**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

**MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VERGEL K. LATAY, SHIELA MARIE F. MARIANO, ARLENE P. PORRAS, and ARLENE B. CHAVEZ,**
Petitioners,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 2253**
(CTA Case No. 9321)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:
MAY 1 2 2022 4:10 pm

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## RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For resolution of the Court *En Banc* is petitioners' Motion for Reconsideration (of the Decision dated 30 June 2021) filed on July 22, 2021, *sans* respondent's comment.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit.

**SO ORDERED."**[1]

Petitioners assert the following grounds in the instant motion:

1. The Honorable Court committed manifest errors when it did not take judicial notice of the decision of RTC Branch 213 of Mandaluyong City and affirmed the decision and resolution of the Honorable Court in Division which ruled on the validity of Revenue Memorandum Circular (RMC) No. 31-2013 effectively exercising appellate jurisdiction over the Regional Trial Court.

2. The Honorable Court committed serious errors in not holding that the Government of the Republic of the Philippines did not expressly retain but merely reserved its right [to] impose tax to Filipino ADB employees.

3. The Honorable Court committed manifest errors in resolving the petitioners' claim for refund by affirming the decision and resolution of the Honorable Court in Division which passed upon the validity of RMC No. 31-2013 and holding that the NIRC is a valid declaration of taxability of ADB Filipino Employees.[2]

**Petitioners clearly questioned the validity of RMC No. 31-2013 in their Petition before the Court in Division. Hence, the CTA validly passed upon the same**

Petitioners assert that the CTA does not have jurisdiction to rule on the validity of RMC No. 31-2013 because the same is not allegedly raised in the Petition.

However, a review of the Petition filed before the Court in Division clearly belies petitioners' assertion. Thus:

> "16. 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."[3]

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1 Decision, Court *En Banc* Docket, p. 205.
2 Grounds for Reconsideration, Motion for Reconsideration (of the Decision dated 30 June 2021), Court *En Banc* Docket, pp. 217-218.
3 Petition for Review, Court in Division Docket, par. 16, Vol. 1, p. 17.

Petitioners likewise reiterated their assertions with regard to the validity of the subject RMC in their Memorandum before the Court in Division. In fact, petitioners argued that "Section 2 (d) (1) of RMC No. 31-2013 is a nullity having been declared unconstitutional by the Regional Trial Court, Branch 213, of Mandaluyong City."[4]

As such, the CTA validly ruled upon the issue on the validity of RMC No. 31-2013 which was precisely raised by petitioners both in their Petition and Memorandum before the Court in Division.

**The CTA is under no obligation to take judicial notice of a decision of a lower court involving different parties and cause of action**

Petitioners also assert that the CTA should take judicial notice of the decision of the Regional Trial Court of Mandaluyong City in "Erwin Salavera and Portia Gonzales v. Commissioner of Internal Revenue", docketed as Civil Case No. MC14-8775.

In *Elsa Degayo v. Cecilia Magbanua-Dinglasan, et al.*,[5] the Supreme Court explained the rule on judicial notice, as follows:

> "The taking of judicial notice is a matter of expediency and convenience for it fulfills the purpose that the evidence is intended to achieve, and in this sense, it is equivalent to proof. Generally, courts are not authorized to 'take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge.' While the principle invoked is considered to be the general rule, this rule is not absolute. There are exceptions to this rule. In the case of *Tiburcio v PHHC*, this Court, citing Justice Moran, stated:
>
> > 'In some instance, courts have taken judicial notice of proceedings in other causes, because of their close connection with the matter in the controversy. Thus, in a separate civil action against the administrator of an estate arising from an appeal against the report of the committee on claims appointed in the administration proceedings of the said estate, to determine whether or not the appeal was taken on time, the court took judicial notice of the record of the administration proceedings. ꝝ

[4] Court in Division Docket, Vol. IV, p. 1479.
[5] G.R. No. 173148, April 6, 2015.

> Courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable in the case under consideration.'"*(Citations omitted)*

Here, petitioners failed to present any justification during the hearing as to why the Court in Division should take judicial notice of the said evidence. While the CTA recognizes that there is a decided case by the lower court respecting the validity of the subject RMC, the same does not deprive the CTA of its power to scrutinize the same especially when it is relevant to petitioner's cause of action, *i.e.*, claim for refund.

As such, the Court *En Banc* finds petitioners' arguments untenable.

**A review of the relevant treaty and legislative provisions will demonstrate that Congress certainly intended to tax the salaries and emoluments received by Filipinos from ADB**

Finally, petitioners rehashed their arguments as to their entitlement to their refund claim. This has been exhaustively discussed in the assailed Decision, as follows:

> "On December 4, 1965, the 'Agreement Establishing the Asian Development Bank' was executed.
>
> Thereafter, in a Senate Resolution No. 6 dated March 16, 1966, the ADB Charter was ratified and confirmed by the Philippine Government with a reservation of its right to tax the Filipino employees of ADB, thus:
>
> > 'NOW THEREFORE, be it known that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the Agreement Establishing the Asian Development Bank done on December 4, 1965 at Manila, Philippines, do hereby in pursuance of the aforesaid concurrent of the Senate of the Philippines, ratify and confirm the said Agreement and every article and clause thereof, <u>subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to</u>

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tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines.'

On December 22, 1966, 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) was signed, which provides in pertinent part:

'ARTICLE XII

Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others

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:

(a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;

(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; xxx."

The 1997 NIRC, a subsequent legislation which took effect on January 1, 1998, is the law that enables the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and outside the Philippines under Sections 23(A), 24(A)(1)(a), 31 and 32, as amended:

'**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 and without the Philippines;

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**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:

(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;'

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**TITLE II**
**TAX ON INCOME**

**CHAPTER V**
**COMPUTATION OF TAXABLE INCOME**

**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.

**CHAPTER VI**
**COMPUTATION OF GROSS INCOME**

**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;

(2) Gross income derived from the conduct of trade or business or the exercise of a profession;

(3) Gains derived from dealings in property;

(4) Interests;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Annuities;

(9) Prizes and winnings;

(10) Pensions; and

(11) Partner's distributive share from the net income of the general professional partnership.'

Based on the foregoing, petitioners' argument that a special law should be passed to specifically tax our nationals is unmeritorious. The clear import of the ADB Charter shows the intent of the government to tax our nationals and as such, the enactment of a special law to tax the same subjects would be superfluous. Meanwhile, the subsequent passage of the 1997 NIRC confirmed the intent of the government to impose taxes on Filipinos working in ADB.

In fact, even prior to the 1966 Agreement between the ADB and the Government of the Republic of the Philippines, the Philippine government has been exercising its sovereign right to tax its citizens or nationals.

Specifically, income tax was levied, assessed, collected, and paid annually upon the entire net income of citizen and resident of the Philippines, pursuant to Sections 21, 28 and 29 of the 1939 NIRC. *gc*

Moreover, it is the Court *En Banc*'s view that the Philippine government, in entering upon the 1966 Agreement and giving the privilege of tax exemption on salaries emolument paid by ADB to its employees, did *not* relinquish its power of taxation over its own citizens and nationals.

In the same vein, pursuant to Sections 21, 28 and 29 of the 1977 NIRC, income tax was 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.

Thereafter, pursuant to Sections 23(A), 24(A), 31 and 32 of the 1997 NIRC, as amended, all income of a resident citizen is subject to tax (derived from all sources within and without the Philippines).

Consequently, the Court *En Banc* in the recent case of *Commissioner of Internal Revenue v. Rowena Vicente, et al.*[6] affirmed the position that notwithstanding the alleged reliance on various confirmations and affirmations of various revenue officials that the income of Filipino citizens from ADB was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the fact remains that the Philippine government in giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did *not* relinquish its power of taxation over its own citizens. Thus, the income tax paid in 2012 is not in excess of what is due and the payment and collection of said tax was neither erroneous nor illegal insofar as it is anchored on a statutory authority. Thus:

> 'Thus, despite the alleged reliance on various confirmations and affirmations of various revenue officials that the income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the fact remains that Philippine government in giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals, <u>that amount of tax paid in taxable year 2012 is not in excess on what is due; that the payment and collection of taxes for taxable year 2012 was subject to statutory authority and is neither erroneous</u>

[6] CTA EB Case Nos. 1717 & 1718 (CTA Case No. 9096), August 8, 2019.

nor illegal. 'Render to Caesar what is Caesar's'. In sum, claim for refund must perforce fail.

Taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.'"[7]

Meanwhile, worth mentioning is the concurring opinion in the assailed Decision of Presiding Justice Roman G. Del Rosario. Indeed, "[t]he issuance of RMC No. 31-2013 does not have the effect of modifying any rule or regulation promulgated by the Commissioner of Internal Revenue (CIR) as there is nothing on record which would show that the CIR had, in the past, issued rules or regulations exempting from income tax the income derived by resident citizens or nationals of the Philippines who are employees of ADB. xxx While non-payment of taxes cannot be considered as custom, yet, even if so – Article 11 of the Civil Code provides that '[c]ustoms which are contrary to law, public order or public policy shall not be countenanced.' Thus, the alleged long-standing practice of the BIR of not subjecting to income tax the salaries and emoluments derived by resident citizens from their employment with ADB is not sufficient to exempt them from payment of said tax."[8]

Considering the foregoing, the Court *En Banc* finds the instant motion unmeritorious. Hence, the denial of the same is in order.

**WHEREFORE**, the instant Motion for Reconsideration (of the Decision dated 30 June 2021) is **DENIED**, for lack of merit.

[7] See Note 1, pp. 200-204.
[8] See Note 1, p. 208.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
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
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice