

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

AIR NEW ZEALAND,

Petitioner,

C.T.A. E.B. NO. 153
(C.T.A. CASE NO. 6761)

Prose:

- versus -

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

AUG 28 2006 *En Polinario*

DECISION

UY, JJ.

This is a Petition for Review before the Court of Tax Appeals En Banc filed on January 11, 2006 of the Decision promulgated on September 12, 2005 and the Resolution promulgated on December 15, 2005 rendered by the First Division of this Court pursuant to Section 11 of Republic Act No. 9282, the respective dispositive portions of which read as follows:

DECISION dated September 12, 2005: CTA CASE NO. 6761

To recapitulate, the petitioner, as resident foreign corporation engaged in trade or business in the Philippines, is

not liable to pay tax on Gross Philippine Billings as provided in Section 28(A)(3)(a) of the Tax Code. However, it is still liable to pay thirty two percent (32%) of its taxable income derived from its sales of passage documents here in the Philippines.

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.^{1/2}

RESOLUTION On dated December 10, 2000 CTA CASE NO. 8761

"There being no new matter or argument advanced in the petitioner's Motion for Reconsideration which may compel this Court's First Division to reverse, modify or depart from the assailed decision, the same is hereby **DENIED** for lack of merit.

SO ORDERED.^{1/2}

Culled from the assailed Decision, the established facts of the case are as follows:

Petitioner is a foreign corporation organized and existing under the laws of New Zealand with principal office at ANZ Level 21, Quay Tower, 28 Customs Street, West Auckland (New Zealand). It is an off-line international air carrier having no landing rights in the Philippines. Consequently, it does not maintain flight operations to and from the Philippines.

Petitioner is likewise not licensed to do business in the Philippines inasmuch as it is not registered with the Securities and Exchange Commission (SEC) as a corporation, branch office or partnership.

It, however, has a general sales agent in the Philippines, Aerotel Limited Corporation (Aerotel) which among others, sells passage documents for compensation or commission covering petitioners off-line flights.

^{1/} Assailed Decision: RoCo, p.42.

^{2/} Assailed Resolution: RoCo, p.43

In support of its Petition for Review, petitioner presents the following arguments:

- a. "Petitioner, as an off-line international carrier, is not engaged in trade or business in the Philippines. Thus, it is not a resident foreign corporation subject to the 32% income tax imposed by Section 28(A)(1) of the 1997 NIRC on resident foreign corporations."
- b. "Income taxation of international carriers is specifically covered by Section 28(A)(3) of the 1997 NIRC, imposing the 2.5% tax on Gross Philippines Billings. Thus, it necessarily precludes the application of Section 28(A)(1) of the 1997 NIRC, which is a general provision of law imposing the 32% regular corporate income tax on resident foreign corporations."
- c. "The RP-New Zealand Tax Treaty similarly precludes the application of Article 7 on Business Profits where income from Shipping and Air Transport is covered in Article 8 thereof."
- d. "The denial of the instant claim for refund on the basis of the Honorable Court's determination that petitioner is subject to the 32% income tax has no legal basis and violates due process."
- e. "The Honorable Court's Decision will result to an inequitable, absurd and unreasonable taxation among online and off-line international carriers."

No comment thereto was filed by the respondent within the extended period requested, or until March 3, 2006. Hence, this decision.

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review, and its annexes, would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the First Division of this Court.

functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization.”

“In order that a foreign corporation may be regarded as doing business, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. In other words, a foreign airline company selling tickets in the Philippines through their local agents, whether liaison offices, agencies or branches, as in the case at bar, shall be considered as resident foreign corporation engaged in trade or business in that country for 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.” (Emphasis supplied)⁴

The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. Petitioner admitted that 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. Hence, 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.⁵

As correctly pointed out by the First Division of this Court, the Supreme Court has already sustained the validity of the aforesaid finding in several cases.⁶ As a matter of fact, it was clarified that the definition of gross

⁴ CTA Case No. 6372, December 12, 2004.

⁵ Assailed Decision, *Id.*, pp.40-41.

⁶ Citing *Commissioner of Internal Revenue vs. American Airlines, Inc.* (180 SCRA 274), *Commissioner of Internal Revenue vs. British Overseas Airways, Corp.* (149 SCRA 395), and *Commissioner of Internal Revenue vs. Japan Airlines, Inc.* (202 SCRA 430).

WHEREFORE, premises considered, the instant petition is hereby
DENIED for lack of merit.

SO ORDERED.


ERLINDA P. DY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is 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 En Banc.


ERNESTO D. ACOSTA
Presiding Justice