REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

IRISH FE N. AGUILAR,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 9867

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *J.J.*

Promulgated:
SEP 30 2021 1:20 pm

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DECISION

MANAHAN, *J.:*

This is a Petition for Review[1] filed by Irish Fe N. Aguilar, seeking the refund of the alleged erroneously and illegally paid income tax in the aggregate amount of Nine Hundred Fifty Nine Thousand Three Hundred Forty Two Pesos (₱959,342.00) for taxable years 2015 and 2016.

THE PARTIES

Petitioner Irish Fe N. Aguilar is an employee of the Asian Development Bank (ADB) whose office is located at 6 ADB Ave., Mandaluyong City.[2]

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[1] Memorandum for the Petitioner, Court Docket, pp. 518-546.
[2] Petition for Review, Court Docket, pp. 10-23.

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Respondent Commissioner of Internal Revenue (CIR) is the government official charged with the administration and enforcement of national internal revenue laws and who has 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 the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013 entitled "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." It provides, among others, that officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

Section 2(d)(1) of RMC No. 31-2013 states:

> "SECTION 2. <u>Tax Treatment of Compensation Income.</u>–
>
> xxx xxx xxx
>
> (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

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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:

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(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." (Emphasis supplied)

Petitioner considered the issuance of RMC 31-2013 as a directive to pay income tax on the compensation she received from ADB and allegedly paid the following amounts for taxable years 2015 and 2016:[3]

Taxable Year	INCOME TAX PAID		TOTAL
	1st Installment	2nd Installment	
2015	₱232,412.00	₱232,412.00	₱464,824.00
2016	247,259.00	247,259.00	494,518.00
TOTAL			**₱959,342.00**

Meanwhile, on February 14, 2014, Mr. Erwin Salaveria and Ms. Portia Gonzales, Filipino employees of the ADB, filed a Petition to Nullify Section 2(d)(1) of RMC No. 31-2013, with the Regional Trial Court, Branch 213 of Mandaluyong City (RTC of Mandaluyong), docketed as Civil Case No. MC14-8775.

On September 30, 2014, the RTC of Mandaluyong promulgated a decision in Civil Case No. MC14-8775 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 due to absence of legislation and/or regulation to the contrary.

[3] Paragraph 8, Memorandum for the Petitioner, Court Docket, pp. 518-545.

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A Motion for Reconsideration was filed by respondent Bureau of Internal Revenue (BIR) which was denied on January 9, 2015.

Respondent appealed the lower court's decision to the Court of Appeals (CA), docketed as CA-G.R. CV No. 104374.

It was during the pendency of the appeal that herein petitioner filed her Income Tax Returns (ITRs) and paid the corresponding income taxes for taxable years 2015 and 2016.[4]

In a Resolution dated July 3, 2015, the CA dismissed the appeal of respondent and ruled that the proper course of action would have been to file a petition with the Supreme Court via Rule 45 of the Rules of Court. Respondent filed a Motion for Reconsideration, but it was also denied by the CA.

The BIR then elevated the case before the Supreme Court by filing a Petition for Review on Certiorari.

On April 12, 2018, petitioner filed a claim for refund with the BIR,[5] embodied in a letter dated April 11, 2018.

The BIR did not act on the claim for refund which prompted petitioner to file a judicial claim for refund via a Petition for Review with the Court on July 2, 2018 and docketed as CTA Case No. 9867.

Respondent then filed his Answer to the Petition for Review on August 28, 2018.[6]

In view of CTA Administrative Circular No. 02-2018 dated September 18 2019 reorganizing the three (3) Divisions of the Court, the case was set for a pre-trial conference only on January 31, 2019.

Both parties filed their Pre-Trial Briefs on January 28, 2019.

The pre-trial conference was then reset to February 14, 2019 and then on April 4, 2019.

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[4] Exhibits "P-1" and "P-2" with sub-markings, Court Docket, pp. 448-458.
[5] Exhibit "P-6", Court Docket, pp. 190-195.
[6] Court Docket, pp. 46-57.

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Due to the absence of petitioner's counsel during the pre-trial conference on April 4, 2019, the Court issued an Order on even date dismissing the instant Petition for Review.[7]

On April 4, 2019, petitioner posted her Manifestation informing the Court that her counsel's non-appearance during the pre-trial conference was due to an alleged miscommunication on the time set for the pre-trial conference which her counsel mistakenly understood to be at 10:00 a.m. instead of 9:00 a.m., hence her late arrival in Court.

On April 29, 2019, the Court issued a Resolution taking note of petitioner's Manifestation but affirming the Order of the Court dismissing the Petition for Review.

On May 3, 2019, petitioner filed a Motion for Reconsideration (of the Order dated 4 April 2019) seeking reconsideration of the Court's dismissal of the Petition for Review and reiterating the reasons for her counsel's non-appearance. Petitioner pleads for the consideration and understanding of the Court and further manifested that counsel for respondent was likewise absent during the pre-trial conference held on April 4, 2019.

Respondent failed to file his comment/opposition to the said Motion for Reconsideration within the time prescribed by the Court.

In a Resolution dated July 10, 2019, the Court granted petitioner's Motion for Reconsideration (of the Order dated 4 April 2019) in the interest of substantial justice, and set the case for pre-trial conference on August 29, 2019.

The pre-trial conference was held on August 29, 2019.[8]

On September 18, 2019, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[9]

On September 27, 2019, the Court issued a Resolution admitting the parties' JSFI.[10]

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[7] Court Docket, pp. 207-208.
[8] Court Docket, p. 382.
[9] Court Docket, pp. 391-398.
[10] Court Docket, page 402.

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On November 19, 2019[11], the Court issued a Pre-Trial Order.

On December 4, 2019,[12] petitioner filed her Formal Offer of Exhibits consisting of Exhibits "P-1" to "P-10", inclusive of sub-markings.

On the other hand, respondent did not file any comment to petitioner's Formal Offer of Exhibits and no longer presented any evidence.

In a Resolution dated June 3, 2020,[13] the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8, "P-9" and "P-10", inclusive of sub-markings, subject to the Court's final evaluation of their purposes, materiality and relevancy and probative value to the issues involved in this case.

On July 29, 2020, petitioner filed her Memorandum while respondent failed to file his Memorandum within the time prescribed by the Court.[14]

In a Resolution dated September 17, 2020, the Court declared the instant case submitted for decision

ISSUE

The parties submitted the following sole issue for the Court's resolution:[15]

> "Whether or not Petitioner is entitled to claim refund for income taxes paid for taxable years 2015 and 2016."

Petitioner's Arguments

The lack of legal basis of Section 2 (d) (1) of RMC 31-2013 and its alleged patent nullity (as declared by RTC of Mandaluyong) serve as the fulcrum of petitoner's claim for refund of income taxes paid for taxable years 2015 and 2016.

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[11] Court Docket, pp. 420-426.
[12] Court Docket, pp. 427-433.
[13] Court Docket, pp. 516-517.
[14] Records Verification Report dated September 8, 2020.
[15] Issue, Joint Stipulation of Facts and Issues, Court Docket, pp. 391-398.

Petitoner argues that even without the declaration by RTC of Mandaluyong on the nullity of the aforecited Section 2 (d) (1) of RMC 31-2013, it is clear in Article 56 of the Republic of the Philippines (RP)-ADB Agreement,[16]otherwise known as the "ADB Charter", that employees of the ADB are exempt from income tax on their salaries and other emoluments. The provision found in Article 56 of the ADB Charter granting the Philippine government the reservation or discretion to tax its Philippine nationals is taken to mean by petitioner that the "power to tax" Filipino ADB employees may or may not be exercised in the future. Petitioner contends that since there is still no law enacted by the Philippine Congress on this matter, the tax exempt provision inthe ADB Charter, subsists.

Petitioner stresses that RMC 31-2013 or any administrative issuance for that matter cannot amend or alter the provisions of an international agreement. According to petitioner, the absence of any enabling law from the Philippine Congress upholds the tax exempt status of ADB employees.

Lastly, petitioner maintains that she has complied with the provisions of Section 229 of the 1997 NIRC, as amended, by filing the administrative and judical claims for refund within the two-year prescriptive period from the payment of the subject income taxes.

Respondent's Counter-Arguments

Respondent asserts that RTC of Mandaluyong had no jurisdiction to rule on the validity of revenue issuances such as RMC 30-2013, hence, its decision in Civil Case No. MC14-8775, is void and without any legal effect. Respondent alleges that the power to rule on the validity of revenue issuances administered by the BIR is within the jurisdiction of this Court and not the regular courts. Even on the assumption that the decision of the RTC of Mandaluyong is valid, respondent avers that it has yet to become final as the appeal with the Supreme Court is still pending resolution. Respondent submits that only decisions of the Supreme Court constitute binding precedents that is to be followed by all courts.

On the substantive aspect of the claim for refund, respondent argues that petitioner is a Philippine citizen and as such, is subject to Philippine income tax law specifically Section

[16] "Agreement Establishing the Asian Development Bank."

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23 of the 1997 NIRC, as amended, where it clearly provides that Philippine citizens are taxable on their income derived from both inside and outside of the country.

Respondent contends that the tax exemption claimed by petitioner is not absolute and cites Article XII Section 45 (b) of the ADB Headquarters Agreement which allegedly made clear that the Philippine government reserves its right to tax its nationals.

RULING OF THE COURT

We shall first detemine the timely filing of the administrative and judicial claims for refund of petitioner.

Section 229 of the 1997 NIRC, as amended, is quoted 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." (Emphasis supplied)

Based on the afore-quoted provision, the claim for refund must be filed with the BIR and the Court of Tax Appeals (CTA) within the two-year prescriptive period from the date of payment of the tax.

Records show that petitioner filed her Annual Income Tax Return (ITR) for taxable year 2015 on April 14, 2016 and made the first installment payment of income tax due on April 14,

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2016 and the second and last installment payment on July 13, 2016. For taxable year 2016, petitioner filed her Annual ITR on April 7, 2017 and made the first installment payment of income tax due on April 7, 2017 and the second and last installment on July 5, 2017.

Petitioner then filed an administrative claim for refund with the BIR on April 12, 2018 seeking the refund of alleged overpaid income taxes for taxable years 2015 and 2016.

Due to the inaction of the BIR on her claim for refund, petitioner elevated an appeal with this Court on July 2, 2018.

We provide below a table detailing the significant dates relative to petitioner's respective income tax payments:

Date of Full Payment of Income Tax		Last day to file refund claim		Date of filing of Admin. Claim	Date of filing of Judicial Claim
2015	2016	2015	2016		
July 13, 2016	July 5, 2017	July 13, 2018	July 5, 2019	April 12, 2018	July 2, 2018

In the case of *Metropolitan Bank vs. CIR*,[17] the Supreme Court ruled that "both the administrative and judicial claims for refund must be filed within the two-year prescriptive period, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription."

Applying the afore-quoted provisions of law and jurisprudence, this Court finds that petitioner has sufficiently established that both the administrative and judicial claims for refund for taxable years 2015 and 2016, were filed within the two-year period in accordance with the aforequoted Section 229 of the 1997 NIRC, as amended.

Reckoned from the date of the last and second payment of the income tax for taxable year 2015 on July 13, 2016,[18] the judicial claim for refund filed on July 2, 2018 was well within the two year prescriptive period. Likewise, reckoned from the second and last payment of income tax for taxable year 2016 on July 5, 2017,[19] the judicial claim for refund filed on July 2, 2018 was

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[17] G.R. No. 182582, April 17, 2017.
[18] Exhibit "P-3", Court Docket, page 459.
[19] Exhibit "P-4", Court Docket, page 460.

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also within the two-year prescriptive period provided under Section 229 of the 1997 NIRC, as amended.

We now proceed to the main issue of this case.

Petitioner cites Chapter VIII, Article 56 of the ADB Charter as the basis of the non-imposition of income tax on the compensation income of ADB employees and we quote its pertinent provision below:

> **"Article 56**
> **Exemption from Taxation**
>
> (2) **No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the 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**." (*Emphasis supplied*)

Petitioner further bolsters her argument when she quoted another significant portion of the ADB Charter where then President Ferdinand Marcos declared the Philippine government's reservation to tax its nationals, to wit:

> "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 nDecember 4, 1965 at Manila, Philippines, do hereby, in pursuance of the aforesaid concurrence 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 subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines.**" (Emphasis supplied).

Petitioner interprets the foregoing provisions in her favor by asserting that the "reservation clause" in the aforequoted ADB Charter grants the Philippine government a choice whether or not to tax the salaries and emoluments received by Philippine nationals who are employees of the ADB and that the absence of a law (since then), proves that the tax exemption under said Agreement, prevails.

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We do not agree with petitioner's contentions.

Interestingly, the very same provisions of the ADB Charter relied upon by the petitioner are the same bases of the Court's denial of the instant Petition for Review.

An examination of the entirety of Section 56 (2), Chapter VIII of the ADB Charter clearly contains an exception to the tax exempt privilege accorded by this Agreement to the covered ADB personnel as encapsulated by the clause **"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."**

The grant of tax-exempt privileges as worded in the ADB Charter, although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens, i.e., Philippine citizens, or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments".[20] (*italics ours*)

In another agreement entered into with ADB on December 22, 1966 entitled "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), the prerogative of the Philippine Government to tax its nationals is reiterated. We quote the pertinent provisions as follows:

> "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**

[20] *Philip Morris Inc. vs. Court of Appeals*, G.R. No. 91332 dated July 16, 1993.

> **the Government to tax its nationals."** (Emphasis supplied)

This Court finds that the foregoing statements overrule and clarify any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB and upholds the applicability of national laws on taxation insofar as their compensations are concerned.

The necessity of an enabling law as propounded by petitioner is negated by the existence of a national law on taxation as embodied in the 1997 NIRC, as amended, and which shall govern the taxability of the compensation earned by the Filipino employees of ADB such as herein petitioner.

Section 23 of the 1997 NIRC, as amended, specifically provides as follows:

> "Section 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."** (Emphasis supplied)

Section 24 (A) (1) of the 1997 NIRC, as amended,[21] provides as follows:

> "Section 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:"** (Emphasis supplied)

[21] Pre-Train Law provisions because the taxable years involved are 2015 and 2016.

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In relation to the aforequoted provisions, Sections 30 and 31 of the 1997 NIRC, as amended, provide as follows:

> "Section 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."
>
> Section 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:"** (Emphasis supplied)

The above provisions leave no doubt that under Philippine law, the compensation income of a citizen or a resident of the Philippines derived within and without the country, is subject to income tax.

We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord with the ADB Charter and the provisions of the 1997 NIRC, as amended.

WHEREFORE, premises considered, the Petition for Review filed by petitioner on July 2, 2018, is hereby **DENIED** for lack of legal basis.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

IRISH FE N. AGUILAR, Petitioner,	**CTA CASE NO. 9867**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 30 2021

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia's* finding that petitioner's claim for refund of income taxes paid for taxable years 2015 and 2016 should be denied on the ground that the income she received from the Asian Development Bank (ADB) is taxable **pursuant to existing provisions of the National Internal Revenue Code (NIR) of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB.**

I wish to stress that a resident citizen or national of the Philippines who is working with the ADB is taxable on his or her income from all sources, including those income derived from ADB. To emphasize, **the taxability of the income of petitioner derived from her employment with ADB is not dependent on the validity or invalidity of Revenue Memorandum Circular No. 31-2013.**

On this point, I reiterate the view I expressed in *Maria Amparo M. Dato, et al. vs. Commissioner of Internal Revenue*,[1] viz.:

[1] CTA EB No. 2253, June 30, 2021.

"The 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**. On this point, I submit that Section 246 of the NIRC of 1997, as amended, on the non-retroactivity of rulings, does not find any application in resolving these cases. As aforestated, employees of ADB who are resident citizens or Philippines nationals are subject to income tax on salaries and emoluments they receive from ADB beginning on the date of their employment therein.

While it may be true that since the ratification of the ADB Charter in 1966, or for almost fifty (50) years, ADB employees have never been subjected by the BIR to income tax until the issuance of RMC 31-2013 on April 12, 2013, suffice it to say that the failure of the BIR to collect income tax from ADB employees who are resident citizens or Philippine nationals does not per se justify the non-implementation of existing legislations nor result in the absurd construction that pertinent tax laws are deemed repealed.

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.

Moreover, it is my view that the Regional Trial Court (RTC) Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. The aforesaid RTC Decision in Civil Case No. MC14-8775 appears to be jurisdictionally infirm insofar as it declared that Section 2(d) (1) of Revenue Memorandum Circular 31-2013 is a nullity. In ***The Philippine American Life and General Insurance Company vs. Commissioner of***

Internal Revenue,[2] the Supreme Court was categorical in saying that **the Court of Tax Appeals is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars.** Needless to say, this Court may not be deprived of its power to review the validity of a claim for tax refund - - falling as it is within its exclusive appellate jurisdiction - - simply on the basis of the existence of the RTC Decision in Civil Case No. MC14-8775." (*Additional boldfacing supplied*)

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] G.R. No. 210987, November 24, 2014.