REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARIA DONA ALIBOSO, JOY ARCINUE, MARY ABIGAIL BACUD, BERNADETTE BIGASIN, MA. PATRICIA LIM, KRISTINE LEAH MERCADO, KATHLEEN ATON, RAQUEL BERNADETTE VELASQUEZ, JAMILA YASMINA ACHANZAR, SARAH SENAS, THELMA GAIL ABIVA, ARNOLD AGUILA, FRANCOISE MARIE ALONZO-CALALAY, KAREN ANDES, LEAH ARBOLEDA, ROSALYN ARIATE, DONATILA BALAGTAS, GLENDA BALATBAT, FATIMA BAUTISTA, MELCHOR BUREROS, PATRICIA CALCETAS, CATHERINE CARIN, KATHERINE MITZI CO, MA. CRISTINA CONCEPCION, MILETT CONCEPCION, MARTIN ERICSON CRUEL, CAROLINE VALENTINA CRUZ, LESLIE CRUZ, MARIA CELINA CRUZ, MARIA SIMONETTE DAQUIS, EDWIN DAVID, CELEDONIA DE FELIPE, MELANIE DELA CRUZ, AGNES DIAMANTE, SHEILA DIMAL, MARIE KRISTINE ESTRELLA, SHERYL EVANGELISTA, JANE FANTILANAN, ANGELICA LUZ FERNANDO, ERICKA JOY GAJETE, KRISTINE GALANG, MARIE JEMINETTE GATCHALIAN, DOROTHY GERONIMO, PAUL ANTHONY GOKIOCO, LANI GOMEZ, GLEN GONZAGA, GEMMALINE GONZALEZ, JHONA GUILLEM,	CTA EB No. 2136 (CTA Case No. 9087)

PAMELA GUTIERREZ, DIANA MARIE HERNANDEZ, MA. KRISTINA HIDALGO, IRIS EVADIE JIMENEZ, LORETTA JOVELLANOS, ELIZABETH JUAN, ANGELICA KARUNUNGAN, NORLYN LAGSIT, DARYL JAMES LAPING, NORMAN LU, JOAN REINA LUNA, MANNY MABALOT, AUGUSTUS MAGNO, ELVIRA MARTINEZ, MA. ILUMINADA MENDOZA, DAISY MENDOZA, MARIE VIC MINA, MARIE CHRISTINE MONTOYA, JANET MUTYANGPILI, JOCELYN NARCISO, JULIET NECIA, CLAIRE ANN ODSINADA, EMMANUEL ONG, WEMA PACANO, MA. VICTORIA PANTALEON, NAJA PEÑAS, CHRISTY PLANCO, FARAHTONI PLANCO, MA. THERESA PRADO, KAREN QUIETA, ELAINE QUINTO, ANGELITO RABE, MARY GRACE RAMOS, ARNEL REYES, MA. ELENA ROCES, MARIA LUALHATI RUEDA, CLARK SALAS, MARIA CLARISSA SAMSON, MARCELLE ANNE SANTOS, JOAQUIN SARDONA JR., ROWENA SARMIENTO, MA. CORAZON SISON, MA. RITA STA. CRUZ, LEA BENITA SUMULONG, PRECIOSA SUNGA, SHERYL TAMAYO, JENNIFER TANTAMCO, ALDOUS MOSES TIRONA, MA. ELOISA TUASON, MARIA CECILIA VILLANUEVA, EDNA VILLAREAL, CHARINA

VILLARINO, ROWENA VIÑAN, BRYAN VISAYA, DULCINEA JOY YRAITA, JULIE YU, FLORDELIZA ZACARIAS, and ALEX MORA, *Petitioners,*	Present: **DEL ROSARIO, *PJ*, UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID, *JJ*.**
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 07 2022 9:25 am

x----------x

DECISION

REYES-FAJARDO, *J.*:

This Petition for Review filed on October 7, 2019,[1] challenges the Decision dated April 3, 2019[2] and Resolution dated August 22, 2019[3] in CTA Case No. 9087, whereby the Court in Division denied petitioners' refund claim of alleged erroneously or illegally paid income taxes (IT) covering taxable years (TYs) 2012 and 2013. The dispositive portions of the challenged Decision and Resolution are as follows:

Decision dated April 3, 2019:

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

Resolution dated August 22, 2019:

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1 *Rollo*, pp. 6-33.
2 *Rollo*, pp. 134-15
3 *Rollo*, pp. 168-176.

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

SO ORDERED.

PARTIES

Petitioners are all Filipino employees of the Asian Development Bank (ADB) for the whole year of 2012 and 2013, whose office is located at 6 ADB Ave., Mandaluyong City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to administer all laws pertaining to internal revenue taxes, with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013.[4] Section 2(d)(1) thereof provides that the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine tax. In contrast, Filipinos who are employed at the ADB are subject to Philippine income taxes, thus:

> 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

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[4] 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.

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

1. Asian Development Bank (ADB)

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

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

(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;

From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

RMC No. 31-2013 was given retroactive effect and petitioners were ordered to declare and pay income taxes for income received for TYs 2012 and 2013. For this reason, they paid income taxes for said years, as follows:

Petitioners	Income Tax Paid		Total
	2012	2013	
Maria Dona D. Aliboso	₱ 213,653.61	₱ 235,979.00	₱449,632.61
Joy I. Arcinue	327,567.68	327,567.68	655,135.36
Mary Abigail C. Bacud	267,927.16	270,169.00	538,096.16
Bernadette B. Bigasin	571,574.00	567,231.00	1,138,805.00
Ma. Patricia A. Lim	419,186.00	414,921.00	834,107.00
Kristine Leah A. Mercado	553,952.42	313,356.00	867,308.42
Kathleen C. Aton-Osias	361,292.89	447,643.00	808,935.89

Raquel Bernadette P. Velasquez	328,545.55	340,709.00	669,254.55
Jamila Yasmina R. Achanzar	130,749.88	147,394.00	278,143.88
Sarah C. Senas	195,138.07	202,098.00	397,236.07
Thelma Gail G. Abiva	294,136.54	294,028.00	588,164.54
Arnold L. Aguila	187,634.47		187,634.47
Franchoise Marie B. Alonzo-Calalay	115,090.98	144,870.00	259,960.98
Karen K. Andes	397,893.35	401,108.00	799,001.35
Leah P. Arboleda	233,601.00	237,029.00	470,630.00
Rosaly P. Ariate-Jimenez	295,938.22		295,938.22
Donatila T. Balagtas	792,952.34		792,952.34
Glenda C. Balatbat	252,231.63	256,810.00	509,041.63
Fatima Mabor Bautista	223,103.94	227,764.00	450,867.94
Melchor R. Bureros	246,833.32	258,092.00	504,925.32
Patricia P. Calcetas	786,591.93	779,718.00	1,566,309.93
Catherine E. Clarin	187,970.47	194,590.00	382,560.47
Katherine Mitzi H. Co	136,487.94		136,487.94
Ma. Cristina N. Concepcion	298,199.64		298,199.64
Milett G. Concepcion	384,323.16	293,383.00	677,706.16
Martin Ericson S. Cruel	397,977.88	381,711.00	779,688.88
Caroline Valentina G. Patacsil-Cruz	365,695.87	380,514.00	746,209.87
Leslie A. Cruz	260,014.11		260,014.11
Ma. Celina S. Cruz	363,248.50	363,781.00	727,029.50
Maria Simonette R. Daquis	186,157.08	197,715.00	383,872.08
Edwin E. David	286,330.33	323,180.00	609,510.33
Celedonia G. De Felipe	646,931.75	479,626.00	1,126,557.75
Fatima Christine N. De Ramos-Blanco	232,256.00	243,268.00	475,524.00
Melanie M. Dela Cruz	452,909.30	458,848.00	911,757.30
Aleli D. Dela Rosa	105,128.65	64,681.00	169,809.65
Agnes V. Diamante	207,075.18		207,075.18
Shiela S. Dimal	451,418.90	444,266.00	895,684.90
Marie Kristine S. Estrella	129,038.47		129,038.47
Sheryl A. Evangelista	138,962.55	148,517.00	287,479.55
Jane I. Fantilanan	136,410.82		136,410.82
Angelica Luz B. Fernando	169,938.50		169,938.50
Ericka Joy Mangalile-Gajete	173,527.81	178,244.00	351,771.81
Kristine L. Galang	230,718.09	253,648.00	484,366.09
Marie Jeminette F. Gatchalian	229,452.23	200,284.00	429,736.23
Dorothy C. Geronimo	433,174.50	432,538.00	865,712.50
Paul Anthony F. Gokioco	246,760.31	259,047.00	505,807.31
Lani R. Gomez	414,667.40	392,099.00	806,766.40
Glen De Leon Gonzaga	275,524.31	293,986.00	569,510.31
Gemmaline D. Gonzalez	331,384.81	329,785.00	661,169.81
Melani A. Gonzales	290,486.34	283,443.00	573,929.34
Jhona G. Guillen	89,348.31		89,348.31
Pamela P. Gutierrez	301,460.12		301,460.12
Diana Marie T. Hernandez	244,251.66	265,788.00	510,039.66
Ma. Kristina C. Hidalgo	398,457.28		398,457.28
Iris Evadie C. Jimenez	199,224.00		199,224.00
Loretta C. Jovellanos	663,678.73	693,843.00	1,357,521.73
Elizabeth C. Juan	157,620.23	336,256.48	493,876.71
Angelica C. Karunungan	152,093.17	160,094.00	312,187.17
Norlyn G. Lagsit	203,181.24	206,380.00	409,561.24
Daryl James A. Laping	176,140.68		176,140.68
Norman T. Lu	508,377.48	514,158.00	1,022,535.48
Joan Reina M. Luna	86,870.50	168,449.00	255,319.50
Manny C. Mabalot	427,620.91	215,029.00	642,649.91
Augustus A. Magno	331,572.43	339,547.00	671,119.43

Elvira S. Martinez	698,395.60	707,789.00	1,406,184.60
Maria Iluminada R. Mendoza	490,590.31		490,590.31
Daisy B. Isidro-Mendoza	228,864.32	240,875.33	469,739.65
Marie Vic E. Mina	337,668.13	348,516.00	686,184.13
Marie Christine G. Montoya	342,742.75	371,150.00	713,892.75
Theresa R. Mora	389,934.94		389,934.94
Janet R. Mutyangpili	213,190.19	216,459.00	429,649.19
Jocelyn M. Narciso	221,493.00	227,103.00	448,596.00
Juliet L. Necia	165,529.02	165,819.00	331,348.02
Claire Ann F. Odsinada	187,354.36	192,150.00	379,504.36
Emmanuel I. Ong	234,734.41	282,207.00	516,941.41
Wema G. Pacano	181,755.00		181,755.00
Ma. Victoria Isabel G. Pantaleon	278,583.58	264,287.00	542,870.58
Naja P. Penas	141,613.78	156,836.00	298,449.78
Christy C. Planco	175,690.76		175,690.76
Farahtoni G. Planco	240,248.95		240,248.95
Ma. Theresa D. Prado	367,745.38		367,745.38
Karen I. Quieta	142,368.01	148,326.00	290,694.01
Elaine Estolano Quinto	144,972.48		144,972.48
Angelito R. Rabe	199,800.87	201,943.00	401,743.87
Mary Grace M. Ramos	160,203.93	275,963.00	436,166.93
Arnel F. Reyes	177,003.49	180,638.00	357,641.49
Ma. Elena S. Roces	250,043.48	261,259.00	511,302.48
Christian Paolo E. Ramagos	190,893.97		190,893.97
Maria Lualhati A. Rueda	292,252.16		292,252.16
Clark P. Salas	215,105.59	197,939.00	413,044.59
Maria Clarissa T. Samson	342,959.72	342,220.00	685,179.72
Marcella Anne L. Santos	168,455.74	170,031.00	338,486.74
Joaquin S. Sardona, Jr.	261,145.55		261,145.55
Rowena P. Sarmiento	531,203.51	516,288.00	1,047,491.51
Ma. Corazon Cecilia M. Sison	349,511.18	320,740.00	670,251.18
Ma. Rita S. Sta. Cruz	386,801.05	393,794.00	780,595.05
Lea Benita R. Sumulong	759,841.45	770,115.00	1,529,956.45
Preciosa L. Sunga	399,217.57	396,908.00	796,125.57
Sheryl G. Tamayo	309,278.03	330,054.00	639,332.03
Jennifer Barrientos Tantamco	233,202.72		233,202.72
Aldous Moses B. Tirona	326,864.83	327,766.00	654,630.83
Ma. Eloisa L. Tuason	366,158.04	366,250.00	732,408.04
Maria Cecilia Ylagan-Villanueva	268,174.50		268,174.50
Edna M. Villareal	400,820.01	342,361.00	743,181.01
Charina J. Villarino	77,073.50	132,408.00	209,481.50
Rowena S. Vinan	752,901.95	730,451.00	1,483,352.95
Bryan H. Visaya	126,565.09	143,885.00	270,450.09
Dulcinea Joy R. Yraita	275,401.32	274,977.00	550,378.32
Julie G. Yu	272,256.69	261,651.00	533,907.69
Flordeliza A. Zacarias	399,602.14	295,849.00	695,451.14
Total			**₱ 58,892,068.16**

Meanwhile, on February 14, 2014, the validity of RMC No. 31-2013 was challenged by two (2) Filipino ADB employees before Branch 213, Regional Trial Court of Mandaluyong City (RTC-Mandaluyong), docketed as Civil Case No. MC14-8775 entitled "Erwin Salavera, et al.[5] vs. Commissioner of Internal Revenue."

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5 Individuals not among the petitioners in this case.

On September 30, 2014, a Decision was rendered by the RTC-Mandaluyong, declaring Section 2(d)(1) of RMC 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law. The RTC-Mandaluyong denied respondent's motion for reconsideration (MR) and affirmed its Decision in an Order dated January 9, 2015.

Respondent filed an appeal before the Court of Appeals (CA), docketed as CA-G.R. CV No. 104374. However, it was dismissed in a Resolution dated July 3, 2015 because respondent improperly elevated the adverse decision and order of the RTC-Mandaluyong through an ordinary appeal. According to the CA, the proper recourse of respondent is to institute a petition for review before the Supreme Court (SC).

Aggrieved, respondent filed a petition for review on certiorari before the SC, questioning the dismissal of his case by the CA. The case is still pending resolution by the SC.

Petitioners filed a claim for refund of the subject income taxes with respondent, and the latter failed to act thereon. By reason thereof, petitioners filed a Petition for Review with the Court in Division on July 10, 2015, docketed as CTA Case No. 9087.

On April 3, 2019, the Court in Division rendered the challenged Decision, denying petitioners' refund claim of erroneously paid or illegally collected IT covering TYs 2012 and 2013, for failure to establish the factual basis thereof.

Petitioners moved to reconsider the challenged Decision, which was likewise denied by the Court in Division in the equally challenged Resolution dated August 22, 2019.

Hence, this Petition.

THE ISSUES

Petitioner posed the following issues for the Court's resolution:

I.
Whether or not petitioner complied with the requirements of Section 229 of the National Internal Revenue Code, as amended.

II.
Whether the RTC has jurisdiction to rule on the validity of RMC No. 31-2013.

III.
Whether or not legislation is necessary in order to tax the income of Filipino ADB employees such as petitioners.

IV.
Whether or not an income tax on the salaries and emoluments of Filipino ADB employees such as petitioners are discriminatory and in violation of the equal protection of the laws.

V.
Whether or not BIR RMC No. 31-2013 prejudiced Filipino ADB employees such as petitioners for being retroactive to year 2012.

VI.
Whether or not petitioners are entitled to claim for refund for income taxes paid on 2012 and 2013 alleged to be erroneously and/or illegally paid.

PETITIONERS' ARGUMENTS

Petitioners argue that among the requirements for the grant of refund under Section 229 of the NIRC, as amended is: *first,* filing of an administrative claim for refund prior to institution of judicial claim of even nature; *second,* said administrative and judicial claims must be filed within two (2) years from payment of tax; and *third,* the taxes sought to be refunded are illegal or erroneous taxes. According

to petitioners, these *three* requirements have been duly complied with.

For the *first* and *second* requisites, petitioners explain that the parties judicially admitted their filing of administrative claims for refund with respondent prior to institution of their Petition for Review before the Court in Division, within two (2) years from payment of IT for TYs 2012 and 2013.

Anent the *third* requisite, petitioners claim that the corresponding ITs they paid for TYs 2012 and 2013 were erroneously and/or illegally collected by respondent because: *first,* the revenue issuance from which their IT liabilities were based, *i.e.,* Section 2(d) of RMC No. 31-2013, was nullified by the RTC-Mandaluyong; and *second,* their salaries and other emoluments are tax exempt pursuant to Article 56 of the ADB Charter.

Petitioners, too, concede that the Philippine government reserved its right to tax its citizens. They nonetheless assert that said reservation is not self-executing; legislation is necessary to put it into effect. As there was no legislation specifically taxing their income for TYs 2012 and 2013, no IT is due from them.

Petitioners also point out that the prevailing practice in the application of the ADB Charter must be considered in the interpretation thereof. Specifically, the following factors collectively reveal the true intent of the ADB Charter to relieve them of Philippine income taxes: *first,* for close to fifty (50) years since the establishment of the ADB, salaries of Filipino employees have not been subjected to income tax; *second,* an opinion of Regional Director Antonio Ortega confirming their tax-exempt status; *third,* Executive Order (EO) No. 161, allegedly stating to respect privileges and immunities of the ADB and its staff; and *fourth,* most member Countries of the ADB that either reserved or retained their right to tax their nationals employed in the country office of the ADB have practiced exemption rather than taxation. These member countries[6] passed legislation, regardless of whether their nationals are to be taxed or not.

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6 Petitioners enumerated the list of ADB member-countries which enacted implementing or enabling laws subsequent to their ratification of the ADB Charter. See Petition for Review. See *Rollo,* pp. 12-24.

Petitioners finally harp that the imposition of IT on their salaries and emoluments is discriminatory and a violation of equal protection of the laws, contending that whatever immunities and privileges granted by the government to the United Nations (UN) and its specialized agencies should likewise be enjoyed by the ADB.

On the other hand, respondent failed to file comment/opposition on petitioners' petition for review, despite notice.[7]

THE RULING OF THE COURT

The Petition is denied.

Section 229 of the NIRC reads:

> 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 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.

Thus, the successful prosecution of a refund claim under Section 229 of the NIRC, as amended rests upon the concurrence of

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7 Records Verification dated June 4, 2021. *Rollo*, p. 288.

the following conditions: *first,* the administrative claim for refund must be filed, prior to filing of a judicial claim of even nature; *second,* both the administrative and judicial claims for refund must be filed within two (2) years from date of payment of tax; and *third,* the taxes or penalties sought to be refunded are illegal or erroneously paid or collected taxes or penalties. Petitioners failed the *second* and *third* requisites, justifying the rejection of their plea for refund.

Petitioners failed to prove the timeliness of its administrative claim for refund, and that said claim contained a categorical demand for reimbursement of tax.

Commissioner of Internal Revenue v. Acosta (Acosta)[8] spelled out the conditions for refund under Section 230 (now Section 229) of the NIRC, as amended in this wise:

> 1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;
>
> 2. The claim for refund must be a **categorical demand** for reimbursement;
>
> 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause**.[9]

To establish the above conditions, petitioner offered as evidence, Exhibits "P-54," and "P-54-1" to "P-54-7." [10] However, these exhibits were denied admission by the Court through Resolution dated September 13, 2017.[11] Hence, the information contained therein may not be utilized to demonstrate adherence with the conditions in *Acosta*.

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8 G.R. No. 154068, August 3, 2007.
9 Boldfacing in the original.
10 Petitioners' Formal Offer of Evidence. Docket (CTA Case No. 9087), p. 1638-1693.
11 Resolution dated September 13, 2017. Docket (CTA Case No. 9087), p. 2042-2046.

Petitioners contend the judicial admission of the parties as to their filing of administrative claims for refund with respondent, prior to their filing of judicial claim with the Court in Division is sufficient to establish compliance with the requirements laid down in *Acosta*.

We disagree.

To recall, petitioners requested from respondent the admission of certain facts.[12] In response thereto, respondent solely admitted[13] paragraph 6 thereof which states:

> 6. That petitioners, prior to filing the instant petition, filed a claim for refund of the subject income taxes with respondent Commissioner of Internal Revenue and, as of this date, respondent has not approved the refund.

Said admission was reflected in paragraph II(A)(5) of the Pre-Trial Order.[14] Under Section 4, Rule 129 of the Rules of Court, as amended, a verbal or written admission, may in the course of the proceeding requires no proof.[15] Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried.[16]

A plain reading of such admission would reveal that: *first*, an administrative claim was filed by petitioners, prior to the filing of judicial claim for refund; and *second*, respondent failed to act on said administrative claim. Yet, said admission does not hint, much less show, the exact dates *when* petitioners' administrative claims for refund were filed. In the absence thereof, it may not be determined

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12 Petitioners' Request for Admission addressed to respondent. Docket (CTA Case No. 9087), p. 353.

13 Respondent's Comment/Reply (to the Request for Admission). Docket (CTA Case No. 9087), p. 367.

14 Docket (CTA Case No. 9087), p. 653.

15 *SCC Chemicals Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 128538, February 28, 2001.

16 *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp., et al.*, G.R. No. 182864, January 12, 2015.

with certainty, whether petitioners' administrative claims for refund were filed within two (2) years from their payment of IT for TYs 2012 and 2013 as ordained in *Acosta*.

The CTA has jurisdiction to rule on the validity of RMC No. 31-2013.

Petitioners argue that since the RTC-Mandaluyong nullified Section 2(d) of RMC No. 31-2013, it follows that the actual collection of the tax is illegal or erroneous, and necessarily must be returned to the petitioners.

This should be corrected.

First, a plethora of cases[17] had consistently ruled that it is the Court of Tax Appeals which has exclusive jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance such as RMC No. 31-2013. As the RTC-Mandaluyong has no jurisdiction to adjudicate Civil Case No. MC14-8775, it may not be invoked by petitioners to justify their respective refund claims.

Second, the RTC-Mandaluyong's Decision, invalidating Section 2(d)(1) of RMC No. 31-2013 does not bind the Court. Such verdict is not a judicial precedent in the context of jurisprudence as "only decisions of [the Supreme] Court constitute binding precedents, forming part of the Philippine legal system."[18]

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17 *St. Mary's Academy of Caloocan City, Inc. v. Henares*, G.R. No. 230138, January 13, 2021, *Confederation for Unity and Advancement of Government Employees (COURAGE), et al. v. Commissioner, Bureau of Internal Revenue*, G.R. Nos. 213446 & 213658, July 3, 2018; *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*, G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018; *Banco De Oro et. al. v. Republic of the Philippines*, G.R. No. 198756 (Resolution on Motion for Reconsideration), August 16, 2016; *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, G.R. No. 212530, August 10, 2016; *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014; *Asia International Auctioneers, Inc. v. Parayno, Jr.*, G.R. No. 163445, December 18, 2007; *Commissioner of Internal Revenue v. Leal*, G.R. No. 113459, November 18, 2002; and *Rodriguez v. Blaquera*, G.R. No. L-13941, September 30, 1960.

18 See *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, words in brackets supplied.

Therefore, the RTC-Mandaluyong's Decision dated September 30, 2014 is void. It did not have any legal and binding effect. It does not divest rights, and no rights can be obtained thereunder.[19]

Relevant treaty and legislative provisions show that the Philippine Government intended to tax the salaries and emoluments received by Filipinos from ADB.

Section 23,[20] in relation to Section 24(A)[21] of the NIRC, as amended, imposes income taxes on residents and citizens of the Philippines, based on their taxable income, derived from sources within and outside the Philippines, in a taxable year. Taxable income means gross income less statutory deductions, if applicable.[22] Among the items of gross income is compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items.[23] Thus, under the NIRC, every form of compensation for personal services is subject to income tax and,

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19 See *Department of Finance (DOF), et al. v. Asia United Bank, et al.*, G.R. Nos. 240163 & 240168-69, December 1, 2021.

20 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;

(B) A nonresident citizen is taxable only on income derived from sources within the Philippines;

...

21 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 be every individual citizen of the Philippines residing therein;

(b) 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 the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection(C) of Section 23 hereof; ...

22 See Section 31, NIRC, as amended.

23 See Section 32(A)(1), NIRC, as amended.

consequently, to withholding tax. The term "compensation" means all remunerations paid for services performed by an employee for his or her employer, whether paid in cash or in kind, unless specifically excluded under Sections 32(B) and 78(A) of the 1997 National Internal Revenue Code.[24]

For TYs 2012 and 2013, petitioners realized income on account of their employment at the ADB. Therefore, they are subject to Philippine income taxes consistent with Section 23, in relation to Section 24(A) of the NIRC, as amended.

Petitioners take exception from the above conclusion, claiming that they are exempt from paying income taxes under Section 45(b) of the Republic of the Philippines (RP)-ADB Agreement. [25]

We differ.

Section 45(b) Article XII of the RP-ADB Agreement reads:

> 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;"

Parenthetically, Article 56(2) of the ADB Charter[26] specified the instrument which would demonstrate the member's reservation of the taxing power on its nationals:

> Article 56
>
> EXEMPTION FROM TAXATION

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24 *ING Bank N.V., engaged in banking operations in the Philippines as ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 167679, July 22, 2015.

25 Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank, executed December 22, 1966.

26 Agreement Establishing the Asian Development Bank, executed on December 4, 1965.

xxx xxx xxx

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, **except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.** (Boldfacing supplied)

As a rule, taxes may not be imposed on salaries and emoluments earned by ADB employees realized from their employment at said international organization. By way of exception, salaries and emoluments of ADB Employees may be taxed when a State-member, via a declaration, retains its authority to tax its citizens. Insofar as the Philippines is concerned, said declaration was embodied in Senate Resolution No. 6 dated March 16, 1966 (Declaration), which states:

> 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, **subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines**. (Boldfacing supplied)

Considering that the Philippine government reserved its right to tax Filipinos deriving income from their employment at the ADB such as petitioners, they are subject to Philippine income taxes pursuant to the exception clauses enshrined in Section 45(b) of the RP-ADB Agreement, and Article 56(2) of the ADB Charter.

Petitioners assert that the reservation made by the Philippine government in the Declaration is not a self-executing provision. Thus, legislation is necessary to put it into effect.

The assertion is specious.

Congress need not enact an enabling statute for respondent to impose IT on petitioners' income realized from their employment at the ADB because there is one already present. In particular, the provisions from which petitioners' IT liability covering TYs 2012 and 2013 was based, *i.e.*, Sections 23(A) and 24(A)(1), in relation to Section 31, and 32(A)(1) of the 1997 NIRC which took effect on January 1, 1998. Indeed, the 1997 NIRC was enacted *after* the Philippine government reserved its right to tax Filipino citizens on March 16, 1966. Thus, petitioners' income realized from their employment at the ADB for TYs 2012 and 2013 is subject to IT on the strength of the foregoing provisions.

Petitioners nonetheless contend that there was a long-standing practice by the BIR of not subjecting their salaries to income taxes. Hence, it may be a valid source of right of income tax exemption in their favor.

The contention is erroneous.

The supposed long-standing practice of the BIR of not collecting IT on the salaries and emoluments derived by Filipino ADB Employees like petitioners, would not ripen into a tax exemption in their favor. The reason is easy to perceive – there is no law or treaty explicitly sparing their compensation income earned at the ADB from Philippine taxes. Basic is the rule that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.[27]

Present controversy can be settled without passing upon the constitutionality of RMC 31-2013.

Petitioners insist that a tax on the salary of the Filipino officials and employees of the ADB is discriminatory and a violation of their

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27 See *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

right to equal protection of the laws under Section 1, Article III of the 1987 Constitution.

Before the Court can exercise its power to pass upon the issue of constitutionality, petitioner must satisfy the following requisites:

1. There must be an actual case or controversy calling for the exercise of judicial power;

2. The person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

3. The question of constitutionality must be raised at the earliest opportunity; and

4. The issue of constitutionality must be the very *lis mota* of the case.[28]

Of these four (4) requisites, petitioners failed to adhere with the *third* and *fourth* requisites.

As to the *third* requisite, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal.[29] In the present case, the alleged violation of the equal protection clause by respondent's issuance of RMC No. 31-2013 was not timely raised by petitioners in their pleadings before the Court in Division.

For the *fourth* requisite, *lis mota* means that the court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the*

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28 *Hacienda Luisita, Incorporated, et al. v. Presidential Agrarian Reform Council, et al.*, G.R. No. 171101, July 5, 2011.

29 *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc., et al.*, G.R. No. 175769-70, January 19, 2009.

application of the statute or the general law. Petitioners must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[30] If there is some other ground upon which the court may rest its judgment, that course will be adopted and the question of constitutionality should be avoided.[31]

Again, the gains received by petitioners from their employment at the ADB is subject to income taxes based on Sections 23 and 24(A), in relation to Sections 31, and 32(A)(1) of the 1997 NIRC, as amended. As the merits of this case may be fully addressed without the need of touching on the constitutional issue raised by petitioners, the purported infringement of the equal protection clause in Section 1, Article III of the Constitution is not the *lis mota* of this case.

On these accounts, the Court refuses to rule on the constitutionality of Section 2(d) of RMC No. 31-2013.

The collection of tax on the salary of Filipino officials and employees of the ADB, which was made to their 2012 and 2013 income, is not prejudicial to them.

Petitioner theorizes that Section 2(d) of RMC No. 31-2013 may not be applied to the compensation income they realized from their ADB Employment for TY 2012. To do so would violate the principle of non-retroactivity of revenue issuances under Section 246 of the NIRC, as amended.

This is misleading.

Petitioners' IT liability is not based on RMC No. 31-2013. Rather, the statutory basis of their IT liability is found in Sections 23(A) and 24(A)(1), in relation to Sections 31, and 32(B)(1) of the 1997

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30 *Congressman Enrique T. Garcia of the 2nd District of Bataan v. The Executive Secretary*, G.R. No. 157584, April 2, 2009, italics in the original.

31 *Kalipunan ng Damayang Mahihirap, Inc.*, et al. *v. Robredo*, G.R. No. 200903, July 22, 2014; *General v. Uro*, G.R. No. 191560, March 29, 2011; and *Liban v. Gordon*, G.R. No. 175353, January 18, 2011.

NIRC, as amended, which took effect on January 1, 1998, or way prior to petitioners' realization of their compensation income in TY 2012. For this reason, respondent rightfully subjected to IT, petitioners' income derived from their employment at the ADB covering TY 2012.

That RMC No. 31-2013 was issued only in 2013 is of no moment, considering that said issuance simply explained and clarified the applicability of Sections 23(A) and 24(A)(1), in relation to Section 31, and 32(A)(1) of the 1997 NIRC, as amended, on the compensation income of Filipino ADB Employees such as petitioners.

In *The Philippine American Life and General Insurance Company v. Secretary of Finance, et al., (PHILAMGEN)*[32] one of the arguments of the taxpayer therein is that since the BIR's circular, i.e., RMC No. 25-11, was issued *after* the taxable transaction occurred, it cannot be applied retroactively under Section 246[33] of the NIRC, as amended. In rejecting said argument, the Supreme Court pronounced:

> Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted.

Just like in *PHILAMGEN*, RMC No. 31-2013 strictly applied Sections 23(A) and 24(A)(1), in relation to Section 31, and 32(A)(1) of the 1997 NIRC, as amended to petitioners' compensation income. These provisions of the 1997 NIRC, as amended existed way back January 1, 1998. Petitioners cannot now complain that their

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32 G.R. No. 210987, November 24, 2014.

33 SEC. 246. *Non- Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

compensation income realized for TY 2012 may not be subjected to IT.

Petitioners are not entitled to the refund of income taxes they paid for TY 2012 and 2013.

Section 229[34] of the NIRC allows the recovery of taxes erroneously or illegally collected. Jurisprudence defines "erroneous or illegal tax" as 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 respect is illegal.[35]

Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the taxpayer bears the burden of establishing the factual basis of his claim for a refund.[36]

Petitioners failed to show that they fall within the coverage of those entitled to tax exemption under Section 56(2) of the ADB Charter. Thus, petitioners are not entitled to the refund of income tax collected from them for TY 2012 and 2013.

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

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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34 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, ...

35 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

36 *Philippine Long Distance Telephone Company v. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008.

We concur:

(I reiterate my Separate Concurring Opinion in the Assailed Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(I join the Separate Concurring Opinion of PJ in the Assailed Decision)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARIA DONA ALIBOSO, JOY ARCINUE, MARY ABIGAIL BACUD, BERNADETTE BIGASIN, MA. PATRICIA LIM, KRISTINE LEAH MERCADO, KATHLEEN ATON, RAQUEL BERNADETTE VELASQUEZ, JAMILA YASMINA ACHANZAR, SARAH SENAS, THELMA GAIL ABIVA, ARNOLD AGUILA, FRANCOISE MARIE ALONZO-CALALAY, KAREN ANDES, LEAH ARBOLEDA, ROSALYN ARIATE, DONATILA BALAGTAS, GLENDA BALATBAT, FATIMA BAUTISTA, MELCHOR BUREROS, PATRICIA CALCETAS, CATHERINE CARIN, KATHERINE MITZI CO, MA. CRISTINA CONCEPCION, MILETT CONCEPCION MARTIN ERICSON CRUEL, CAROLINE VALENTINA CRUZ, LESLIE CRUZ MARIA CELINA CRUZ, MARIA SIMONETTE DAQUIS, EDWIN DAVID, CELEDONIA DE FELIPE, MELANIE DELA CRUZ, AGNES DIAMANTE, SHEILA DIMAL, MARIE KRISTINE ESTRELLA, SHERYL EVANGELISTA, JANE FANTILANAN, ANGELICA LUZ FERNANDO, ERICKA JOY GAJETE, KRISTINE GALANG, MARIE JEMINETTE GATCHALIAN, DOROTHY GERONIMO, PAUL ANTHONY

CTA EB NO. 2136
(CTA Case No. 9087)

GOKIOCO, LANI GOMEZ, GLEN GONZAGA, GEMMALINE GONZALEZ, JHONA GUILLEM, PAMELA GUTIERREZ, DIANA MARIE HERNANDEZ, MA. KRISTINA HIDALGO, IRIS EVADIE JIMENEZ, LORETTA JOVELLANOS, ELIZABETH JUAN, ANGELICA KARUNUNGAN, NORLYN LAGSIT, DARYL JAMES LAPING, NORMAN LU, JOAN REINA LUNA, MANNY MABALOT, AUGUSTUS MAGNO, ELVIRA MARTINEZ, MA. ILUMINADA MENDOZA, DAISY MENDOZA, MARIE VIC MINA, MARIE CHRISTINE MONTOYA, JANET MUTYANGPILI, JOCELYN NARCISO, JULIET NECIA, CLAIRE ANN ODSINADA, EMMANUEL ONG, WEMA PACANO, MA. VICTORIA, PANTALEON, NAJA PEÑAS, CHRISTY PLANCO, FARAHTONI PLANCO, MA. THERESA PRADO, KAREN QUIETA, ELAINE QUINTO, ANGELITO RABE, MARY GRACE RAMOS, ARNEL REYES, MA. ELENA ROCES, MARIA LUALHATI RUEDA, CLARK SALAS, MARIA CLARISSA SAMSON, MARCELLE ANNE SANTOS, JOAQUIN SARDONA JR., ROWENA SARMIENTO, MA. CORAZON SISON, MA. RITA STA. CRUZ, LEA BENITA SUMULONG, PRECIOSA SUNGA, SHERYL TAMAYO, JENNIFER TANTAMCO, ALDOUS MOSES TIRONA, MA. ELOISA TUASON, MARIA CECILIA VILLANUEVA,

EDNA VILLAREAL, CHARINA VILLARINO, ROWENA VIÑAN, BRYAN VISAYA, DULCINEA JOY YRAITA, JULIE YU, FLORDELIZA ZACARIAS, and ALEX MORA,

Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Present:
DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 07 2022 9:25 am

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CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

I concur with the *ponente* that the National Internal Revenue Code (NIRC) of 1997, as amended, imposes tax on the income of resident individual citizens from all sources within and without the Philippines. And in the absence of a specific grant of tax-exemption, the salaries and emoluments received by Filipino employees of the Asian Development Bank ("ADB") are subject to income tax.

I do not agree, however, with the denial of the claims for refund of the concerned ADB employees representing the income taxes they paid for taxable year 2012.

It has been my consistent position that while Revenue Memorandum Circular No. 31-13 is a mere interpretation of an existing law, justice and equity dictate that it should be applied prospectively. Income of resident citizens employed by foreign governments and international organizations, such as the ADB in the case at bar, should be subjected to income tax only starting from year 2013 and onwards. Income tax paid for taxable year 2012 by the concerned ADB employees should be refunded.[1]

[1] Erwin Casaclang v. Commissioner of Internal Revenue (RDO 041 Mandaluyong City), CTA Case No. 9091, August 06, 2018; Leah Empesando, et. al v. Commissioner of Internal Revenue, CTA Case No. 9093, September 17, 2018.

To quote my ponencia in the case of *Leah Empesando, et al. v. Commissioner of Internal Revenue*:

> "RMC No. 31-13 was issued by Respondent in 2013. Nevertheless, Respondent sought to subject Petitioners income for 2012 and 2013 to income tax. **In the past, however, compensation income of resident citizens employed by foreign governments and/or international organizations were not subjected to income tax.**
>
> While it can be argued that RMC No. 31-13 is a mere interpretation of existing law and should thus be applied even to the compensation income of petitioners for taxable year 2012, **the Court holds that it should be applied prospectively in the interest of justice and equity**. Consequently, the income of resident citizens employed by foreign governments and/or international organizations should only be subjected to income tax beginning taxable year 2013, the year RMC No. 31-13 took effect.
>
> **In the present case, Petitioners who received the compensation income during 2012 were of the honest belief - and neither did Respondent enforce rules to the contrary - that their compensation income were exempt from tax**. When Respondent issued RMC No. 31-13 and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, Petitioners were constrained to file their Income Tax Return for 2012 and pay their deficiency tax liabilities in one payment. **Whereas previously, their income was not subjected to tax, they now had to come up a substantial amount for an individual in order to settle their income tax liability**. Hence, it would be in keeping with justice and equity for the implementation of RMC No. 31-13 to begin prospectively and to apply to compensation income earned by Petitioners beginning taxable year 2013."[2]

From the foregoing, I vote to **PARTIALLY GRANT** the Petition for Review and **REMAND** the case to the First Division for the determination of the refundable amount for taxable year 2012.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[2] *Emphasis and underscoring supplied.*

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

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CUI-DAVID, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

OCT 07 2022 9:25 am

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur with the majority that income of the employees of Asian Development Bank (ADB) for taxable year 2013 and onwards are taxable, hence, no refund of such payments may be granted.

However, with due respect to my distinguished colleague, Justice Marian Ivy F. Reyes-Fajardo, who is the ponente in the instant case, as well as to the opinion of the majority, I dissent from the conclusion that the income of the herein petitioners for taxable year 2012 are taxable.

There was confusion created by the previous issuances of respondent Commissioner of Internal Revenue (CIR) regarding the proper tax rate to be imposed on the income of ADB employees. It was only clarified in 2013 through the issuance of Revenue Memorandum Circular (RMC) No. 31-2013. Hence, it should only be applied on the income earned in taxable year 2013 and not on income earned prior to its promulgation.

It is true that the power to interpret tax laws is vested upon the CIR under Section 4 of the 1997 National Internal Revenue Code (NIRC)[1], as amended, as implemented by Department of Finance (DOF) Order No. 07-2002 (May 7, 2002) which provides for the implementing rules on the exercise of the power of the Secretary of Finance to review the rulings of the CIR.

From the effectivity dates of the twin agreements, the ADB Charter Agreement and the ADB Headquarters Agreement, there was no explicit and categorical ruling or issuance from the Bureau of Internal Revenue (BIR) implementing the reserved taxing power of the Philippine Government on the Filipino ADB employees, except until the issuance of RMC No. 31-2013. The ADB Filipino employees, petitioners included, were never subjected to withholding tax on their compensation income. Likewise, they did not pay any annual income tax to the BIR. During this interregnum period (1966 to 2013), the BIR issued

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[1] **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.

three varying guidelines on the taxable status of the ADB Filipino employees[2], to wit:

1. On March 11, 1999, former Commissioner Beethoven L. Rualo issued a ruling that ADB Filipino employees holding managerial and technical positions are subject to a preferential rate of 15%;

2. On January 29, 2001, the BIR, through its Regional Director (RD) which had the jurisdiction over the ADB, issued an opinion stating that salaries and emoluments received by ADB officers and staff are exempt from taxation; and

3. On February 6, 2013, the Chief, Legal Division of Revenue Region No. 7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are subject to the preferential tax rate of 15% on their compensation income.

Then, RMC No. 31-2013 was issued by the respondent requiring all Philippine nationals to file their annual income tax returns using BIR Form No. 1700 or 1701, without stating what income tax rate was applicable, unlike the earlier letter-rulings. This latest BIR issuance was not explicit enough in denoting the particular income tax rate that will be imposed on the petitioners, to wit:

> SECTION 3. FILING OF INCOME TAX RETURNS AND DECLARATION OF COMPENSATION INCOME. - Philippine nationals and alien individuals who were not granted tax exemption or immunities under duly recognized international agreements or local laws **shall file their annual income tax returns or or before the 15th day of April each year using BIR Form no. 1700 or 1701**, as may be applicable, declaring therein the amounts of their respective compensation income for the preceding taxable year for services rendered or performed for such foreign government embassy, diplomatic mission, agency or international organization. (*Emphasis supplied*)

The aforesaid BIR tax guidelines for ADB Filipino employees, sent contradictory signals to the petitioners. While one opined that the ADB Filipino employees are exempt from taxation, two prescribed a final 15% tax rate and the latest one

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[2] EB Docket, Petition for Review, pp. 30-31.

imposed graduated income tax rates. Given said inconsistent legal interpretations, the petitioners are caught in a quagmire as to how to go about complying with their tax obligations since the principal implementing agency of the tax laws has yet to come up with a unified crystal clear position on their taxable status. The RMC was the first ever comprehensive guideline issued by respondent and it took effect on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the UP Law Center in observance of the requirement under the 1987 Administrative Code, Section 3, Chapter 2, Book VII, which provides:

> *Filing.* (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

Pursuant to the abovementioned provision, the Supreme Court emphasized in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission, G.R. No. 163935, February 2, 2006* that both the **requirements of publication and filing of administrative issuances are mandatory for their effectivity**.

Thus, under the RMC, with the express repealing clause that any revenue issuance which is inconsistent with the circular is deemed revoked, repealed or modified accordingly, the petitioners and the rest of the ADB Filipino employees are finally declared to be taxable under Section 24(A)(1)(a) and (2) of the Tax Code.

This Court is well aware of the hornbook doctrine in statutory construction that laws operate prospectively only and never retrospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.[3] Article 4 of the New Civil Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."

In the instant case, the assailed RMC 31-2013 stated under its **Section 7. EFFECTIVITY**, that **"This Circular shall take effect immediately.** xxx." However, in reality, the respondent proceeded to collect from the petitioners income tax

[3] Diaz, Statutory Construction 249 (4th Edition, 2013).

payments starting 2012 despite the fact that the RMC took effect only on May 2, 2013.

Section 246 of the 1997 Tax Code provides:

> SEC. 246. ***Non- Retroactivity of Rulings***. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.
>
> (*Emphasis supplied*)

The factual antecedents of the case shall reveal that petitioners neither committed fraud nor acted in bad faith when they failed to pay their income taxes to the government. To believe that they are exempt from income tax obligation based on their limited layman's understanding of the ADB Charter and its declared tax exempt status, is not to be taken against them. The contradictory official statements of the BIR sowed confusion to the ADB employer as well as to its employees with regard to their taxability under the international agreements.

True, the inaction on the part of the previous BIR commissioners to enforce the collection of income taxes from petitioners does not estop the respondent from collecting said taxes. This court is mindful 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. However, this rule admits of exceptions in the interest of justice and fair play.[4]

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*[5], the Supreme

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[4] Vitug and Acosta, Tax Law And Jurisprudence 31 (2nd edition, 2000).
[5] G.R. No. L-52306, October 12, 1981.

Court sustained the non-retroactivity provision of the previous tax law which is now the Section 246 of 1997 Tax Code as to respondent's rulings or circulars, *viz*:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. *Non-retroactivity of rulings.* — Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue *shall not be given retroactive application if the relocation, modification, or reversal will be prejudicial to the taxpayers*, except in the following cases: (a) where the taxpayer deliberately mis-states or omits material facts from his return or any document required of him by the Bureau of Internal Revenue: (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. (*italics for emphasis*)
>
> **It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers**. The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them. (*Emphasis and underscoring ours*)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*[6], it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the*

[6] G.R. No. 117982, February 6, 1997.

Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

The applicable law is Sec. 246 of the Tax Code which provides -

Sec. 246. *Non-retroactivity of rulings.*- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax. *(Emphasis ours)*

Thus, the income tax payments of the following petitioners for taxable year 2012 were illegally collected in violation of the provision of Sec. 246 of the NIRC, as amended, and Art. 4 of the New Civil Code.

However, there is still a need to determine if petitioners were able to comply with the requirements for a valid claim for refund for their 2012 income tax payments.

All told, I vote to **PARTIALLY GRANT** the Petition for Review and remand the case to the Division for the determination of the refundable amount for taxable year 2012, if any.

CATHERINE T. MANAHAN
Associate Justice