

## THIRD DIVISION

[ G.R. Nos. 206079-80, January 17, 2018 ]

**PHILIPPINE AIRLINES, INC. (PAL), PETITIONER, V. COMMISSIONER OF  
INTERNAL REVENUE, RESPONDENT.**

[G.R. No. 206309, January 17, 2018]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. PHILIPPINE  
AIRLINES, INC. (PAL), RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

Before this Court are two (2) consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court assailing the August 14, 2012 Decision<sup>[1]</sup> and February 25, 2013 Resolution<sup>[2]</sup> of the Court of Tax Appeals En Banc in CTA EB Nos. 749 and 757 (CTA Case No. 6877).

These consolidated cases stem from a refund claim by Philippine Airlines, Inc. (PAL) for final taxes withheld on its interest income from its peso and dollar deposits with China Banking Corporation (Chinabank), JP Morgan Chase Bank (JPMorgan), Philippine Bank of Communications (PBCom), and Standard Chartered Bank (Standard Chartered) (collectively, Agent Banks).<sup>[3]</sup>

G.R. Nos. 206079-80 involves the Petition filed by PAL questioning the denial of its claim for refund of P510,233.16 and US\$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.<sup>[4]</sup>

Meanwhile, G.R. No. 206309 involves the Petition filed by the Commissioner of Internal Revenue (Commissioner) assailing the grant to PAL of the tax refund of P1,237,646.43, representing the final income tax withheld and remitted by JPMorgan.<sup>[5]</sup>

PAL asserts that it is entitled to a refund of the withheld taxes because it is exempted from paying the tax on interest income under its franchise, Presidential Decree No. 1590.<sup>[6]</sup> However, the Commissioner refused to grant the claim, arguing that PAL failed to prove the remittance of the withheld taxes to the Bureau of Internal Revenue.<sup>[7]</sup>

Thus, the issue involves whether or not PAL is required to prove the *remittance* to the Bureau of Internal Revenue of the final withholding tax on its interest from currency bank deposits to be entitled to tax refund.

The Court of Tax Appeals Special First Division ordered the refund to PAL of P1,237,646.43 representing the final income tax withheld and remitted by JPMorgan on PAL's interest income. However, it denied the refund of P510,223.16 and US\$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.<sup>[8]</sup> The Court of Tax Appeals En Banc affirmed the Decision of the Court of Tax Appeals Special First Division.<sup>[9]</sup>

The facts are as follows:

Sometime in 2002, PAL made US dollar and Philippine peso deposits and placements in the following Philippine banks: Chinabank, JPMorgan, PBCom, and Standard Chartered.<sup>[10]</sup>

PAL earned interest income from these deposits and the Agent Banks deducted final withholding taxes.<sup>[11]</sup>

From Chinabank, PAL claimed that it earned interest income net of withholding tax in the amount of US\$480,688.76 in its US dollar time deposit for the year 2002.<sup>[12]</sup> Substantiating this claim was Chinabank's Certification dated October 24, 2003,<sup>[13]</sup> which stated that withholding taxes were deducted

from PAL's interest income in the amount of US\$38,974.75. These taxes were remitted to the Bureau of Internal Revenue on different dates from February 11, 2002 to January 10, 2003.<sup>[14]</sup>

From JPMorgan, PAL alleged that it earned interest income in its peso deposit in the amount of P6,188,232.17, from September 2002 to December 2002. JPMorgan deducted withholding tax totalling P1,237,646.43.<sup>[15]</sup>

From PBCom, PAL maintained that it earned interest income from its various dollar placements for the year 2002, with the following corresponding final taxes withheld:<sup>[16]</sup>

<b>CERTIFICATE FOR THE PERIOD</b>	<b>INTEREST INCOME</b>	<b>TAX WITHHELD</b>
1 <sup>st</sup> Quarter	US\$ 102,648.40	US\$ 7,698.63
2 <sup>nd</sup> Quarter	US\$ 22,653.20	US\$ 1,698.00
3 <sup>rd</sup> Quarter	US\$ 40,123.73	US\$ 3,009.28
4 <sup>th</sup> Quarter	US\$ 107,163.73	US\$ 8,037.28
TOTAL	US\$ 272,589.06	US\$ 20,443.19

PAL's peso deposit account with PBCom also allegedly earned interest income for the year 2002, with the following corresponding final taxes withheld:<sup>[17]</sup>

<b>CERTIFICATE FOR THE PERIOD</b>	<b>INTEREST INCOME</b>	<b>TAX WITHHELD</b>
2 <sup>nd</sup> Quarter	P 541,758.42	P 108,351.67
3 <sup>rd</sup> Quarter	P 2,009,357.41	P 401,871.46
TOTAL	P 2,551,115.83	P 510,223.13

A letter dated April 10, 2003 from PBCom's Branch Manager, Carmencita L. Tan, stated that the taxes withheld from PAL's interest income had been remitted by PBCom to the Bureau of Internal Revenue.<sup>[18]</sup>

From Standard Chartered, PAL stated that it earned interest income in its dollar time deposit account from May 2002 to December 2002, amounting to US\$86,107.55. The amount of US\$6,458.14 was deducted and allegedly remitted to the Bureau of Internal Revenue as final withholding tax.<sup>[19]</sup>

Claiming that it was exempt from final withholding taxes under its franchise, Presidential Decree No. 1590, PAL filed with the Commissioner on November 3, 2003 a written request for a tax refund<sup>[20]</sup> of the withheld amounts of P1,747,869.59 and US\$65,877.07.<sup>[21]</sup>

The Commissioner failed to act on the request. Thus, on February 24, 2004, PAL elevated the case to the Court of Tax Appeals in Division.<sup>[22]</sup>

In her Answer, the Commissioner contended that PAL's claim was subject to administrative routinary investigation or examination by the Bureau of Internal Revenue. She also alleged that PAL's claim was not properly documented, and that it must show that it complied with the prescriptive period for filing refunds under Sections 204(C) and 229 of the National Internal Revenue Code. It likewise asserted that claims for refund are of the same nature as a tax exemption, and thus, are strictly construed against the claimant.<sup>[23]</sup>

PAL presented evidence to support its claim. The Commissioner then submitted the case for decision based on the pleadings.<sup>[24]</sup>

In its November 9, 2010 Decision,<sup>[25]</sup> the Court of Tax Appeals Special First Division partially granted PAL's Petition and ordered the Commissioner to refund PAL P1,237,646.43, representing the final income tax withheld and remitted by JPMorgan. It denied the remaining claim for refund of P510,223.16 and US\$65,877.07 representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.<sup>[26]</sup>

The Court of Tax Appeals Special First Division found that PAL was exempted from final withholding tax on interest on bank deposits.<sup>[27]</sup> However, it ruled that PAL failed to adequately substantiate its claim because it did not prove that the Agent Banks, with the exception of JPMorgan, remitted the withheld

amounts to the Bureau of Internal Revenue.<sup>[28]</sup> PAL only presented documents<sup>[29]</sup> which showed the total amount of final taxes withheld for all branches of the banks.<sup>[30]</sup> As such, the amount of tax withheld from and to be refunded to PAL could not be ascertained with particularity.<sup>[31]</sup> It ruled that the Certificates of Final Tax Withheld at Source are not sufficient to prove remittance.<sup>[32]</sup> Thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND in favor of petitioner the reduced amount of P1,237,646.43, representing the 20% final income tax withheld and remitted by JP Morgan Chase bank on petitioner's interest income; while the remaining claim of P510,223.16 and US\$65,877.07, representing the final income tax withheld by China Banking Corporation, Philippine Bank of Communication[s], and Standard Chartered Bank are hereby DENIED due to insufficiency of evidence.

SO ORDERED.<sup>[33]</sup>

The Court of Tax Appeals Special First Division denied the separate motions for reconsideration filed by the parties. Thus, both parties filed separate appeals before the Court of Tax Appeals En Banc, which consolidated the cases.<sup>[34]</sup>

In its August 14, 2012 Decision, the Court of Tax Appeals En Banc denied the petitions and affirmed the decision of the Court of Tax Appeals Special First Division.<sup>[35]</sup> The Court of Tax Appeals En Banc sustained that PAL needed to prove the remittance of the withheld taxes because although remittance is the responsibility of the banks as withholding agents, remittance was put in issue in this case. Thus, the Court of Tax Appeals Special First Division correctly made a ruling on it.<sup>[36]</sup>

It found that PAL was able to establish the remittance of the taxes withheld by JPMorgan because the monthly remittance returns were identified by PAL's witness and were formally offered in the Court of Tax Appeals Special First Division without objections to their admissibility. It ruled that the monthly remittance returns may be considered even if they were only presented in the Court of Tax Appeals Special First Division as it is a court of record and is required to conduct a formal trial.<sup>[37]</sup>

It sustained that PAL failed to prove the remittance by Chinabank, PBCOM, and Standard Chartered because it did not show that the amounts remitted by these Agent Banks pertained to the taxes withheld from PAL's interest income.<sup>[38]</sup>

Thus:

**WHEREFORE**, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 749 and PAL's Petition for Review in CTA EB No. 757 are hereby **DENIED** for lack of merit. The assailed Decision dated November 9, 2010 and Resolution dated March 17, 2011 are hereby **AFFIRMED**.

**SO ORDERED.**<sup>[39]</sup> (Emphasis in the original)

The Court of Tax Appeals En Banc denied the motions for reconsideration.<sup>[40]</sup>

Hence, the present Petitions via Rule 45 have been filed.<sup>[41]</sup>

In G.R. Nos. 206079-80, PAL questions the denial of its refund claim for the taxes withheld by Chinabank, PBCOM, and Standard Chartered. PAL argues that it adequately established the withholding and remittance of final taxes through the Certificates of Final Taxes Withheld issued to it by these Agent Banks.<sup>[42]</sup> It contends that these Certificates are *prima facie* evidence of actual remittance, and if they are uncontroverted, as in this case, they are sufficient proof of remittance.<sup>[43]</sup> It holds that the rule pertaining to Creditable Taxes Withheld in *CIR v. Asian Transmission Corporation*<sup>[44]</sup> and other Court of Tax Appeals En Banc cases<sup>[45]</sup> should apply to Final Taxes Withheld, as these are of the same nature.<sup>[46]</sup>

PAL also insists that it is unequivocally exempt from final withholding taxes,<sup>[47]</sup> and consequently, for as long as it duly establishes that taxes were withheld from its income, it must be refunded.<sup>[48]</sup> It maintains that proof of actual remittance is not necessary.<sup>[49]</sup>

PAL further claims that it need not establish the remittance of income taxes to the Bureau of Internal Revenue because this function is vested with the Agent Banks as the payors and withholding agents of

the Commissioner.<sup>[50]</sup>

In G.R. No. 206309, the Commissioner questions the grant of refund to PAL for the final income taxes withheld by JPMorgan. She argues that PAL is not entitled to the refund as it failed to present its documentary evidence before the Bureau of Internal Revenue when it filed its administrative claim.<sup>[51]</sup>

In its June 10, 2013 Resolution, the two (2) cases were consolidated.<sup>[52]</sup>

The parties thereafter filed their respective Comments,<sup>[53]</sup> Replies,<sup>[54]</sup> and Memoranda.<sup>[55]</sup>

PAL argues that it is entitled to its claim for tax refund or tax credit and insists that it has adequately established that the final taxes on interest income withheld by the banks were remitted to the Bureau of Internal Revenue.<sup>[56]</sup> It contends that the Certificates of Final Taxes Withheld issued by the Agent Banks are *prima facie* evidence of actual remittance.<sup>[57]</sup> As *prima facie* evidence, they are sufficient proof of the fact that PAL is establishing, if they are unexplained or uncontradicted.<sup>[58]</sup>

As such, PAL avers that the Commissioner had the burden to prove that the Agent Banks failed to remit the withheld taxes.<sup>[59]</sup> Nonetheless, the Commissioner simply submitted the case for decision based on the pleadings. It did not contradict or dispute the Certificates of Final Taxes Withheld.<sup>[60]</sup>

PAL further posits that the failure of the Agent Banks to remit the withheld taxes should not prejudice PAL, because they are the withholding agents accountable for proving remittance. PAL has no control or responsibility over the remittance of the taxes withheld.<sup>[61]</sup>

Moreover, PAL holds that there is no need for proof of actual remittance to be entitled to claim for refund,<sup>[62]</sup> and that this Court's rulings on creditable taxes withheld should also apply to final taxes withheld at source, as they are of the same nature.<sup>[63]</sup> Since PAL has shown that it is unequivocally exempt from paying final withholding taxes, its taxes were erroneously paid and must be refunded.<sup>[64]</sup>

PAL further asserts that the Court of Tax Appeals is a court of record, required to conduct a trial *de novo*. Thus, it should not be barred from considering new evidence not submitted in the administrative claim for refund.<sup>[65]</sup>

Assuming PAL is limited by the documents it submitted in the administrative level, the Commissioner had the burden to prove that PAL did not submit complete supporting documents. However, it neither showed what documents PAL presented nor established that PAL submitted incomplete supporting documents.<sup>[66]</sup>

PAL further submits that assuming it failed to present the remittance returns on final income tax withheld, the Commissioner could have retrieved these files from the records, as these are monthly returns filed with the Bureau of Internal Revenue.<sup>[67]</sup> As the Chief of the Bureau of Internal Revenue, the Commissioner has access to all tax returns including those of final income tax withheld at source, and thus, is in bad faith in not checking the records to determine whether or not the withheld taxes were remitted.<sup>[68]</sup> PAL maintains that the Commissioner's denial of the withholding of the taxes is not a specific denial, and thus, should be deemed as an admission of this fact.<sup>[69]</sup>

Finally, PAL holds that the denial of its refund because of its failure to submit monthly remittance returns is contrary to substantial justice, equity, and fair play.<sup>[70]</sup>

On the other hand, the Commissioner argues in her Memorandum<sup>[71]</sup> that PAL needed to prove, but did not prove, that the withheld taxes were remitted to the Bureau of Internal Revenue.<sup>[72]</sup>

She points out that PAL only showed the withheld amounts remitted by branches of Chinabank, PBCOM, and Standard Chartered, but there is no indication that the remitted amounts are the taxes withheld from PAL's interest income. She argues that PAL must first prove that the money remitted to the Bureau of Internal Revenue is attributable to it because tax refunds are strictly construed against the taxpayer.<sup>[73]</sup>

She further insists that PAL's claim must fail for insufficiency of evidence because it failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.<sup>[74]</sup> She argues that even if the evidence was presented in the Court of Tax Appeals, it should not be considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown

in the administrative claim for refund.<sup>[75]</sup> The Court of Tax Appeals' judicial review is allegedly limited to whether the Commissioner rightfully ruled on the claim on the basis of the evidence presented in the administrative claim, and the ruling may only be set aside where there is gross abuse of discretion, fraud, or error of law.<sup>[76]</sup> Thus, she claims that the Court of Tax Appeals erred in considering the new evidence presented to it.<sup>[77]</sup> In allowing the presentation of new evidence, the Court of Tax Appeals did not conduct a judicial review. Rather, it adopted an entirely new proceeding.<sup>[78]</sup>

This Court resolves the following issues:

First, whether or not evidence not presented in the administrative claim for refund in the Bureau of Internal Revenue can be presented in the Court of Tax Appeals;

Second, whether or not Philippine Airlines, Inc. was able to prove remittance of its final taxes withheld to the Bureau of Internal Revenue; and

Finally, whether or not proof of remittance is necessary for Philippine Airlines, Inc. to claim a refund under its charter, Presidential Decree No. 1590.

This Court sustains the factual findings of the Court of Tax Appeals that Philippine Airlines, Inc. failed to prove remittance of the withheld taxes.

Nonetheless, this Court grants the Petition of Philippine Airlines, Inc.

## I

The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.<sup>[79]</sup> Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.<sup>[80]</sup>

This Court rules that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

Section 4 of the National Internal Revenue Code<sup>[81]</sup> states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:

*Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.*

*The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.*

Republic Act No. 9282,<sup>[82]</sup> amending Republic Act No. 1125,<sup>[83]</sup> is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:

*Section 7. Jurisdiction. — The CTA shall exercise:*

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;