THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 180043**
	Present:
	YNARES-SANTIAGO, *J.*, Chairperson,
- *versus* -	CARPIO,[*] CHICO-NAZARIO, VELASCO, JR., and PERALTA, *JJ.*
PHILIPPINE AIRLINES, INC.,	Promulgated:
Respondent.	July 14, 2009

x- -x

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, petitioner Commissioner of Internal Revenue assails the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated 9 August 2007 in CTA EB No. 221, affirming the Decision[2] dated 14 June 2006 of the CTA First Division in CTA Case No. 6735, which granted the claim of respondent Philippine Airlines, Inc. (PAL) for the refund of its Overseas Communications Tax (OCT) for the period April to December 2001.

Petitioner, as the Commissioner of the Bureau of Internal Revenue (BIR), is

responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, including the 10% Overseas Communications Tax (OCT), imposed by Section 120 of the National Internal Revenue Code (NIRC) of 1997, which reads:

> SEC. 120. *Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.* -
>
> (A) *Persons Liable*—There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment service, a tax of ten percent (10%) on the amount paid of [the transaction involving overseas dispatch, message or conversation] such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

On the other hand, respondent is a domestic corporation organized under the corporate laws of the Republic of the Philippines; declared the national flag carrier of the country; and the grantee under Presidential Decree No. 1590[3] of a franchise to establish, operate, and maintain transport services for the carriage of passengers, mail, and property by air, in and between any and all points and places throughout the Philippines, and between the Philippines and other countries.[4]

For the period January to December 2001, the Philippine Long Distance Telephone Company (PLDT) collected from respondent the 10% OCT on the amount paid by the latter for overseas telephone calls it had made through the former. In all, PLDT collected from respondent the amount of ₱202,471.18 as OCT for 2001, summarized as follows[5]:

PERIOD	**AMOUNT**
January to March 2001	₱ 75,332.26
April to June 2001	50,271.43
July to September 2001	43,313.96
October to December 2001	33,553.53
Total	**₱ 202,471.18**

On 8 April 2003, respondent filed with the BIR an administrative claim for refund of

the ₱202,471.18 OCT it alleged to have erroneously paid in 2001. In a letter[6] dated 4 April 2003, addressed to petitioner, Ma. Stella L. Diaz (Diaz), the Assistant Vice-President for Financial Planning & Analysis of respondent, explained that the claim for refund of respondent was based on its franchise, Section 13 of Presidential Decree No. 1590, which granted it (1) the option to pay either the basic corporate income tax on its annual net taxable income or the two percent franchise tax on its gross revenues, whichever was lower; and (2) the exemption from all other taxes, duties, royalties, registration, license and other fees and charges imposed by any municipal, city, provincial or national authority or government agency, now or in the future, except only real property tax. Also invoking BIR Ruling No. 97-94[7] dated 13 April 1994, Diaz maintained that, other than being liable for basic corporate income tax or the franchise tax, whichever was lower, respondent was clearly exempted from all other taxes, including OCT, by virtue of the "in lieu of all taxes" clause in Section 13 of Presidential Decree No. 1590.

Petitioner failed to act on the request for refund of respondent, which prompted respondent to file on 4 June 2003, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6735. Respondent sought the refund of the amount ₱127,138.92, representing OCT, which PLDT erroneously collected from respondent for the second, third and fourth quarters of 2001.[8] The claim of respondent for the refund of the OCT for the first quarter of 2001, amounting to ₱75,323.26, had already prescribed after the passing of more than two years since said amount was paid.

Respondent alleged in its Petition that per its computation, reflected in its annual income tax return, it incurred a net loss in 2001 resulting in zero basic corporate income tax liability, which was necessarily lower than the franchise tax due on its gross revenues. Respondent argued that in opting for the basic corporate income tax, regardless of whether or not it actually paid any amount as tax, it was already entitled to the exemption from all other taxes granted to it by Section 13 of Presidential Decree No. 1590. [9]

After a hearing on the merits, the CTA First Division rendered a Decision[10] dated

14 June 2006, the dispositive part of which reads:

> **WHEREFORE,** the Petition for Review is hereby **GRANTED**. Respondent is **ORDERED** to refund to the petitioner the substantiated amount of ₱126,243.80 representing the erroneously collected 10% Overseas Communications Tax for the period April to December 2001.

The CTA First Division reasoned that under Section 13 of Presidential Decree No. 1590, respondent had the option to choose between two alternatives: the basic corporate income tax and the franchise tax, whichever would result in a lower amount of tax, and this would be in lieu of all other taxes, with the exception only of tax on real property. In the event that respondent incurred a net loss for the taxable year resulting in zero basic corporate income tax liability, respondent could not be required to pay the franchise tax before it could avail itself of the exemption from all other taxes under Section 13 of Presidential Decree No. 1590. The possibility that respondent would incur a net loss for a given taxable period and, thus, have zero liability for basic corporate income tax, was already anticipated by Section 13 of Presidential Decree No. 1590, the very same section granting respondent tax exemption, since it authorized respondent to carry over its excess net loss as a deduction for the next five taxable years.

However, the CTA First Division held that out of the total amount of ₱127,138.92 respondent sought to refund, only the amount of ₱126,243.80 was supported by either original or photocopied PLDT billing statements, original office receipts, and original copies of check vouchers of respondent. Respondent was also able to prove, through testimonial evidence, that the OCT collected by PLDT from it was included in the quarterly percentage tax returns of PLDT for the second, third, and fourth quarters of 2001, which were submitted to and received by an authorized agent bank of the BIR.[11]

Not satisfied with the foregoing Decision dated 14 June 2006, petitioner filed a Motion for Reconsideration, which was denied by the CTA First Division in a Resolution dated 17 October 2006.[12]

Petitioner filed an appeal with the CTA *en banc*, docketed as CTA EB No. 221. The latter promulgated its Decision[13] on 9 August 2007 denying petitioner's appeal. The CTA *En Banc* found that Presidential Decree No. 1590 does not provide that only the actual payment of basic corporate income tax or franchise tax by respondent would entitle it to the tax exemption provided under Section 13 of the latter's franchise. Like the CTA First Division, the CTA *en banc* ruled that by providing for net loss carry-over, Presidential Decree No. 1590 recognized the possibility that respondent would end up with a net loss in the computation of its taxable income, which would mean zero liability for basic corporate income tax. The CTA *En Banc* further cited *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[14] (PAL case) to support its conclusions. In the said case, this Court declared that despite the fact that respondent did not pay any basic corporate income tax, given its net loss position for the taxable years concerned, it was still exempted from paying all other taxes, including final withholding tax on interest income, pursuant to Section 13 of Presidential Decree No. 1590. Lastly, the CTA *en banc* sustained the finding of the CTA First Division that respondent was only able to establish its claim for OCT refund in the amount of ₱126,243.80.

The CTA *En Banc* denied petitioner's Motion for Reconsideration in a Resolution dated 11 October 2007.[15]

Hence, the present Petition for Review where the petitioner raises the following issues:

I

THE COURT OF TAX APPEALS *EN BANC* ERRED IN HOLDING THAT THE PHRASE "IN LIEU OF ALL OTHER TAXES" IN SECTIONS 13 AND 14 OF PRESIDENTIAL DECREE NO. 1590 DOES NOT CONTEMPLATE THE FULFILLMENT OF A CONDITION BEFORE THE EXEMPTION FROM ALL OTHER TAXES MAY BE APPLIED; AND

II

TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS. AS SUCH, THEY SHOULD BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE PERSON OR ENTITY

CLAIMING THE EXEMPTION.[16]

The present Petition is without merit.

Petitioner argues that the PAL case is not applicable to the case at bar, since the former involves final withholding tax on interest income, while the latter concerns another type of tax, the OCT.[17]

Petitioner's argument is untenable.

Pertinent portions of Section 13 of Presidential Decree No. 1590 are quoted hereunder:

> Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise, whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
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> (b) A franchise tax of two per cent (2%) of the gross revenues, derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided, that with respect to international air-transport service, only the gross passenger, mail and freight revenues from its outgoing flights shall be subject to this tax.
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> The tax paid by grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future x x x
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> x x x x
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> The grantee, shall, however, pay the tax on its real property in conformity with existing law.

The language used in Section 13 of Presidential Decree No. 1590, granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or

franchise tax paid by respondent shall be "**in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future** x x x," except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the OCT.

Moreover, although the PAL case may involve a different type of tax, certain pronouncements made by the Court therein are still significant in the instant case.

In the PAL case, petitioner likewise opposed the claim for refund of respondent based on the argument that the latter was not exempted from final withholding tax on interest income, because said tax should be deemed part of the basic corporate income tax, which respondent had opted to pay. This Court was unconvinced by petitioner's argument, ratiocinating that "basic corporate income tax," under Section 13(a) of Presidential Decree No. 1590, relates to the general rate of 35% (reduced to 32% by the year 2000) imposed on taxable income by Section 27(A) of the NIRC. Although the definition of "gross income" is broad enough to include all passive incomes, the passive incomes already subjected to different rates of final tax to be withheld at source shall no longer be included in the computation of gross income, which shall be used in the determination of taxable income. The interest income of respondent is already subject to final withholding tax of 20%, and no longer to the basic corporate income tax of 35%. Having established that final tax on interest income is not part of the basic corporate income tax, then the former is considered as among "all other taxes" from which respondent is exempted under Section 13 of Presidential Decree No. 1590.

It is true that the discussion in the PAL case on "gross income" is immaterial to the case at bar. OCT is not even an income tax. It is a business tax, which the government imposes on the gross annual sales of operators of communication equipment sending overseas dispatches, messages or conversations from the Philippines. According to Section 120 of the NIRC, the person paying for the services rendered (respondent, in this case) shall

pay the OCT to the person rendering the service (PLDT); the latter, in turn, shall remit the amount to the BIR. If this Court deems that final tax on interest income – which is also an income tax, but distinct from basic corporate income tax – is included among "all other taxes" from which respondent is exempt, then with all the more reason should the Court consider OCT, which is altogether a different type of tax, as also covered by the said exemption.

Petitioner further avers that respondent cannot avail itself of the benefit of the "in lieu of all other taxes" *proviso* in Section 13 of Presidential Decree No. 1590 when it made no actual payment of either the basic corporate income tax or the franchise tax.

Petitioner made the same averment in the PAL case, which the Court rejected for the following reasons:

> **A careful reading of Section 13 rebuts the argument of the CIR that the "in lieu of all other taxes" proviso is a mere incentive that applies only when PAL actually pays something.** It is clear that PD 1590 intended to give respondent the option to avail itself of Subsection (a) or (b) as consideration for its franchise. Either option excludes the payment of other taxes and dues imposed or collected by the national or the local government. PAL has the option to choose the alternative that results in lower taxes. **It is not the fact of tax payment that exempts it, but the exercise of its option.**
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> Under Subsection (a), the basis for the tax rate is respondent's annual net taxable income, which (as earlier discussed) is computed by subtracting allowable deductions and exemptions from gross income. By basing the tax rate on the annual net taxable income, PD 1590 necessarily recognized the situation in which taxable income may result in a negative amount and thus translate into a zero tax liability.
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> x x x x
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> **The fallacy of the CIR's argument is evident from the fact that the payment of a measly sum of one peso would suffice to exempt PAL from other taxes, whereas a zero liability arising from its losses would not. There is no substantial distinction between a zero tax and a one-peso tax liability.**[18] (Emphases ours.)

In insisting that respondent needs to actually pay a certain amount as basic corporate income tax or franchise tax, before it can enjoy the tax exemption granted to it, petitioner places too much reliance on the use of the word "pay" in the first line of Section 13 of Presidential Decree No. 1590.

It must do well for petitioner to remember that a statute's clauses and phrases should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts.[19] A strict interpretation of the word "pay" in Section 13 of Presidential Decree No. 1590 would effectively render nugatory the other rights categorically conferred upon the respondent by its franchise.

Section 13 of Presidential Decree No. 1590 clearly gives respondent the option to "pay" either basic corporate income tax on its net taxable income or franchise tax on its gross revenues, whichever would result in lower tax. The rationale for giving respondent such an option is explained in the PAL case, to wit:

> Notably, PAL was owned and operated by the government at the time the franchise was last amended. It can reasonably be contemplated that PD 1590 sought to assist the finances of the government corporation in the form of lower taxes. When the respondent operates at a loss (as in the instant case), no taxes are due; in this [sic] instances, it has a lower tax liability than that provided by Subsection (b).[20]

In the event that respondent incurs a net loss, it shall have zero liability for basic corporate income tax, the lowest possible tax liability. There being no qualification to the exercise of its options under Section 13 of Presidential Decree No. 1590, then respondent is free to choose basic corporate income tax, even if it would have zero liability for the same in light of its net loss position for the taxable year. Additionally, a ruling by this Court compelling respondent to pay a franchise tax when it incurs a net loss and is, thus, not liable for any basic corporate income tax would be contrary to the evident intent of the law to give respondent options and to make the latter liable for the least amount of tax.

Moreover, then President Ferdinand E. Marcos, the author of Presidential Decree No. 1590, was mindful of the possibility that respondent would incur a net loss for a taxable year, resulting in zero tax liability for basic corporate income tax, when he included in the franchise of respondent the following provisions:

> For the purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

x x x x

(2) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.

In allowing respondent to carry over its net loss for five consecutive years following the year said loss was incurred, Presidential Decree No. 1590 takes into account the possibility that respondent shall be in a net loss position for six years straight, during which it shall have zero basic corporate income tax liability. The Court also notes that net loss carry-over may only be used in the computation of basic corporate income tax. Hence, if respondent is required to pay a franchise tax every time it has zero basic corporate income tax liability due to net loss, then it shall never have the opportunity to avail itself of the benefit of net loss carry-over.

Finally, petitioner contends that according to well-established doctrine, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer.[21] However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.

In its previous discussion, the Court has already established that by merely exercising its option to pay for basic corporate income tax – even if it had zero liability for the same due to its net loss position in 2001 – respondent was already exempted from all other taxes, including the OCT. Therefore, respondent is entitled to recover the amount of OCT erroneously collected from it in 2001. Also, the CTA, both in Division and *en banc*, found that respondent submitted ample evidence to prove its payment of OCT to PLDT during the second, third, and fourth quarters of 2001, in the total amount of ₱126,243.80, which, in turn, was paid by PLDT to the BIR. Said finding by the CTA, being factual in nature, is already conclusively binding upon this Court. Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases. Accordingly, its findings of fact are generally regarded as final, binding, and conclusive on this Court, and will not ordinarily be reviewed or disturbed on appeal when supported by

substantial evidence, in the absence of gross error or abuse on its part.[22]

WHEREFORE, the instant Petition for Review is **DENIED.** The Decision of the Court of Tax Appeals *En Banc* dated 9 August 2007 in CTA EB No. 221, affirming the Decision dated 14 June 2006 of the CTA First Division in CTA Case No. 6735, which granted the claim of Philippine Airlines, Inc. for a refund of Overseas Communications Tax erroneously collected from it for the period April to December 2001, in the amount of ₱126,243.80, is **AFFIRMED.** No costs.

SO ORDERED.

MINITA V. CHICO-NAZARIO
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

DIOSDADO M. PERALTA

Associate Justice

ATTESTATION

I attest 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's Division.

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, 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's Division.

REYNATO S. PUNO
Chief Justice

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* Associate Justice Antonio T. Carpio was designated to sit as additional member, replacing Associate Justice Antonio Eduardo B. Nachura per raffle dated 22 June 2009.

[1] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 39-50.

[2] Penned by Associate Justice Caesar A. Casanova; records, pp. 201-210.

[3] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

[4] Section 1 of Presidential Decree No. 1590.

[5] Records, p. 202.

[6] Id. at 27.

[7] Id. at 34-35.

[8] In BIR Ruling No. 97-94, then CIR Liwayway Vinzons-Chato ruled that the "in lieu of all taxes" clause in Section 13 of Presidential Decree No. 1590 exempted PAL from all taxes, including documentary stamp tax. In accordance with Section 173 of the NIRC, the Philippine National Bank, the Landbank and other banks in whose favor the promissory notes and other documents are executed by PAL, shall be liable for the payment of the documentary stamp tax. (Records, p. 26.)

[9] Records. p. 205.

[10] Id. at 201-210.

[11] Id. at 208-210.

[12] *Rollo*, p. 53.

[13] Id. at 42-50.

[14] G.R. No. 160528, 9 October 2006, 504 SCRA 90.

[15] Id. at 51.

[16] *Rollo*, pp. 28-29.

[17] Id. at 8.

[18] Id. at 100-101.

[19] *Sanciangco v. Roño*, G.R. No. L-68709, 19 July 1985, 137 SCRA 671, 676; *Commissioner of Customs v. Esso Standard Eastern, Inc*., 160 Phil. 805, 812 (1975).

[20] Supra note 14 at 101.

[21] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, 15 September 2006, 502 SCRA 87, 91; *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981); *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549, 552-553.

[22] *Benguet Corporation v. Commissioner of Internal Revenue*, G.R. No. 141212, 22 June 2006, 492 SCRA 133, 142.