REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

ERWIN CASACLANG,

Petitioner,

CTA CASE NO. 9091

-versus-

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE (RDO 041 Mandaluyong City)
Respondent.

Promulgated:

DEC 04 2018
11:22 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution are the following:

1) Petitioner's "Motion to Extend Time to File Comment" filed on October 02, 2018 *via* registered mail, praying for an additional ten (10) days from October 02, 2018 or until October 12, 2018 to file his comment;

2) Records Verification Report of the Judicial Records Division dated October 11, 2018 stating that Petitioner only filed one (1) copy of his "Motion to Extend Time to File Comment"; and

3) Respondent's "Motion for Reconsideration" filed on August 29, 2018 [1], with Petitioner's "Comment (Re: Motion for Reconsideration)" filed on October 12, 2018.

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1 Docket, pp. 287 to 292.

Petitioner's "Motion to Extend Time to File Comment"

On August 31, 2018, a Resolution[2] was issued requiring Petitioner to comment on Respondent's "Motion for Reconsideration" within fifteen (15) days from notice. Upon receipt of Petitioner's comment or the lapse of the period granted, the incident shall be deemed submitted for the resolution of the Court.

On October 02, 2018, Petitioner filed a "Motion to Extend Time to File Comment" *via* registered mail, praying for an additional ten (10) days from October 02, 2018 or until October 12, 2018 to file his comment. On October 11, 2018, a Records Verification Report was issued by the Judicial Records Division stating that Petitioner only filed one (1) copy thereof.

The Court **GRANTS** Petitioner's "Motion to Extend Time to File Comment". However, since only a single copy was filed, Petitioner is **ORDERED** to file additional three (3) copies of said pleading within five (5) days from notice.

Respondent's "Motion for Reconsideration"

Respondent moves for the reconsideration of the Court's Decision[3] dated August 06, 2018 ("Assailed Decision"), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of Petitioner Erwin Casaclang the amount of Two Hundred Twenty-Eight Thousand Nine Hundred Sixteen Pesos and 81/100 (Php228,916.81), representing his erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012.
>
> **SO ORDERED.**"

Respondent assails the aforesaid Decision on the following grounds:

1) Revenue Memorandum Circular ("RMC") No. 31-2013 was issued to implement the provisions of the Tax Code; and

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[2] *Id.*, p. 294.
[3] *Id.*, pp. 264 to 285.

2) It is the National Internal Revenue Code ("NIRC") of 1997, as amended, which imposes a tax on Filipino employees of the Asian Development Bank ("ADB"), and not RMC No. 31-2013.

Respondent contends that RMC No. 31-2013 was issued merely to clarify the existing law, that is the exemption from withholding taxes of compensation of officials and employees of foreign governments/embassies/diplomatic missions and international organizations. As such, it does not create new rules. Respondent points out that it is an interpretative law. Its application is the effectivity of the law which it clarifies – the NIRC of 1997, as amended. Therefore, Respondent claims that Petitioner is subject to income taxes for 2012. He is not entitled to a refund of the taxes paid for that year.

Respondent also submits that upon the effectivity date of the NIRC of 1997, as amended on January 01, 1998, the Legislature already imposed the payment of income tax upon Filipino employees of the ADB. In particular, Sections 23(A) and 24(A)(1) of the said Code provides that a Filipino citizen and resident of the Republic of the Philippines, such as Petitioner, is subject to Philippine income taxes on all his income derived from sources within and without the country.

Lastly, Respondent emphasizes that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

On the other hand, Petitioner in his "Comment (Re: Motion for Reconsideration)" maintains that the motion for reconsideration deserves scant consideration and should be denied. Petitioner posits that Respondent's arguments fail to consider pertinent instruments that preceded the NIRC of 1997, as amended. This includes the Agreement Establishing the Asian Development Bank ("ADB Charter") stating that bank employees shall be exempt from taxation while recognizing that member nations retain the right to tax its own citizens, the 1966 ratification by the Philippine Government of the ADB Charter and the Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank ("ADB Headquarters Agreement").

Petitioner avers that following the principle of prospectivity of statutes, RMC 31-2013 is a new regulation that may not be applied retroactively to the period previous to its date of issuance in 2013. Petitioner asserts that absent express language authorizing retroactive application, it may not be applied to the year 2012 for which Petitioner paid his income tax.

Lastly, Petitioner underscores that Respondent failed to present justification that Petitioner has not complied with the requirements to be entitled to the tax refund for taxes paid for 2012.

We find Respondent's "Motion for Reconsideration" bereft of merit.

The Court does not have any misgivings or doubts as to Respondent's position with regards to the taxable status of Filipino ADB employees, such as Petitioner. Thus, We have painstakingly discussed in the Assailed Decision that under Sections 23 and 24 of the NIRC of 1997, as amended, compensation income of resident citizens is subject to the graduated income tax rates unless expressly exempted under treaty. Because of the reservation by the Republic of the Philippines of its power to tax its nationals in the ADB Charter and the ADB Headquarters Agreement, the rule is that resident citizens employed by ADB are subject to graduated income tax rates.

However, it must be pointed out and emphasized that notwithstanding above, compensation income of Filipino personnel employed by ADB were not subjected to income tax in the past. It was only by the issuance of RMC No. 31-2013 that then Commissioner Kim Henares categorically clarified that their compensation is subject to tax. Moreover, it was provided in the RMC that due to the fact that ADB as employer is exempt from withholding the Withholding Tax on Compensation ("WTC") on these employees, they themselves must file their own Annual Income Tax Return with the Revenue District Office having jurisdiction either over ADB's principal office or their legal residence or principal place of business.

In other words, RMC 31-2013 was issued to shed light on the "confusion" relative to the correct tax treatment of the compensation income earned by Filipino personnel employed by ADB. It addressed the inadequacy of the current Bureau of Internal Revenue (BIR) regulations on the matter and devised a mode for the said employees to pay their income tax obligations to the government, which was not provided for previously. The fact that the issuance of the said RMC was rendered necessary leads to no other conclusion than that the matter in issue has been obscure and ambiguous. Hence, the Filipino employees of ADB should not be prejudiced, penalized nor castigated for their failure to comply with their income tax obligations under our tax laws, having taken guidance from the policies, pronouncements, issuances and actuations of the BIR prior to RMC No. 31-2013.

This Court is not unaware of the well-entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. In fact, utmost caution should be taken in this regard. But, like other principles of law, this also admits of exceptions in the interest of justice and fair play.[4]

RMC No. 31-2013 was issued only April 12, 2013. By virtue thereof, Respondent collected Petitioner's income tax for his compensation for calendar year 2012. This notwithstanding the fact that previously, Petitioner's income was not subjected to tax. Unlike a regular employee whose withholding tax on compensation was withheld by his employer in monthly installments minimizing the impact in the employee's pocket, Petitioner, just like the other Filipino personnel employed by ADB, was forced to procure a substantial amount for an individual in order to settle his income tax liability for 2012. Where he is supposed to get it from, either from his savings if he possesses one or from a personal loan, is his own concern.

That is indeed a reality this Court refuses to ignore. The Court is neither blind nor is it turning a deaf ear on the plight of the ADB Filipino employees who were in 2013 constrained to file and pay their income tax for the previous year, for which no money was set aside for later use. Consistent with the basic notions of fairness and equity, RMC No. 31-2013 should be applied prospectively. The compensation income earned by Petitioner should only be taxable beginning calendar year 2013, the year RMC No. 31-13 took effect. By 2013, Filipino personnel employed by ADB such as Petitioner had already taken cognizance of the said RMC and are already mindful of their obligation to retain money from their salaries in payment for their tax liabilities.

Again, this Court is not only a court of law but also of justice. Faced with a choice between a decision that will serve justice and another that will deny it because of a too strict interpretation of the law, We must resolve in favor of the former, for the ultimate end of the law is justice.[5] *Bonus judex secundum aequum at bonum judicat stricto juri praefert.*[6]

Accordingly, We find no justifiable reason to deviate from Our finding that Petitioner's claim for refund amounting to Php228,916.81, representing his erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012, is valid.

WHEREFORE, premises considered, Respondent's "Motion for Reconsideration" is **DENIED** for lack of merit.

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[4] ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. L-52306, October 12, 1981.

[5] Pangan v. Court of Appeals and Teodora Garcia, G.R. No. L-39299, October 18, 1988.

[6] A good judge decides according to justice and right and prefers equity to strict law.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice