939), under which Section 192, pertaining to the common carrier's tax, can be found:

> Sec. 192. Percentage tax on carriers and keepers of garages. – Keepers of garages, transportation contractors, persons who transport passenger or freight for hire, and **common carriers by land, air, or water**, except owners of bancas, and owners of animal-drawn two-wheeled vehicles, **shall pay a tax equivalent to two per centum of their monthly gross receipts.** [Emphasis supplied]

This provision has, over the decades, been substantially reproduced with every amendment of the NIRC, up until its recent reincarnation in Section 118 of the NIRC.

The legislature is presumed to have full knowledge of the existing revenue regulations interpreting the aforequoted provision of law and, with its subsequent substantial re-enactment, there is a presumption that the lawmakers have approved and confirmed the rules in question as carrying out the legislative purpose.[25] Hence, it can be concluded that with the continued duplication of the NIRC provision on common carrier's tax, the law-making body was aware of the existence of Revenue Regulations No. 6-66 and impliedly endorsed its interpretation of the NIRC and its definition of gross receipts.

Although the Court commiserates with GF in its predicament, it is left with no choice but to uphold the validity of Revenue Regulations No. 6-66

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[24] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586, 617 (2005).
[25] Id.

and apply it to the case at bench, thus upholding the ruling of the CTA. There is no cause to reverse the decision of the tax court. As a specialized court dedicated exclusively to the study and resolution of tax issues, the CTA has developed an expertise on the subject of taxation.[26] The Court cannot be compelled to set aside its decisions, unless there is a finding that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.[27] Therefore, its findings are accorded the highest respect and are generally conclusive upon this court, in the absence of grave abuse of discretion or palpable error.[28]

On a final note, it is incumbent on the Court to emphasize that tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[29] Regrettably, the petitioner in the case at bench failed to unequivocally prove that it is entitled to a refund.

WHEREFORE, the petition is **DENIED**. The January 30, 2008 Decision and the March 12, 2008 Resolution of the Court of Tax Appeals in C.T.A. E.B. No. 302 (C.T.A. Case No. 7030) are hereby **AFFIRMED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[26] *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999).
[27] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561-562.
[28] *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010, 634 SCRA 205, 213.
[29] *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, 531 Phil. 264, 267-268 (2006).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice