REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

IRISH FE N. AGUILAR, RUTH C. MANGROBANG, Petitioners,	**CTA Case No. 9299**
	Members:
- versus -	**DEL ROSARIO,** _P.J._, _Chairperson,_ **UY,** and **MINDARO-GRULLA,** _JJ._
HONORABLE KIM S. JACINTO-HENARES, in her capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 08 2019 ; 10:50am

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DECISION

UY, J.:

This case involves a *Petition for Review* filed by Irish Fe N. Aguilar and Ruth C. Mangrobang on March 18, 2016, praying for the refund of their income tax payments made by them in the respective amounts of ₱414,495.00 and ₱164,702.00 for taxable year 2013.

THE FACTS

Petitioners Irish Fe N. Aguilar and Ruth C. Mangrobang are employees of the Asian Development Bank (ADB), an international organization with principal office at No. 6 ADB Avenue, Mandaluyong City.[1] On the other hand, respondent Kim S. Jacinto-Henares is the Commissioner (CIR) of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

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[1] The Parties, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket, pp. 11 and 60.
[2] *Supra*; The herein respondent was succeeded by Commissioner Cesar R. Dulay.

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013.[3] This BIR issuance provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

In order to comply with RMC No. 31-2013, petitioners filed their Income Tax Returns (ITRs) and paid their income taxes for taxable year 2013,[4] detailed as follows:

TAXABLE YEAR 2013		
NAME OF EMPLOYEE	**PAYMENT DATE**	**AMOUNT PAID**
Irish Fe N. Aguilar	March 19, 2014	₱ 414,495.00
Ruth C. Mangrobang	April 8, 2014	82,351.00
	July 7, 2014	82,351.00
	TOTAL	**₱ 579,197.00**

Thereafter, some of petitioners' colleagues, namely, Erwin Salavera and Portia Gonzales, by themselves and as attorneys-in-fact of concerned Filipino employees of the ADB, filed before the Regional Trial Court (RTC) - Branch 213 of Mandaluyong City a petition to nullify Section 2(d)(1) of RMC No. 31-2013.[5] The case was entitled *"Erwin Salavera, et al., Petitioners, versus Commissioner of Internal Revenue, Respondent"*, and docketed as Civil Case No. MC14-8775.[6]

Consequently, on September 30, 2014, the said RTC issued a Decision, declaring Section 2(d)(1) of RMC No. 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and / or regulation to the contrary.[7]

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[3] SUBJECT: Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/Embassies/Diplomatic Missions and International Organizations Situated in the Philippines

[4] Par. 3, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 229; and Exhibits "P-1", "P-2", "P-3", "P-12", "P-11", "P-10", "P-9", and "P-8", Docket, pp. 308 to 315, and 356 to 363.

[5] Par. 4, Stipulated Facts, JSFI, Docket, p. 229.

[6] Exhibit "P-4", Docket, pp. 316 to 347.

[7] Par. 6, Stipulated Facts, JSFI, Docket, p. 229; and Exhibit "P-4", *supra*.

Respondent appealed the said RTC Decision to the Court of Appeals but the same was dismissed on July 3, 2015, upon the ground of availing an improper remedy.[8]

On March 17, 2016, petitioners, *inter alia*, filed a claim for refund before the BIR – Revenue District Office No. 41, in Mandaluyong City, covering their income tax payments for taxable year 2013.[9]

Due to the alleged inaction of respondent,[10] however, petitioners filed the instant judicial claim before this Court on March 18, 2016.

Respondent filed his *Answer* on May 16, 2016,[11] interposing the following special and affirmative defenses, to wit:

> "13. The alleged decision of RTC Branch 213 from which Petitioner based his *(sic)* claim for refund is void. The same was issued by a regular court that has no jurisdiction to take cognizance of the case relating to the validity of Revenue Memorandum No. 31-2013 (RMC 31-2013). The power to rule on the validity of Revenue Issuances administered by the BIR are within the jurisdiction of the Court of Tax Appeals and not the Regular Courts.
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> As discussed in the preceding paragraphs, the Supreme Court held in the case of The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue, that:
>
>> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American*

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[8] Resolution dated July 3, 2015, Exhibit "P-7", Docket, pp. 364 to 370.
[9] Exhibits "P-5", "P-6", and "P-13", Docket, pp. 348 to 355.
[10] Par. 11, Petition for Review, Docket, p. 14.
[11] Docket, pp. 60 to 70.

> *Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**"

After the pre-trial conference on August 11, 2016,[12] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on August 30, 2016.[13] In the Resolution dated September 15, 2016,[14] the Court approved the parties' JSFI and terminated the pre-trial. Subsequently, the Court issued a Pre-Trial Order on December 15, 2016.[15]

On February 7, 2017, petitioners filed a *Motion for Consolidation*[16] with the instant case, CTA Case Nos. 9306 and 9321, which are pending before this Division, and CTA Case No. 9384, which is pending before the Third Division, claiming that petitioners in the said cases are similarly situated, and involves similar claims for refund of taxes erroneously paid for taxable year 2013. However, the said *Motion for Consolidation* was denied in the Resolution dated June 13, 2017,[17] pursuant to Rule IV, Section 3(b) of the *Internal Rules of the Court of Tax Appeals.*

During trial, petitioners Aguilar and Mangrobang testified by way of Judicial Affidavits[18] to support the material allegations in their Petition for Review. Exhibits[19] on June 29, 2017, consisting of Exhibits "P-1" to "P-13-A". Thereafter, petitioners filed their Formal Offer of Exhibits.

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[12] Notice of Pre-Trial Conference, Docket, pp. 71 to 72.
[13] Docket, pp. 228 to 234.
[14] Docket, p. 237.
[15] Docket, pp. 246 to 252.
[16] Docket, pp. 253 to 259.
[17] Docket, pp. 293 to 294.
[18] Exhibits "P-14" and "P-15", Docket, pp. 84 to 93 and 148 to 156, respectively.
[19] Docket, pp. 299 to 307.

In the Resolution dated December 15, 2017,[20] the Court admitted all of petitioners' formally offered exhibits and ordered the parties to file their respective memoranda within thirty (30) days from notice considering the failure of respondent's counsel to file his comment to petitioners' Formal Offer of Exhibits and to indicate whether or not he will be presenting any evidence or not, the parties were given a period

With the filing of petitioners' *Memorandum* on February 12, 2018,[21] without respondent's memorandum,[22] the Court considered the instant case submitted for decision on February 15, 2018.[23]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues for this Court's resolution, to wit:

> "Whether or not petitioners are employees of the Asian Development Bank (ADB).
>
> Whether or not the Republic of the Philippines–Asian Development Bank (RP-ADB Agreement) exempts ADB employees from taxes that may be levied on salaries and emoluments paid to them by the ADB.
>
> Whether or not ADB employees, whether foreign nationals or Filipinos, have been enjoying exemption from payment of Philippine income taxes since 1966.
>
> Whether or not petitioners filed their written claims for refund with BIR Revenue District Office (RDO) No. 41 in Mandaluyong City on March 17, 2016.
>
> Whether or not Petitioners' claim for refund were not acted upon by the BIR.

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[20] Docket, pp. 378 to 379.
[21] Docket, pp. 380 to 410.
[22] Records Verification dated February 13, 2018 issued by the Judicial Records Division of this Court, Docket, p. 411.
[23] Docket, p. 415.

> Whether or not this judicial claim for refund was filed within two (2) years from the latest payment date.
>
> Whether or not petitioners are entitled to claim refund for income taxes paid in taxable year 2013."[24]

Considering petitioners' arguments vis-à-vis respondent's counter-arguments (*infra*), the above-enumerated issues may be simplified as follows:

1. Whether or not Section 2(d)(1) of RMC No. 31-2013 is unconstitutional and violative of the doctrine of *pacta sunt servanda*; and

2. Whether or not petitioners are entitled to the refund of their income tax payments for taxable year 2013.

Petitioners' arguments:

Petitioners argue that the Philippines, including respondent, pursuant to the doctrine of *pacta sunt servanda*, is bound to comply with its obligations under the RP-ADB Agreement[25].

According to petitioners, Section 2(d)(1) of RMC No. 31-2013 is a nullity having been declared unconstitutional by the RTC – Branch 213 of Mandaluyong City; and an RMC issued by the BIR cannot in any way amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international agreement—this is a basic principle in administrative law.

Moreover, petitioners submits that Section 2(d)(1) of RMC No. 31-2013 is unconstitutional; and that it violates the doctrine of separation of powers and the rule on the origin of revenue bills.

Lastly, petitioners aver that they are entitled to a refund of the income taxes they have paid for taxable year 2013.

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[24] Issue, JSFI, Docket, pp. 229 to 230.
[25] Formally known as the "AGREEMENT ESTABLISHING THE ASIAN DEVELOPMENT BANK".

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Respondent's counter-arguments:

In his *Answer*, respondent contends that RTC – Branch 213 of Mandaluyong City has no jurisdiction over the case filed by the employees of the ADB, pertaining to the validity of RMC No. 31-2013, considering that the power to rule on the validity of revenue issuances is within the jurisdiction of this Court and not the regular courts.

Furthermore, respondent claims that petitioners, being Filipino citizens and residents of the Republic of the Philippines, are subject to Philippine income taxation, pursuant to Sections 23 and 22(E) of the NIRC of 1997, as amended.

THE COURT'S RULING

The instant *Petition for Review* is bereft of merit.

Petitioners cannot validly rely on the Decision of the RTC – Branch 213 of Mandaluyong, declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional nor rely on the dismissal of respondent's appeal by the Court of Appeals.

Petitioners heavily rely on the Decision of the RTC - Branch 213 of Mandaluyong City,[26] declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional, for having been issued without legal basis, in excess of authority, and/or without due process of law. Allegedly, this Court can take judicial notice of the said Decision.

They also invoke the Resolution dated July 3, 2015 of the Court of Appeals,[27] dismissing respondent's appeal on the said Decision, to support the instant claim for tax refund.

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[26] Exhibit "P-4", Docket, pp. 316 to 347.
[27] Exhibit "P-7", Docket, pp. 364 to 370

To the mind of this Court, petitioners' reliance on the said Decision and Resolution, however, is misplaced. Petitioner's plea for this Court to take judicial notice of the said Decision is likewise untenable.

In invoking said Decision and Resolution, petitioners are actually asking this Court to recognize, honor, or be bound by, the RTC's Decision, declaring the unconstitutionality of Section 2(d)(1) of RMC No. 31-2013, and the Court of Appeals' Resolution, dismissing respondent's appeal on the said Decision, as Our basis for declaring that they are entitled to the tax refund being sought. However, this, We cannot do, simply because the said Decision and Resolution are not binding precedents. It must be emphasized that only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[28]

In addition, Section 4 of the NIRC of 1997 [Republic Act (RA) No. 8424] provides as follows:

> "SEC. 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." *(Emphasis and underscoring supplied)*

The foregoing provision confers upon the CIR both: (a) the power to interpret tax laws in the exercise of her quasi-legislative function; and (b) the power to decide tax cases in the exercise of her quasi-judicial function. As for the former power, it is plain and clear that the same is subject to the review by the Secretary of Finance.

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[28] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

Revenue rulings and issuances that implement or interpret tax laws are classified and described, *inter alia*, as RMCs.[29] RMCs are considered administrative *rulings* which are issued from time to time by the CIR.[30] Thus, pursuant to the above-quoted Section 4, it is the Secretary of Finance who has the power to review RMC No. 31-2013, particularly Section 2(d)(1) thereof, and not the RTC - Branch 213 of Mandaluyong City.

Relative thereto, in *Banco De Oro, et al. vs. Rizal Commercial Banking Corporation*,[31] the Supreme Court, in no uncertain terms, ruled as follows:

> "Republic Act No. 9282,[32] a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax or regulations. Except for local taxes, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> Furthermore, **with respect to administrative issuance (revenue orders, <u>revenue memorandum circulars</u>, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws.** Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. **Hence, the determination of <u>the validity of these issuances</u> clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of**

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[29] Section 1(g), Revenue Administrative Order No. 001-12 dated April 2, 2012.

[30] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999; and *Asia International Auctioneers, Inc., et al. vs. Hon. Guillermo L. Parayno, et al.*, G.R. No.163445, December 18, 2007.

[31] G.R. No. 198756, August 16, 2016.

[32] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **Republic Act No. 1125, as amended, <u>subject to prior review by the Secretary of Finance</u>, as required under Republic Act No. 8424.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the power to review the validity or constitutionality of RMCs issued by the CIR is initially lodged with the Secretary of Finance. Thereafter, it is this Court which has an exclusive appellate jurisdiction to determine the validity or constitutionality of the said administrative issuances.

Correspondingly, RTC - Branch 213 of Mandaluyong City is without jurisdiction to decide on the validity or constitutionality of Section 2(d)(1) of RMC No. 31-2013, and therefore, its Decision dated September 30, 2014 is a nullity. Needless to state, a judgment rendered without jurisdiction is a void judgment.[33]

In the same vein, the Court of Appeals' Resolution dated July 3, 2015[34] cannot have a persuasive effect on the resolution of the instant case, simply because it is not consistent with the jurisdictional requirements of the law. After all, petitioners can neither properly nor successfully rely on the decisions of the Court of Appeals. This is so because the said Court and this Court are now of the same level, pursuant to RA No. 9282; and decisions of the former are thus no longer superior to nor reversive of those of this Court.[35]

Section 2(d)(1) of RMC No. 31-2013 is not unconstitutional. Neither is it violative of the* pacta sunt servanda *doctrine.

In arguing that Section 2(d)(1) of RMC No. 31-2013 is unconstitutional, petitioners contend that an RMC cannot, in any way, amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international

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[33] *Imperial, et al. vs. Armes, et al. etseq.*, G.R. Nos. 178842 and 195509, January 30, 2017.
[34] Exhibit "P-7", Docket, pp. 364 to 370.
[35] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

agreement; and that the said provision violates the doctrine of separation of powers and the rule on the origin of revenue bills.

The said contentions, however, are without merit.

Section 2(d)(1) of RMC No. 31-2013 did not amend or alter the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank* (RP-ADB Agreement).

For easy reference, We reproduce herein pertinent portions of RMC No. 31-2013, including Section 2(d)(1) thereof, *viz*:

"SECTION 1. BACKGROUND. —

xxx xxx xxx

Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:

> 'SECTION 23. General Principles of Income Taxation in the Philippines.—
>
> (A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
>
> xxx
>
> (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; xxx'

As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/ diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.

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The tax consequence of compensation income received by those employed by foreign governments/ embassies/diplomatic missions situated in the Philippine hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. **It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended** ('Tax Code').

This Circular is being issued to evoke compliance by Philippine nationals and individual aliens who are liable to Philippine income tax under the provisions of the Tax Code and who were not given exemption under the terms of duly recognized international agreements or other Philippine laws.

SECTION 2. TAX TREATMENT OF COMPENSATION INCOME. —

The tax treatment of Philippine nationals and alien individuals on compensation income **received by them from** foreign governments/embassies and missions and **international organizations shall be as follows**:

xxx xxx xxx

(d) **Those Employed by Organizations Covered by Separate International Agreements** or Specific Provisions of Law-

1. Asian Development Bank (ADB)

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Section 45(b), Article XII of the **Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank** provides:

'ARTICLE XII

xxx xxx xxx

Section 45

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

xxx xxx xxx

(b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank **subject to the power of the Government to tax its nationals**;" Underscoring supplied

From the above, **only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.**" *(Emphases supplied)*

A careful reading of the foregoing would reveal that the CIR merely exercised his or her power to interpret the pertinent provisions of the NIRC of 1997 in relation to the RP-ADB Agreement. Specifically, based on the cited provisions, the CIR, in effect, concluded that while the RP-ADB Agreement grants income taxation exemption on the salaries and emoluments of officers and staff of ADB, as well as to experts and consultants performing missions therefor, such income taxation exemption does not extend to ADB's officers and staff, who are Philippine nationals.

Such being the case, contrary to the contention of petitioners, the CIR did not, via the issuance of RMC No. 31-2013, supersede, revise or amend the said international agreement.

Without doubt, the State's inherent power to tax is vested exclusively in the Legislature.[36] The Supreme Court has since ruled that the power to tax includes the power to grant tax exemptions.[37] Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.[38]

In this case, however, the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, was not made by the CIR via the promulgation of RMC No. 31-2013. Rather, the tax imposition was made by the Legislature pursuant to the pertinent provisions of the NIRC of 1997, in relation to Section 45(b) of the RP-ADB Agreement. Thus, the contentions of petitioners that there was a violation of the doctrine of separation of powers and the rule on the origin of revenue bills are clearly untenable.

As correctly cited and pointed out in RMC No. 31-2013, all of a resident citizen's income is subject to tax, pursuant to Section 23(A) of the NIRC of 1997, to wit:

> "SEC. 23. *General Principles of Income Taxation in the Philippines.* — Except when otherwise provided in this Code:
>
> **(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within or without the Philippines**;" *(Emphasis supplied)*

In addition and in relation to the above provision, Sections 24, 31 and 32(A)(1) of the NIRC of 1997 read:

> "SEC. 24. *Income Tax Rates.* –
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –
>
> (1) **An income tax is hereby imposed**:

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[36] *Film Development Council of the Philippines vs. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

[37] Refer to *Quezon City vs ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

[38] *Secretary of Finance Cesar B. Purisima, et al. vs. Representative Carmelo F. Lazatin, et al.*, G.R. No. 210588, September 29, 2016.

(a) **On the taxable income defined in Section 31 of this Code**, other than income subject to tax under Subsections (B), (C) and (D) of this Section, **derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein**;

xxx xxx xxx

The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over ₱10,000............................	5%
Over ₱10,000 but not over ₱30,000......	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000......	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000.....	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000...	₱22,500+25% of the excess over ₱140,000
Over ₱250,000 but not over ₱500,000...	₱50,000+30% of the excess over ₱250,000
Over ₱500,000...............................	₱125,000+34% of the excess over ₱500,000 in 1998

Provided, That effective January 1, 1999, the top marginal rate shall be thirty-three (33%) and effective January 1, 2000, the said rate shall be thirty-two percent (32%).

xxx xxx xxx." *(Emphases supplied)*

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> "SEC. 31. *Taxable Income Defined.* — **The term 'taxable income' means the pertinent items of gross income specified in this Code**, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws." *(Emphasis supplied)*
>
> "SEC. 32. *Gross Income.* –
>
> (A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income derived from whatever source, including (but not limited to) the following items**:
>
> (1) **Compensation for services in whatever form paid, including, but not limited to** fees, **salaries, wages**, commissions, and similar items;" *(Emphases supplied)*

Based on the foregoing provisions, it is clear that the compensation income of a Philippine national or a citizen of the Philippines, who is residing therein, from all sources within and without the Philippines, is subject to income tax.

Correspondingly, there is no need for a separate legislation to tax the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens, since the latter individuals are already covered by the above-quoted provisions of the NIRC of 1997.

We cannot agree with the reliance of petitioners on the supposed "Reservation" under Section 45(b) of the RP-ADB Agreement, *i.e.*, on the phrase *"subject to the power of Government to tax its nationals"*, and their resulting contention that without any act from Congress specifically authorizing the exercise of the Government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand. This is simply because a specific congressional act is unnecessary and superfluous, since the power to tax Philippine nationals or citizens, as above shown, are already being exercised under Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997.

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Moreover, as correctly ruled by respondent CIR, the "Reservation" made by the Philippines regarding its right to tax its citizens who earn income as employees of ADB is not a mere reservation but an affirmation of the inherent power of the State to tax its own citizen.[39] And in this connection, it must be stressed that the Philippine Government have long exercised the said power to tax its own citizen, not only at the time the subject income tax was collected, but also at the time the RP-ADB Agreement was entered into, in the year 1966, and also thereafter, even up to the present time.

At the time the RP-ADB Agreement was entered into by the Philippine Government, *i.e.*, on December 22, 1966, the law then in force was the NIRC of 1939.[40] This law had the following provisions to the effect of imposing tax on the income of Philippine nationals or citizens, to wit:

> "SECTION 21. ***Rates of Tax on Citizens*** *or Residents.* — **There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year of the Philippines, a tax equal to the sum of the following:**
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*
>
> "SECTION 28. *Meaning of Net Income.* — ***'Net income'*** **means the gross income computed under section 29** less the deductions allowed by section 30." *(Emphasis supplied)*
>
> "SECTION 29. *Gross Income.* — (a) *General Definition.* — ***'Gross income'*** **includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis supplied)*

Even the NIRC of 1977,[41] the tax code after the NIRC of 1939, had the following taxing provisions on the income of Philippine nationals or citizens, to wit:

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[39] ITAD BIR Ruling No. 018-14 dated February 19, 2014.
[40] Commonwealth Act No. 466.
[41] Presidential Decree No. 1158.

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> "SECTION 21. ***Rates of tax on citizens*** *or residents.* — **A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein** or alien residing in the Philippines **determined in accordance with the following schedule**: xxx
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*
>
> "SECTION 28. *Meaning of net income.* — ***'Net income'*** **means the gross income computed under section twenty-nine,** less the deductions allowed by section thirty." *(Emphasis supplied)*
>
> "SECTION 29. *Gross Income.* — (a) *General Definition.* — *'**Gross income'*** **includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis supplied)*

In view of the foregoing, it cannot be denied that the Philippine Legislature has exercised, and has been exercising, its power to tax the income of Philippine nationals or citizens, at the time the RP-ADB Agreement, up to the present time. Thus, We find no basis in declaring that, at any one time, salaries and emoluments of ADB's officers and staffs, who are Philippine nationals or citizens, were ever exempted from income tax.

Furthermore, in arguing that officers and staff of ADB, who are Philippine nationals or citizens, are exempt from income taxation, petitioners cannot find solace on Section 45(b) of the RP-ADB Agreement. In fact, it is very clear that while the said provision grants tax exemption on the salaries and emoluments paid by the ADB to its officers and staff, it qualifies that the Philippine government has the power to tax ADB's officers and staff, who are Philippine nationals or citizens. For easy reference, Section 45(b) of the RP-ADB Agreement reads as follows:

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"Section 45

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, **shall enjoy the following privileges and immunities**:

xxx xxx xxx

(b) **Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank <u>subject to the power of the Government to tax its nationals</u>**;" *(Emphases and underscoring supplied)*

Considering the above-quoted Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997—the law in force for taxable year 2013—vis-à-vis the foregoing provision of the RP-ADB Agreement, it cannot be said that through the issuance of RMC No. 31-2013, the CIR superseded, revised or amended the said international agreement, in imposing income tax on the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens. As a corollary, even without the issuance of RMC No. 31-2013, the taxability of the said salaries and emoluments remains, by virtue of the said provisions of the NIRC of 1997 and the RP-ADB Agreement.

In the same vein, there can be no violation of the doctrine of *pacta sunt servanda*—a fundamental maxim of international law that requires the parties to keep their agreement in good faith.[42] Section 2(d)(1) of RMC No. 31-2013 does not, in any way, violate Section 45(b) of the RP-ADB Agreement. On the contrary, the said Section 2(d)(1) of RMC No. 31-2013 upholds Section 45(b) of the RP-ADB Agreement, when the former declared that *"only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax."*

Relative thereto, it must be noted that Section 32(B) of the NIRC of 1997 recognizes the treaty obligations entered into by the Government which grants income tax exemptions, to wit:

"SEC. 32. *Gross Income.* –

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[42] *Land Bank of the Philippines vs. Atlanta Industries, Inc.*, G.R. 193796, July 2, 2014.

(A) *Exclusions from Gross Income.* – **The following items shall not be included in gross income and shall be exempt from taxation under this Title**:

xxx xxx xxx

(5) ***Income Exempt under Treaty.*** – **Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.**" *(Emphases and underscoring supplied)*

It is also worthy of note that like the provisions imposing tax on the income of Philippine nationals or citizens, the foregoing provision has been in Our statute books since the enactment of the NIRC of 1939,[43] and thus, is already in existence when the RP-ADB Agreement has been entered into by the Philippine Government. The same provision was also re-enacted in the NIRC of 1977[44] — the precursor of the NIRC of 1997. Thus, there is no indication that the Philippine Government violated the RP-ADB Agreement, insofar as the imposition of tax on the salaries and emoluments paid by the ADB to its officers and employees, who are Philippine nationals or citizens, is concerned.

Applying Section 32(B) of the NIRC of 1997 to the instant case, only those income which are clearly covered by the tax exemption granted under Section 45(b) of the RP-ADB Agreement must be recognized by the Philippine Government. Any item of income, beyond the scope of the said granted tax exemption, must already be subject to income taxation, specifically, the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens.

Long-settled is the rule that the power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed.[45] An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction.[46] Thus, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must

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[43] Section 29(b)(6), Commonwealth Act No. 466.
[44] Section 29(b)(6), Presidential Decree No. 1158.
[45] *Luzon Stevedoring Corporation vs. Court of Tax Appeals, et al.*, G.R. No. L-30232, July 29, 1988.
[46] *Lung Center of the Philippines vs. Quezon City, et al.*, G.R. No. 144104, June 29, 2004.

contribute his share in the running of the government.[47]

As a corollary, a tax exemption cannot arise from vague inference.[48] Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[49]

Petitioners are not entitled to the refund of income taxes paid for taxable year 2013.

Section 229 of the NIRC of 1997 provides as follows:

> "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 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."

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[47] *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.
[48] *Digital Telecommunications Phils., Inc. vs. City Government of Batangas, et al.*, G.R. No, 156040, December 11, 2008
[49] *Supra.*

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Section 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority,[50] 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 respect is illegal.[51] In other words, for taxes to be refunded, it must be shown to have been erroneously or illegally collected.

In this case, however, petitioners failed to establish the factual basis of their claim for a refund. Specifically, petitioners failed to show that they are not Philippine nationals or citizens, so as to entitle them to the tax exemption granted under Section 45(b) of the RP-ADB Agreement. Thus, petitioners' claim for refund must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[50] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005, citing Black's Law Dictionary, 8th Ed., pp. 1496-1497.
[51] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

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
Chairperson, Special 1st Division