Supreme Court E-Library

SECOND DIVISION

[G.R. No. 67938. December 19, 1989]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AMERICAN AIRLINES, INC. and COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE, AS AMENDED; OFF-LINE INTERNATIONAL CARRIER; LIABLE TO PAY 2% TAX ON GROSS PHILIPPINE BILLINGS. — We have already had the occasion to rule on this issue in two previous cases involving the British Overseas Airways Corporation and Air India, generated by similar factual backgrounds although of different taxable periods. In said cases, foreign airline companies which sold tickets in the Philippines through their local agents, whether called liaison offices, agencies or branches, were considered resident foreign corporations engaged in trade or business in the country. Such activities show continuity of commercial dealings or arrangements and performance of acts or works or the exercise of some functions normally incident to and in progressive prosecution of commercial gain or for the purpose and object of the business organization. It was likewise declared that for the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activities within this country. In the case of these airline companies, the absence of flight operations within Philippine territory cannot alter the fact that the income was derived from activity within this jurisdiction for.

2. ID.; ID.; ASSESSMENT OF DEFICIENCY INTEREST PROPER IN CASE AT BAR. — The assessment of the additional amount of ₱88,206.30 by way of deficiency interest is also proper. Under Section 51(d) of the tax code then in force, interest of 14% per annum was prescribed, but with the qualification that the maximum amount that may be collected as interest on the tax deficiency should not exceed such interest corresponding to three (3) years, or a maximum of 42%. This was the interest rate at the time of the accrual of the tax liability of respondent, several

Supreme Court E-Library

years before the changes brought about by Presidential Decree No. 1705 which took effect on August 1, 1980.

3. **ID.; ID.; ADDITIONAL INTEREST UNDER SECTION 51(e) (2); BASIS OF COMPUTATION.** — Private respondent is liable to pay the interest provided in Section 51 (e)(2) of the code in addition to the interest under Section 51 (d). Such additional interest shall be computed from the date when petitioner demanded payment of the tax deficiency and shall be based upon the entire amount of the unpaid liability inclusive of the previous interest. But, again, the aforesaid additional interest shall in no case exceed the amount corresponding to a period of three (3) years. In the present case, the maximum should be 54%, broken down into 14% for the first year and 20% for the next two (2) years thereafter. At the time the demand letter was received by respondent on August 8, 1979, the rate of interest under Section 51(e)(2) was 14% per annum until it was increased to 20% per annum on August 1, 1980 by the amendments introduced by Presidential Decree No. 1705. Thus, the additional interest is ₱161,039.50.

4. **ID.; ID.; ID.; 5% SURCHARGE; PROPER IN VIEW OF THE NON-PAYMENT OF TAX DEFICIENCY WITHIN THIRTY DAYS AFTER NOTICE AND DEMAND.** — We find it justified to grant the prayer for the 5% surcharge authorized in Section 51(e)(3) for non-payment of the tax deficiency within thirty (30) days after notice and demand. The surcharge in this case is ₱10,500.75, or 5% of the actual deficiency income tax, which surcharge is payable in addition to all other increment provided by the tax code.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Sycip, Salazar, Feliciano and *Hernandez* for private respondent.

Supreme Court E-Library

DECISION

REGALADO, *J.*:

Petitioner Commissioner of Internal Revenue comes to this Court seeking the reversal of the decision of the Court of Tax Appeals (CTA, for short), promulgated on April 16, 1984 in CTA Case No. 3046. Respondent American Airlines Inc. was absolved in said decision of liability for the tax imposed under Section 24(b)(2) of the National Internal Revenue Code, as amended by Presidential Decree No. 69 promulgated on November 24, 1972. The provision reads:

"(2) *Resident corporations.* — A corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade and business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources in the Philippines: *Provided, however*, That international carriers shall pay a tax of two and one-half per cent on their gross Philippine billings."

Said section 24(b)(2) was further amended by Presidential Decree No. 1355, promulgated on April 21, 1978, stating that:

"x x x 'Gross Philippine Billings' include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail (shall) include the gross freight charge up to final destination. Gross revenue from chartered flights originating from the Philippines shall likewise form part of 'Gross Philippine Billings' regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights, the term 'originating from the Philippines' shall include flight of passengers who stay in the Philippines for more than forty-eight(48) hours prior to embarkation."

There is no dispute that respondent airline company was duly organized under the laws of the United States of America. It is an off-line international carrier without any flight originating from the Philippines. However, by virtue of BOI Certificate of

Supreme Court E-Library

Authority No. 267 and a license issued by the Securities and Exchange Commission dated August 2 , 1973, a liaison office was established by it in this country for passenger and flight information and reservation and to render ticketing services.[1]

In early 1979, petitioner assessed respondent company for deficiency income tax, interest and compromise penalty for the year 1974, amounting to ₱298,521.30. On August 8, 1979, private respondent received from petitioner a letter of demand with notice of assessment dated July 31, 1979.[2] On the gross Philippine billings which, upon investigation, was in the amount of ₱8,400,617.00, the assessment was arrived at under the following computation:

Income tax due thereon (2-1/2%)	₱210,015.00
Add: 14% interest per annum from 4-16-75 to 7-31-79	88,206.30
Compromise penalty, for failure to file return and late payment of the tax	300.00
Total amount due	₱298,521.30

In subsequent submissions, petitioner prays that respondent be ordered to pay, in addition to the aforesaid amount of ₱298,521.30, "5% surcharge and interest at the rate of 14% per annum from July 31, 1979 up to July 31, 1980 and interest at the rate of 20% per annum from August 1, 1980 to July 31, 1982 pursuant to Section 51(e)(2) and (3) of the Tax Code as amended by P.D. No. 1705 which took effect on August 1, 1980."[3]

Private respondent protested the assessment on August 20, 1979 asking that the same be withdrawn and cancelled. Petitioner, in his letter dated September 14, 1979, denied the request

---

[1] *Rollo*, 31-33.

[2] *Ibid.*, 40.

[3] Brief for Petitioner, 15; *Rollo*, 143.

Supreme Court E-Library

informing the respondent that such letter was the final decision on the protest. A copy thereof was received by private respondent on October 25, 1979.[4]

Consequently, private respondent filed a petition for review with respondent court on November 23, 1979 contending that it was not doing business in the Philippines and that selling tickets is not an activity subject to the assessed tax on gross Philippine billings.[5] An answer rebutting the allegation in the petition was filed by petitioner with respondent court on April 24, 1980.[6]

As earlier mentioned, respondent court reversed the appealed decision of petitioner, relying on its earlier rulings where it held that "the acts of a foreign corporation in the business of international air carriage and of selling passage tickets in the Philippines through its agent; in maintaining of (*sic*) an office in the Philippines for promotion and information purposes; and the receipt of payments for passage tickets sold in the Philippines from passengers from the Philippines do not make such international air carrier engaged in business in the Philippines x x x ."[7]

The controversy is now before this Court, elevated by petitioner on the issue of whether or not respondent American Airlines, Inc., which is an off-line international carrier without flight operations in this country but rendering ticketing services herein, is liable to pay the 2-1/2% tax on its gross Philippine billings pursuant to Section 24(b)(2), as amended, of the tax code.

We have already had the occasion to rule on this issue in two previous cases involving the British Overseas Airways Corporation and Air India, generated by similar factual backgrounds although of different taxable periods.[8]

---

[4] *Ibid.*, 32.

[5] *Ibid.*, 31-34.

[6] *Ibid.*, 36-28.

[7] *Ibid.*, 47-48.

[8] *Commissioner of Internal Revenue vs. British Overseas Airways Corporation, et al.*, 149 SCRA 395 (1987); *Commissioner of Internal Revenue vs. Air India, et al.*, 157 SCRA 648 (1988).

Supreme Court E-Library

In said cases, foreign airline companies which sold tickets in the Philippines through their local agents, whether called liaison offices, agencies or branches, were considered resident foreign corporations engaged in trade or business in the country. Such activities show continuity of commercial dealings or arrangements and performance of acts or works or the exercise of some functions normally incident to and in progressive prosecution of commercial gain or for the purpose and object of the business organization.[9]

It was likewise declared that for the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activities within this country. In the case of these airline companies, the absence of flight operations within Philippine territory cannot alter the fact that the income was derived from activity within this jurisdiction for, as lucidly explained by Mme. Justice Melencio-Herrera in the *British Overseas Airways Corporation* case:

"x x x the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The situs of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

"A transportation ticket is not a mere piece of paper. When issued by a common carrier, it constitutes the contract between the ticket-holder and the carrier. It gives rise to the obligation of the purchaser of the ticket to pay the fare and the corresponding obligation of the carrier to transport the passenger upon the terms and conditions set forth thereon. The ordinary ticket issued to members of the travelling public in general embraces within its terms all the elements to constitute a valid contract, binding upon the parties entering into the relationship.

"True, Section 37(a) of the Tax Code, which enumerates items of gross income from sources within the Philippines, namely: (1) interest,

---

[9] *Id.; Id.*; see also Sec. 1, R.A. No. 5455.

Supreme Court E-Library

(2) dividends, (3) service, (4) rentals and royalties, (5) sale of real property, and (6) sale of personal property, does not mention income from the sale of tickets of international transportation. However, that does not render it less an income from within the Philippines. Section 37, by its language, does not intend the enumeration to be exclusive. It merely directs that the types of income listed therein be treated as income from sources within the Philippines. A cursory reading of the section will show that it does not state that it is an all-inclusive enumeration, and that no other kind of income may be considered."[10]

The 2-1/2% tax on gross Philippine billings imposed under the proviso added by Presidential Decree No. 69 to Section 24 (b) (2) is an income tax levied on the presumed gain of the airline companies. Such proviso and the statutory definition of gross Philippine billings provided by Presidential Decree No. 1355 ensured that international airlines are taxed on the income they derive from Philippine sources. The revenues from the sale of tickets having been derived from Philippine sources, there is no cogency to the contention that said airlines are not subject to the aforestated tax.

The inexorable conclusion, therefore, is that respondent American Airlines, Inc., being a resident foreign corporation engaged in business in the Philippines and deriving income from Philippine sources, the assessment of the aforestated deficiency tax against it was correct and valid.

The assessment of the additional amount of ₱88,206.30 by way of deficiency interest is also proper. Under Section 51(d) of the tax code then in force, interest of 14% per annum was prescribed, but with the qualification that the maximum amount that may be collected as interest on the tax deficiency should not exceed such interest corresponding to three (3) years, or a maximum of 42%. This was the interest rate at the time of the accrual of the tax liability of respondent, several years before the changes brought about by Presidential Decree No. 1705 which took effect on August 1, 1980.

---

[10] *Supra*, 407-408.

Supreme Court E-Library

Private respondent is likewise liable to pay the interest provided in Section 51 (e)(2) of the code in addition to the interest under Section 51 (d). Such additional interest shall be computed from the date when petitioner demanded payment of the tax deficiency and shall be based upon the entire amount of the unpaid liability inclusive of the previous interest. But, again, the aforesaid additional interest shall in no case exceed the amount corresponding to a period of three (3) years. In the present case, the maximum should be 54%, broken down into 14% for the first year and 20% for the next two (2) years thereafter. At the time the demand letter was received by respondent on August 8, 1979, the rate of interest under Section 51(e)(2) was 14% per annum until it was increased to 20% per annum on August 1, 1980 by the amendments introduced by Presidential Decree No. 1705. Thus, the additional interest is ₱161,039.50.

We also find it justified to grant the prayer for the 5% surcharge authorized in Section 51(e)(3) for non-payment of the tax deficiency within thirty (30) days after notice and demand. The surcharge in this case is ₱10,500.75, or 5% of the actual deficiency income tax, which surcharge is payable in addition to all other increment provided by the tax code.

ACCORDINGLY the decision of the Court of Tax Appeals, dated April 16, 1984, is hereby *SET ASIDE*. Private respondent shall pay the deficiency income tax of ₱210,015.00, deficiency interest of ₱88,206.30 provided under Section 51(d), ₱161,039.50 by way of interest imposed by Section 51 (e)(2), and surcharge of ₱10,500.75 prescribed in Section 51(e)(3), all of the tax code, or a total liability of ₱469,761.55. Without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera (Chairman), Padilla, and *Sarmiento, JJ.*, concur.

Paras, J., took no part. Son is partner of Sycip, *et al.*