

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SOUTH AFRICAN AIRWAYS,
Petitioner,

C.T.A. EB No. 118
(C.T.A. Case No. 6760)

VERSUS

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Present:

Acosta, P.J.,
Castafeda, Jr.,
Santista,
Uy,
Casanova, and
Palencia-Enriquez, JJ.

Promulgated:

DEC 02 2005 *M. Galina*

DECISION

ACOSTA, P.J.:

This is a Petition for Review seeking the reversal and setting aside of the Decision of this Court's First Division dated June 5, 2005, denying petitioner's claim for refund of alleged erroneously paid tax on Gross Philippine Billings for the taxable year 2001 and the subsequent Resolution dated September 5, 2005, denying the Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Petitioner is a non-resident foreign corporation organized and existing under the laws of the Republic of South Africa with principal office at Airways Park, Jones Road, Johannesburg International Airport, South Africa, 1672. It is an off-line international air carrier having no landing rights in the Philippines. Consequently, it

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." *(Emphasis supplied)*

The petitioner is a resident foreign corporation engaged in trade or business in the country within the purview of our tax law and must be subject to tax. It sells passage documents in the Philippines through its sales agent Aerotel and it derives revenues from the conduct of its business activity regularly pursued within the Philippines. The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation.

The Honorable Supreme Court in some of its landmark decisions affirmed the validity of the afore-mentioned finding. Among these are the cases of Commissioner of Internal Revenue vs. American Airlines, Inc., 180 SCRA 216 and Commissioner of Internal Revenue vs. British Overseas Airways, Corp., 149 SCRA 396, where the High Tribunal clarified that:

"The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. xxx The test of taxability is the 'source'; and the source of an income is that activity xxx which produced the income. Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a business activity regularly pursued within the Philippines. And even if the BOAC tickets sold covered the 'transport of passengers and cargo to and from foreign cities', it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word 'source' conveys one essential idea that of origin, and the origin of the income herein is the Philippines." *(Emphasis supplied)*

The High Court in the same case of Commissioner of Internal Revenue vs. British Overseas Airways Corporation, supra, expounded further in this manner:

"Gross income' includes gains, profits, and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from profession, vocations, trades, business, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such

