REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2439** (CTA Case No. 9334)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
GULF AIR COMPANY PHILIPPINE BRANCH, Respondent.	Promulgated: APR 12 2022

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated July 10, 2020 and Resolution[2] ("Assailed Resolution") dated January 29, 2021 of the Court of Tax Appeals First Division ("First Division"), granting Respondent's claim for refund in the aggregate amount of Php41,547,783.00, representing its erroneously paid income taxes on Gross Philippine Billings ("GPB") for taxable years 2013 and 2014.

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1 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. del Rosario and Associate Justice Catherine T. Manahan concurring. Docket, pp. 1029-1056.

2 Penned by Presiding Justice Roman G. del Rosario with Associate Justice Catherine T. Manahan concurring. *Id.*, pp. 1094-1096.

The Parties

Petitioner Commissioner of Internal Revenue (CIR) is the public official tasked with the enforcement of the internal revenue laws, with office address at Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent Gulf Air Company Philippine Branch is a resident foreign corporation registered under Philippine laws, and licensed to do business in the country. It is a registered taxpayer with Tax Identification Number (TIN) 000-587-856-000, and holds office at Unit 8 Solemare Parksuites, Bradco Avenue, Aseana Business Park, Baclaran, Parañaque City.[4]

The Facts

The facts as found by the First Division are as follows:

> "On May 11, 2004, [Respondent] filed with Deputy Commissioner of the Large Taxpayers Service, Estelita Aguirre, a letter-application for relief from double taxation together with BIR Form No. 0901, which the BIR-International Tax Affairs Division (ITAD) granted through its Ruling No. DA-ITAD 91-04 dated August 31, 2004.
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> On March 7, 2013, Republic Act (RA) No. 10378 was enacted, amending among others Section 28(A)(3) of the National Internal Revenue Code (NIRC). It took effect on March 29, 2013.
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> On April 24, 2013, [Respondent] filed with the BIR-ITAD a request for confirmation of its exemption from income taxes imposed on GPB, or the gross revenue derived from the transport of passengers and their excess baggage pursuant to the reciprocity rule under RA No. 10378.
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> In a Letter-Reply dated June 26, 2013, the BIR-ITAD requested [Respondent] to submit documents in connection with its letter-application for confirmation of its exemption from income taxes imposed on GPB. [Respondent] complied *via* several letters, and even sent additional supporting documents to Attorney Ana Paula Borgonos of the BIR-ITAD.

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3 *Id.*, Decision dated July 10, 2020, p. 1030.
4 *Id.*, Decision dated July 10, 2020, pp. 1029-1030.

> In a letter dated April 21, 2015 filed with the Assistant Commissioner (ACIR), Large Taxpayers Service of the BIR, [Respondent] requested that the late payment penalty for its Annual Income Tax Return (AITR) covering TY 2014 be waived.
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> On June 25, 2015, [Respondent] filed administrative claims both dated June 22, 2015 for the refund in the respective amount of [Php]19,164,519.00 and [Ph]22,382,264.00 for TYs 2013 and 2014, representing its alleged overpayment of income taxes imposed on its GPB.
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> On April 15, 2016, [Respondent] filed the instant Petition for Review, originally raffled to the Second Division of the Court.
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> xxx xxx xxx
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> In the Order dated September 24, 2018, the case was transferred from Second to the First Division of the Court.[5]

The Ruling of the First Division

On July 10, 2020, the First Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review dated April 15, 2016, filed by [Respondent] Gulf Air Company Philippine Branch is **GRANTED**. Consequently, [Petitioner] is **DIRECTED to REFUND** in favor of [Respondent], the amounts of [Php]19,164,519.00 and [Php]22,383,264.00 (or a total amount of [Php]41,547,783.00), representing erroneously paid income taxes for TYs 2013 and 2014.
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> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 10 July 2020)"[7] on July 29, 2020, which the First Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, premises considered, [Petitioner's] Motion for Reconsideration (Re: Decision promulgated on 10 July 2020) filed on July 29, 2020 is hereby **DENIED** for lack of merit.

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5 *Id.*, Decision dated July 10, 2020, pp. 1030-1036.
6 *Id.*, Decision dated July 10, 2020, p. 1055.
7 *Id.*, pp. 1057-1063.

SO ORDERED."[8]

The Proceedings in the Court of Tax Appeals En Banc

On February 16, 2021, Petitioner filed the present "Petition for Review"[9].

On March 04, 2021, the Court issued a Resolution[10] ordering Respondent to comment on the Petition for Review within ten (10) days from notice.

On March 26, 2021, Respondent filed *via* registered mail its "Comment (Re: Petition for Review)"[11] ("Comment").

On June 23, 2021, the Court issued a Resolution[12] submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of its petition – whether or not the First Division of the Honorable Court erred in ruling that Respondent is entitled to refund of alleged erroneously paid income taxes for taxable years 2013 and 2014.[13]

The Arguments of Parties

Petitioner avers that what Respondent's parent company, Gulf Air B.S.C., and Philippine Airlines, Inc. ("PAL") entered into was a Code Share and Block Space Agreement. Under the said Agreement, Respondent, as the operating carrier, operates the flights while PAL, as the marketing carrier, is only given the right to sell tickets for certain Gulf Air flights. As such, PAL is not operating in Bahrain, the home country of Respondent. It follows therefore that Respondent cannot claim an exemption from payment of income tax under Section 28(A)(3) of the National Internal Revenue Code ("NIRC") of 1997, as amended by Republic Act ("RA") No. 10378.

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8 *Id.*, Resolution dated January 29, 2021, p. 1096.
9 Rollo, pp. 1-6. Record shows that Petitioner received the January 29, 2021 Resolution on February 05, 2021; Docket, p. 1092.
10 *Id.*, pp. 46-47.
11 *Id.*, pp. 48-77
12 *Id.*, pp. 83-84.
13 *Id.*, "Petition for Review" dated February 09, 2021, Assignment of Error, p. 3.

Petitioner also stresses that Respondent failed to show that Philippine carriers are actually enjoying the income tax exemption in the home country of Respondent as allegedly required under Revenue Regulation ("RR") No. 15-2013.

Lastly, Petitioner submits that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer, and that Respondent fell short of proving the veracity of its claim for refund.

On the other hand, Respondent in its Comment maintains that proof of actual enjoyment by Philippine carriers of the income tax exemption in the home country of the international carrier is not required under Section 28(A)(3) of the NIRC of 1997, as amended by R.A. No. 10378. As such, Petitioner has engaged in administrative lawmaking in the last paragraph of Section 4.2(B) of RR 15-2013 by adding such requirement.

Additionally, Respondent's asserts that that the Income Tax Law of Bahrain does not impose income tax on the income of airlines derived from the transport of passengers and their excess baggage. Hence, Respondent has satisfied the requirement that its home country grants income tax exemption to Philippine carriers.

Respondent further contends that it was able to show during the proceedings in the First Division that its refund claim was with legal and factual bases.

Finally, Respondent points out that a confirmatory ruling from the International Tax Affairs Division of the Bureau of Internal Revenue (ITAD-BIR) is not a condition precedent for an international carrier to avail of the income tax exemption under Section 28(A)(3).

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated 10 July 2020)", on January 29, 2021. Petitioner received said Resolution on February 05, 2021.[14] Pursuant to Rule 4, Section 2(a)(1)[15] in relation to Rule 8, Section

[14] Docket, p. 1948.

[15] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

3(b)[16] of the Revised Rules of the Court of Tax Appeals[17] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until February 20, 2021 within which to file its petition for review.

On February 16, 2021, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. They were already passed upon, addressed and resolved in the Assailed Decision. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Requisites for recovery of tax erroneously or illegally collected

Sections 204(C)[18] and 229[19] of the NIRC of 1997, as amended, govern refund claims of erroneously or illegally collected tax. Pursuant to the said

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(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

16 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

17 A.M. No. 05-11-07-CTA, November 22, 2005.

18 **SEC. 204.** *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

19 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed

provisions, the following pre-requisites must be satisfied for such claim to prosper:

1) that an administrative claim for refund or credit must be filed with the BIR before filing a judicial claim with this court, both within two (2) years from the date of payment of tax; and

2) that the subject tax paid is an *erroneous or illegal tax*, that is, "one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal".[20]

We now determine whether or not Respondent was able to comply with the above-mentioned requirements.

The administrative and judicial claims were timely filed

Respondent is seeking refund of its overpayment of GPB tax ("GPB tax"), which were erroneously paid for taxable years 2013 and 2014. GPBT is a form of income tax applied to international airlines or shipping companies under the NIRC of 1997, as amended.

In any case, for corporate income taxes, the two (2)-year prescriptive period should be reckoned from the time the final adjustment return or the Annual Income Tax Return ("AITR") was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability[21]. This is in line with the ruling in *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*[22],

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to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

20 Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012, *citing* the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

21 Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue, G.R. No. 117254, January 21, 1999.

22 G.R. No. 96322, December 20, 1991.

Commissioner of Internal Revenue v. TMX Sales, Inc., et al.[23] and *Commissioner of Internal Revenue v. Philippine American Life Insurance Co., et al.*[24], which were all cited in *Commissioner of Internal Revenue v. Court of Appeals, et al.*[25], to wit:

> "The conclusions reached by the appellate court are contrary to the very rulings cited by it. In *Commissioner of Internal Revenue v. TMX Sales, Inc.,* this Court, in rejecting the contention that the period of prescription should be counted from the date of payment of the quarterly tax, held:
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> > . . . [T]he filing of a quarterly income tax return required in Section 85 [now Section 68] and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 [now Section 69] which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 [now Section 230 of the Tax Code] should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.
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> On the other hand, in *ACCRA Invesments Corporation v. Court of Appeals*, where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:
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> > Clearly, there is the need to file a return first before a claim for refund can proper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of

[23] G.R. No. 83736, January 15, 1992.
[24] G.R. No. 105208 May 29, 1995.
[25] G.R. No. 117254 January 21, 1999.

> Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
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> xxx xxx xxx
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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed is final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The 'date of payment', therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, we held:

> Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the TMX Sales case. Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be construed in conjunction with it.
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> xxx xxx xxx

> Thus, **it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted 'from the date of payment of the tax' for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed."**[26]

Following the principles above, Respondent filed and paid its AITR for taxable years 2013 and 2014 on April 16, 2014[27] and April 16, 2015[28], respectively. Thus, counting two (2) years from the said dates, Respondent had until April 16, 2016 (for taxable year 2013) and April 16, 2017 (for taxable year 2014), within which to file its claim, both in the administrative and judicial levels. Since Respondent filed its administrative claim on June 25, 2015[29], and the judicial claim on April 15, 2016[30], the same were filed within the two-year prescriptive period.

Correspondingly, in this case, Respondent timely filed its administrative and judicial claims.

There was erroneous overpayment of income tax

Section 28(A)(3)(a) of the NIRC of 1997, as amended by RA No. 10378[31] provides:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* —
>
> (A) *Tax on Resident Foreign Corporations.* —
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26 *Emphasis and underscoring supplied.*
27 Docket, Exhibits "P-15-1", "P-15-2", and "P-15-3", pp. 773-783.
28 *Id.*, Exhibits "P-19-1" and "P-19-2", pp. 818-828.
29 *Id.*, Exhibits "P-26-1" and "P-26-3", pp. 902-903 and 905-906.
30 *Id.*, Petition for Review, pp. 10-25.
31 An Act Recognizing The Principle Of Reciprocity As Basis For The Grant Of Income Tax Exemptions To International Carriers And Rationalizing Other Taxes Imposed Thereon By Amending Sections 28(A)(3)(A), 109, 118 And 236 Of The National Internal Revenue Code (NIRC), As Amended, And For Other Purposes, Approved March 07, 2013.

> (3) *International Carrier* — An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:
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> (a) *International Air Carrier.* — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.
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> *Provided*, **That international carriers doing business in the Philippines may avail of** a preferential rate or **exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage** on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or **on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision.**"[32]

Based on the foregoing provision, it is clear that an international air carrier doing business in the Philippines shall pay a tax of two and one-half percent (2.5%) on its GPB. However, such international air carrier may, *inter alia*, avail of a tax exemption on the basis of reciprocity.

Reciprocity in tax exemption means that the international air carrier's country of registry also exempts from similar taxes the gross revenue (derived from the carriage of persons and their excess baggage) by Philippine carriers in their country. Consequently, Respondent must prove that its home country does not impose income taxes on air carriers of Philippine origin.

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[32] *Emphasis supplied.*

In this regard, Respondent presented the following:

1) Consularized Registration Certificate of Bahrain Shareholding Company of Gulf Air B.S.C. (issued by the Ministry of Industry and Commerce, Kingdom of Bahrain)[33];

2) Consularized Commercial Registration Extract of Gulf Air B.S.C. (issued by the Ministry of Industry and Commerce, Kingdom of Bahrain)[34];

3) Consularized Certification on the Taxation of Gulf Air B.S.C. signed by Mr. Sami Mohammed Humaid of the Competent Authority, Foreign Economic Relations Director of the Ministry of Finance of the Kingdom of Bahrain[35];

4) Consularized Certification: Amiri Decree No. 22 of 1979 — Bahrain Income Tax Law 1979 signed by Mr. Sami Mohammed Humaid of the Competent Authority, Foreign Economic Relations Director of the Ministry of Finance of the Kingdom of Bahrain with attestation on the attached English translation[36];

5) Consularized Attestation (executed and signed by Shaika Noof Alkhalifa) on the English translation of Bahrain Income Tax Law of 1979[37];

6) Certification from the Philippine Embassy stating that Shaika Noof Alkhalifa is a Legal Counselor at the Legal Affairs Office of the Ministry of Finance of the Kingdom of Bahrain and has legal custody of the original English translation of the 1979 Income Tax Law of Bahrain[38]; and

7) Certification from the Philippine Embassy stating that Shaika Noof Alkhalifa is a Legal Counselor at the Legal Affairs Office of the Ministry of Finance of the Kingdom of Bahrain and has legal custody of the original English translation of the 1979 Income Tax Law of Bahrain.[39]

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33 Docket, Exhibits "P-6-1" to "P-6-2", pp. 664-666.
34 *Id.*, Exhibits "P-7-1" to "P-7-2", pp. 667-671.
35 *Id.*, Exhibits "P-8-1" to "P-8-2", pp. 672-674.
36 *Id.*, Exhibits "P-9-1" to "P-9-2", pp. 675-687.
37 *Id.*, Exhibits "P-9-3" to "P-9-4", pp. 688-699.
38 *Id.*, Exhibit "P-9-5", p. 700.
39 *Id.*, Exhibit "P-9-5", p. 700.

After a careful review of the documents listed above, We come to the same conclusion as the First Division that Respondent is a foreign entity organized under the laws of the State of Bahrain; that under the income tax law of the Bahrain, income taxes are only imposed on gains realized by companies directly engaged in exploration or production of crude oil or other natural hydrocarbons from the ground in Bahrain for its own account or in refining crude oil owned by it or by others in its facilities in Bahrain; and that no income tax is levied by Bahrain on the revenue of Philippine air carriers or any other airlines navigating to and from Bahrain.

Petitioner however alleges that there must be proof of actual enjoyment by Philippine carriers of income tax exemption in Bahrain. Petitioner based his argument on Section 4.2(B) of RR No. 15-2013, the implementing regulation of RA No. 10378, which states:

> "SECTION 4. Income Tax. —
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> xxx xxx xxx
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> 4.2) Preferential Income Tax Rate or Exemption of International Carrier with Flights or Voyage Originating from Philippine Ports. — Under Section 28 (A) (3) of the NIRC, as amended by RA No. 10378, international carriers doing business in the Philippines may avail of a preferential income tax rate or income tax exemption on their gross revenues derived from the carriage of persons and their excess baggage on the basis of the following:
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> xxx xxx xxx
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> B) **Reciprocity. — This may be invoked by an international carrier as basis for Gross Philippine Billings Tax exemption when its Home Country grants income tax exemption to Philippine carriers.**
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> The domestic law of the Home Country granting exemption shall cover income taxes and shall not refer to other types of taxes that may be imposed by the relevant taxing jurisdiction. The fact that the tax laws of the Home Country provide for exemption from business tax, such as gross sales tax, in respect of the operations of Philippine carriers shall not be considered as valid and sufficient basis for exempting an international carrier from Philippine income tax on account of reciprocity.

Reciprocity requires that Philippine carriers operating in the Home Country of an international carrier are actually enjoying the income tax exemption."[40]

We disagree with Petitioner.

The Court reaffirms the time-honored doctrine that the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope.[41]

A plain reading of RA No. 10378 shows that for purposes of availing the exemption from income tax under the rule on reciprocity, it is sufficient that the international carrier's home country grants an income tax exemption to Philippine carriers. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[42] The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute.[43]

Additionally, We find Petitioner's interpretation of the law as groundless for it essentially requires that a Philippine carrier be actually operating in the home country of the international carrier, absence of which deprives the latter the privilege of tax exemption in the Philippines. This runs counter to the purpose of the law which is to encourage flight and shipping operations of international carriers, and as a matter of course, foreign tourist arrivals in the country.[44] It is very possible that there is no corresponding Philippine carrier operating in the home country of an international carrier who intends to invest and/or do business in the Philippines. Upholding Petitioner's reasoning would result to an unfair tax treatment to the said international carrier, which is not the intention of the lawmakers when they amended the Tax Code.

It must be emphasized that in the implementation of statutes, the will and intention of its authors must be determined. Legislative intent is part and parcel of the law, the controlling factor in interpreting a statute. In construing a statute, the proper course is to start out and follow the true intent of the legislature and to adopt the sense that best harmonizes with the context and

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40 *Emphasis and underscoring supplied.*

41 Felix B. Perez and Amante G. Doria v. Philippine Telegraph and Telephone Company and Jose Luis Santiago, G.R. No. 152048, April 7, 2009.

42 Republic of the Philippines, et. al. v. Carlito Lacap, G.R. No. 158253, March 02, 2007.

43 Luzviminda Dela Cruz Morisono v. Ryoji Morisono, et. al., G.R. No. 158253, July 02, 2018.

44 *See* Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 222239. January 15, 2020 (Resolution), and Revenue Regulations No. 15-13, Section 1, Background, September 20, 2013.

promotes in the fullest manner the policy and objects of the legislature. In fact, any interpretation that runs counter to the legislative intent is unacceptable and invalid.[45]

Hence, there is only one reading of the law. Under RA No. 10378, the clear legislative intent is that, "for an international carrier to be excused from imposition of Philippine IT on its GPB, Section 28(A)(3)(a) of the NIRC, as amended by RA No. 10378 decrees that the IT law of the international carrier's home country exempts carriers of Philippine origin from such country's income taxes."[46] This is the sole requirement. There are no other conditions.

In view of the foregoing, the 3rd paragraph of Section 4.2(B) of RR No. 15-2013 unduly expands Section 28(A)(3)(a) of the NIRC of 1997, as amended by RA No. 10378. Said provision in the regulation must be invalidated. In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.[47]

Respondent is entitled to a refund amounting to Php41,547,783.00

After consideration, the Court *En Banc* resolves that there was overpayment of income tax on GPB when Respondent paid the one and one-half percent (1.5%) special tax rate under Article 8 of the Philippines-Bahrain Tax Treaty[48], instead of not paying any income tax thereon as a result of the tax exemption under RA No. 10378.

For taxable year 2013

Note that Respondent is entitled only for the refund of GPBT paid for the second to fourth quarters of taxable year 2013 since RA No. 10378 took effect on March 29, 2013.

Respondent had a total Income Tax Payable of Php6,152,366.00 in its Original AITR[49] composed of the following – revenues amounting to (a) Php1,874,480,997.00 subjected to one and one-half percent (1.5%) special tax rate, and (b) Php30,000.00 subjected to thirty percent (30%) regular corporate

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45 League of Cities of the Philippines, et. al. v. Commission on Elections, et al., G.R. Nos. 176951, 177499, & 178056, December 21, 2009.
46 Docket, Decision dated July 10, 2020, pp. 1043-1044.
47 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, G.R. No. 215427, December 10, 2014.
48 Confirmed by the Bureau of Internal Revenue in BIR Ruling No. DA-ITAD 91-04 dated August 31, 2004. *Id.*, "Exhibit P-39", pp. 920-922.
49 Docket, Exhibit P-15-1 and sub-markings, pp. 773-779.

income tax rate. It then paid the same amount *via* Electronic and Filing Payment System (EFPS) on April 16, 2014.[50]

Out of the Php1,874,480,997.00, the First Division was able to derive Respondent's GPB from carriage of passengers and excess baggage for the second to fourth quarters of taxable year 2013 amounting to Php1,277,634,623.94, which corresponds to an overpayment of income tax of Php19,164,519.00.[51]

For taxable year 2014

Respondent subjected all its revenues for the first three (3) quarters of taxable year 2014 to the special tax rate of one and one-half percent (1.5%), as shown by its Quarterly Income Tax Returns[52] and Acknowledgement Receipts[53] from the Development Bank of the Philippines.

The court *a quo* then found that among the revenues it subjected to the one and one-half percent (1.5%) special tax rate amounting to Php468,768,219.65, Php627,319,833.16 and Php497,117,419.71, which covers the first, second and third quarters of taxable year 2014, a portion thereof pertains to Respondent's GPB derived from transport of passengers and excess baggage, in the respective amounts of Php434,995,472.16, Php594,367,080.01 and Php465,834,769.02.[54]

Thus, the income taxes due thereon in the respective sums of Php6,524,932.08 for the first quarter, Php8,915,506.20 for the second quarter, and Php6,987,521.54 for the third quarter, or in the aggregate sum of Php22,427,959.82 were erroneously paid. Nevertheless, Respondent is only entitled to a refund of Php22,383,264.00, taking into consideration the income tax due for its revenue subject to thirty percent (30%) regular corporate income tax rate, for the fourth quarter of taxable year 2014 amounting to Php44,696.16.[55]

In total

On the whole, Respondent was able to prove that it is entitled to a refund in the total amount of Php41,547,783.00 representing erroneously paid income taxes on GPB for taxable years 2013 and 2014, computed as follows:

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50 *Id.*, Exhibits "P-15-2" and "P-15-3", p. 783.
51 *Id.*, Decision dated July 10, 2020, pp. 1046-1048. Rounded off amount of Php19,164,519.36.
52 *Id.*, Exhibits "P-23-1" and sub-markings, "P-24-1" and sub-markings and "P-25-1" and sub-markings, pp. 871-872, 881-882 and 891-892.
53 *Id.*, Exhibits "P-23-3", "P-24-3" and "P-25-3", pp. 874, 884 and 894.
54 *Id.*, Decision dated July 10, 2020, pp. 1049-1050.
55 *Id.*, Decision dated July 10, 2020, pp. 1050-1052. Rounded off amount of Php22,383,263.66.

	Amount to be Refunded
Taxable year 2013	Php19,164,519.00
Taxable year 2014	22,383,264.00
TOTAL	**Php41,547,783.00**

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.

Considering all these pronouncements and there being no reversible error committed by the court *a quo*, We find no cogent reason to reverse or modify the Assailed Decision and Assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated July 10, 2020 and the Resolution dated January 29, 2021 of the First Division in the case docketed as CTA Case No. 9334 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice