REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LICEL CALDERON, ET AL.,
Respondents.

CTA EB No. 1876
(CTA Case No. 9090)

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

LICEL CALDERON, ET AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1878
(CTA Case No. 9090)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

Promulgated:

JUL 02 2019 3:12 p.m.

x- x

DECISION

Fabon-Victorino, J.:

For action are the Petitions for Review dated June 7, 2018, filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1876, and by Licel Calderon, et al. dated June

18, 2018 in CTA EB No. 1878, challenging the Decision dated March 27, 2018 and the Resolution dated May 23, 2018 both rendered by the Court in Division in CTA Case No. 9090. The respective decretal portions of the challenged Decision and Resolution read as follows:

Challenged Decision of March 27, 2018:

WHEREFORE, in light of the foregoing, the Petition for Review filed by [the Filipino ADB Employees] is hereby **PARTIALLY GRANTED**.

Accordingly, [the CIR] is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of [the Filipino ADB Employees] in the amount of Php30,543,307.80 to be individually allocated based on the tabular summary provided earlier, representing the illegally collected taxes for taxable year 2012.

As regards the 2013 claim for tax refund/tax credit certificate in the amount of Php15,229,352.50, the same is hereby **DENIED** for lack of legal basis.[1]

Challenged Resolution of May 23, 2018:

WHEREFORE, in light of the foregoing premises, [the Filipino ADB Employees'] **Motion for Reconsideration** and [the CIR's] **Motion for Partial Reconsideration (Re: Decision dated March 27, 2018)** are both **DENIED** for lack of merit.

SO ORDERED.[2]

As synthesized by the Court in Division, the facts of CTA Case No. 9090 are as follows:

Licel Calderon and her co-claimants are all Filipino employees of Asian Development Bank (Filipino ADB Employees), located at 6 ADB Avenue, Mandaluyong City.

On the other hand, the Commissioner of Internal Revenue (CIR) is the government official charged with the administration and enforcement of national internal revenue

---

[1] *Rollo* (CTA EB No. 1876), p. 43.
[2] Ibid. at p. 61.

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 BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 12, 2013, the CIR issued Revenue Memorandum Circular (RMC) No. 31-2013.[3] Section 2(d)(1) thereof provides *inter alia*, that the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. In contrast, Filipinos who are employed at the ADB are subject to pertinent Philippine income taxes. The provision reads:

> SECTION 2. *Tax Treatment of Compensation Income.* –
>
> The tax treatment of Philippine nationals and alien individuals on compensation income received by them from foreign governments/embassies and missions and international organizations shall be as follows:
>
> xxx xxx xxx
>
> (d) *Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law* –
>
> 1. *Asian Development Bank (ADB)*
>
> Section 45 (b), Article XII of the *Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank* provides:
>
> 'ARTICLE XII
>
> xxx xxx xxx
>
> Section 45.

[3] 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.

> Officers and staff of the Bank, <u>including for the purposes of this Article experts and consultants performing missions for the Bank</u>, 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;

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

Since the foregoing RMC was applied retroactively, the Filipino ADB employees paid the following amounts as their income taxes for taxable years (TYs) 2012 and 2013, broken down as follows:[4]

ADB EMPLOYEE	INCOME TAX PAID		TOTAL
	2012	2013	
Licel Calderon	₱ 106,983.60	₱ -	₱ 106,983.60
Juliet Calingo	257,387.59		257,387.59
Shiela Dorothy Callet	162,123.74		162,123.74
Carmela Canare	291,317.16	296,699.00	588,016.16
Agnes Canillas	312,322.78	323,998.00	636,320.78
Ma. Laarni Canonizado	283,655.90		283,655.90
Rebecca Canoy	265,860.82		265,860.82
Odessa Canto	510,958.43	591,182.00	1,102,140.43
Cecilia Caparas	469,399.70		469,399.70
Eileen Capilit	391,412.78		391,412.78
Ma. Virginita Capulong	736,184.07		736,184.07
Ninebeth Carandang	1,352,151.95	557,003.00	1,909,154.95
Mary Grace Caranto	176,830.16		176,830.16
Helen Carnecer	189,066.29		189,066.29
Cynthia Carreon	494,824.75		494,824.75
Xandro Joaquin Castañeda	446,705.44		446,705.44
Lea Ann Castro	149,859.92		149,859.92
Ma. Fatima Cheryl Catacutan	410,737.43		410,737.43
Sylvia Catapang	393,584.09	377,768.00	771,352.09
Ana Cervantes	482,286.57		482,286.57
Laurie Ann Cervantes	212,527.00		212,527.00
Ma. Rowena Cham	500,193.73	522,407.00	1,022,600.73
Mary Anne Chaneco	149,764.00		149,764.00
Azalea Chanyongco	157,268.20		157,268.20
Candy Chao	319,245.04	211,473.00	530,718.04
Patricia Tuazon Ching	400,276.59	407,773.00	808,049.59
Geraldine Chu	377,315.80	395,135.00	772,450.80
Maila Cinco	176,026.81		176,026.81
Marileth Co	262,409.93	300,938.00	563,347.93

---

[4] Docket (CTA Case No. 9090), pp. 24-26.

Christine Dianne Cobarrubias	135,723.89		135,723.89
Ma. Loreca Cobilla	340,859.03		340,859.03
Jerry Colasito	102,030.41		102,030.41
Paulita Comia	323,348.72	344,025.00	667,373.72
Camille Contreras	316,431.20	316,820.00	633,251.20
Nedilla Correa	246,678.15	256,600.00	503,278.15
Josefa Maria Coscolluela	451,792.08	456,754.00	908,546.08
Melanie Covar	249,082.64	264,465.00	513,547.64
Mary France Creus	142,696.07	153,440.00	296,136.07
Marisol Crisostomo	225,270.82		225,270.82
Claribella Cruz	147,102.69		147,102.69
Fermirelyn Cruz	126,963.83	49,237.52	176,201.35
Gene Oliver Cruz	267,498.26	268,775.00	536,273.26
Grace Cruz	194,644.00	194,645.00	389,289.00
Jerome Cruz	79,902.19		79,902.19
Kristine Cruz	344,026.01	340,180.00	684,206.01
Ma. Lenina Tanya Cruz	384,729.75		384,729.75
Margaret Rose Cruz	198,313.46		198,313.46
Mary Grace Kristine Cruz	150,200.69		150,200.69
Mary Jane Cruz	337,721.94	350,108.00	687,829.94
Shiela Cruz	58,301.12		58,301.12
Ligaya Cuevas-Arce	275,744.81	139,867.00	415,611.81
Tadeo Culla	391,339.12	390,065.00	781,404.12
Ramon Dacio	267,508.39		267,508.39
Lailaine Danao	400,129.00		400,129.00
Marie Remilyn Dandan	144,848.51	150,141.00	294,989.51
Marie Lullete Daria	219,583.10		219,583.10
Shiela Ann David-De Castro	134,895.30		134,895.30
Janeth De Belen	263,434.29		263,434.29
Juan Armando De Borja	152,850.27	154,855.00	307,705.27
Elena De Castro	474,379.69		474,379.69
Maria Bernadette De Castro	289,018.79	291,187.00	580,205.79
Modesta De Castro	546,954.24		546,954.24
Arnel De Gracia	410,836.51	420,264.00	831,100.51
Charmaine Ruth De Guzman	21,146.56	131,662.00	152,808.56
Ma. Cielo De Guzman	248,223.22	252,317.00	500,540.22
Maria Guia De Guzman	297,685.52		297,685.52
Mia Gracia De Guzman	206,763.12	211,904.00	418,667.12
Jennifer De Jesus	160,743.96		160,743.96
Rosarie Celine De Leon	269,234.11	333,970.00	603,204.11
Mary Jane De Ocampo	142,966.09		142,966.09
Eduardo De Veyra	444,331.31	441,761.00	886,092.31
Marisol Del Rosario	367,207.23	390,009.00	757,216.23
Marlo Del Rosario	349,205.66		349,205.66
Hazel Joy Dela Cruz	408,774.32	411,220.00	819,994.32
Ramoncito Dela Cruz	662,924.86	662,862.00	1,325,786.86
Shiela Dela Cruz	41,022.67	120,369.00	161,391.67
Fernando Dela Fuente	166,343.91	203,000.50	369,344.41
Marcela Leonila Dela Merced	353,031.94		353,031.94
Excelsa Dela Santa	300,315.14	300,315.14	600,630.28
Ma. Melissa Dela Torre	446,192.17		446,192.17
Lamberto Delgado Jr.	246,244.52	243,708.00	489,952.52
Czareana Dello	156,570.63		156,570.63
Ma. Cristina Delos Santos	306,109.10	331,066.00	637,175.10
Merdinia Deguilla	110,477.00		110,447.00
Lyrah Tatiana Devanadera	131,722.89	176,392.00	308,114.89
Vladimer Diamonon	274,345.99	277,855.00	552,200.99
Maria Carmen Diaz	222,777.79	128,333.34	351,111.13
Vanessa Dimaano	493,570.64		493,570.64
Linda Dimayuga	503,900.28		503,900.28
Ma. Juana Dimayuga	541,724.84	537,420.00	1,079,144.84

Irene Dionisio	301,997.28	295,710.00	597,707.28
Michael Diza	171,137.42		171,137.42
Aivy Katherine Dizon	226,536.82		226,536.82
Madeline Dizon	285,420.28	284,046.00	569,466.80
Liza Jane Domingo	216,677.34		216,677.34
Michelle Domingo	464,154.91		464,154.91
Julius Cesar Duque	273,741.04	278,049.00	551,790.04
Maria Josephine Duque-Comia	610,668.83	319,036.00	929,704.83
Jessica Ebio	302,453.45		302,453.45
Ma. Helen Ebora	222,211.23		222,211.23
Irma Ebreo	361,234.49	372,543.00	733,777.49
TOTAL	**₱30,543,307.80**	**₱15,229,352.50**	**₱45,772,660.30**

On February 14, 2014, Erwin Salaveria and Portia Gonzales,[5] lodged before the Regional Trial Court[6] of Mandaluyong City a Petition to Nullify Section 2(d)(1) of RMC No. 31-2013, docketed as Civil Case No. MC14-8775. The case was decided on September 30, 2014 invalidating Section 2(d)(1) of RMC No. 31-2013 for having been 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.

The CIR filed a Motion for Reconsideration of the RTC decision but it was denied in the Order dated January 9, 2015.

The CIR elevated the adverse RTC Decision with Court of Appeals (CA) docketed as CA-G.R. CV No. 104374.

In the Resolution dated July 3, 2015, the CA dismissed the CIR's Appeal for being procedurally defective. It reasoned that the CIR's remedy in impugning the adverse Decision rendered by the RTC of Mandaluyong in the exercise of its original jurisdiction is to file a petition for review with the Supreme Court (SC) pursuant to Rule 45 of the Rules of Court since the issues involved therein are pure questions of law. The CIR sought to reconsider the foregoing dismissal, but it was denied in the Resolution dated January 4, 2016.

The CIR assailed the dismissal of his Appeal by the CA before the Supreme Court via a Petition for Review on

[5] Individuals not among the Filipino ADB Employees in this case.
[6] Branch 213.

Certiorari under Rule 45 of the Rules of Court. The case is still pending resolution by the Supreme Court.

On June 11 and 22, 2015, the Filipino ADB Employees filed their respective administrative claims for refund of income taxes paid with the BIR covering TYs 2012 and 2013.

On July 13, 2015, the Filipino ADB Employees filed a Petition for Review before the Court in Division, citing the CIR's inaction on their administrative claims for refund and maintaining their stance that the income taxes they paid were illegally/erroneously collected by the BIR.

On March 27, 2018, the Court in Division rendered the challenged Decision, partially granting the Petition for Review filed by the Filipino ADB Employees. The Court in Division ruled that under Sections 23 and 24 of the NIRC, as amended, taxes are imposed upon the compensation income derived from sources within or outside the Philippines realized by resident citizens such as the Filipino ADB Employees. It added that the general tax-exempt provisions of the ADB Charter may not be applied to them as the Philippine government retained its right to tax its citizens working at the said international organization. Nevertheless, the Court in Division prospectively applied the provisions of RMC No. 31-2013 to the income they earned during the TY 2013 or after the efficacy of the same, following the rule against retroactivity of circulars enshrined in Section 246 of same Code. For this reason, the CIR was directed to refund the taxes paid by ADB Filipino employees on their income earned only in TY 2012. The Court in Division rejected their claim for refund for the income taxes paid for TY 2013.

The CIR and the Filipino ADB Employees separately[7] moved to reconsider the impugned Decision of March 27, 2018, but both of which were denied in the equally challenged Resolution of May 23, 2018.

Hence, the present Petitions for Review.

---

[7] The CIR's Motion for Partial Reconsideration dated April 12, 2013 and The Filipino ADB Employees' Motion for Reconsideration dated April 16, 2013. See Docket (CTA Case No. 9090), pp. 900-910; and pp. 913-930 respectively.

The Filipino ADB Employees' Petition for Review:[8]

The Filipino ADB Employees argue that they are excused from paying income taxes in line with the general tax-exemption provisions found in Article 56(2) of the ADB Charter. They concede that the Philippine Government[9] reserved its right to tax Filipino citizens employed by ADB. For them, however, the said reservation means that the Philippine government withheld its taxing power from the Filipino ADB Employees until a legislation to that effect has been promulgated. Thus, the reservation standing alone is not a license for the CIR to impose income taxes on their salaries at the ADB. Until an implementing statute conferring upon the CIR specific authority to tax them, they remain to be tax-exempt individuals.

They further contend that contemporaneous, as well as subsequent acts or practices in applying a treaty/international agreement are potent aids in the interpretation thereof, citing Section 3, Article 32 of the Vienna Convention of the Law on Treaties and Article 1371 of the Civil Code, as bases. According to them, the following circumstances reveal the true intent of the ADB Charter to relieve them of Philippine income taxes: a) long-standing practice not taxing such individuals spanning more than four (4) decades; b) Opinion of Regional Director Antonio Ortega confirming their tax-exempt status; c) Executive Order (EO) No. 161, allegedly stating to respect privileges of the ADB; and d) Member Countries[10] of the ADB enacted their respective enabling laws to tax salaries and emoluments of employees/staff of the said international organization.

The Filipino ADB Employees also complain that by allowing tax exemption privileges regardless of citizenship to staff/employees of the United Nations (UN) while rejecting similar privilege to them renders RMC No. 31-2013 offensive of the equal protection clause enshrined in Section 1, Article III of the Constitution.

---

[8] *Rollo (CTA EB No. 1878),* pp. 8-32.

[9] As attested to by the then Philippine Senate and former President Ferdinand E. Marcos per Senate Resolution No. 6 dated March 16, 1966.

[10] The ADB Employees enumerated the list of ADB member-countries observing tax-exemption privileges of their nationals by legislative fiat after ratifying the ADB Charter, as follows: United States of America, Australia, India, Papua New Guinea, and Singapore. See Petition for Review (CTA EB No. 1878), pp. 20-23.

Moreover, the RTC of Mandaluyong already declared void and without legal basis RMC No. 31-2013. The RTC of Mandaluyong, being a court of law, should be accorded judicial courtesy.[11]

The Filipino ADB Employees also stress that they have duly established by formidable proof that the services they rendered at the ADB were exempted from Philippine income taxes. In addition, the arguments raised by the CIR do not find application in the present case given the variance of issues in the proceedings before the RTC-Mandaluyong vis-à-vis in this Court. The Filipino ADB Employees insist that they are entitled to the refund of income taxes they paid for TYs 2012 and 2013.

In his Memorandum,[12] the CIR counters that the Filipino ADB Employees speciously invoked the general tax-exempt provisions of the ADB Charter but as well admit that the Philippine Government explicitly reserved the right to tax them. Further, since 1939 to the present, the compensation income realized by Filipino citizens derived from sources within the Philippines are subject to income taxes. In addition, the alleged long-standing practice of not taxing them is not ample justification to renege on their tax obligations. Moreover, RMC No. 31-2013 covers the salaries the Filipino ADB Employees earned in TY 2012 since it merely clarifies Sections 23 and 24 of the NIRC, as amended, already in force way back in 1998, or before they earned their compensation income in TYs 2012 and 2013. In view of all the foregoing grounds, the refund claims of Filipino ADB employees for the income taxes they paid for TYs 2012 and 2013 should be disallowed in their entirety.

The CIR's Petition for Review:[13]

The CIR maintains that the Filipino ADB Employees are accountable for accrued income taxes covering TYs 2012 and 2013. Under Section 23 of the NIRC, as amended, as

---

[11] The Filipino ADB Employees cites *Datu Michael Abas Kida vs. Senate of the Philippines,* G.R. No. 196271, February 12, 2012.

[12] *Rollo (CTA EB No. 1876),* pp. 77-95. The CIR's Memorandum was treated as his comment/opposition in CTA EB No. 1878. See Resolution dated September 24, 2018.

[13] Ibid. at pp. 1-16.

clarified by RMC No. 31-2013, income taxes are imposed on gains realized by resident citizens derived from sources within or outside the Philippines. With the rendition of services by the Filipino employees to the ADB, their compensation income realized therefrom are subject to Philippine income taxes.

Reliance by the Filipino ADB Employees on the general tax-exempt provision of the ADB Charter is misplaced. The exemption claimed by the Filipino employees of ADB from income taxes will apply only in the absence of any reservation made by the Philippine government to retain its right to impose taxes on its citizens, which is not obtaining in the present case. The Philippine government explicitly reserved the right to tax its citizens by virtue of Senate Resolution No. 06, the general tax-exempt privileges under the ADB Charter finds no application to Filipino citizens, such as the ADB Employees in this case.

He as well asserts that the alleged long-standing practice of not taxing Filipino ADB Employees will not ripen into a valid right as the same is in conflict with the provisions of the Tax Code.

The CIR also opines that the Court in Division erred when it ruled that RMC No. 31-2013 may only be applied prospectively. He claims that the imposition of taxes on the income earned by Filipino ADB Employees covering TY 2012 is warranted since his right to impose income taxes is not dependent on the efficacy of RMC No. 31-2013 for it merely clarifies existing revenue laws. Their income tax liability sprung from the provisions of the Sections 23 and 24 of the Tax Code which were already in force as early as 1998, or way prior to the realization of their compensation income in TYs 2012 and 2013. There being no legal impediment to collect the foregoing income taxes, their refund claim for TY 2012, like that of TY 2013, must be rejected, says the CIR.

In their Comment[14], the Filipino ADB Employees argue that the reservation made by the Philippine Government[15] on

---

[14] *Comment/Opposition dated August 6, 2018,* filed by the Filipino ADB Employees, see *rollo (CTA EB No. 1876),* pp. 72-76.
[15] See Note 9.

its taxing power simply means that its power to tax is withheld until an implementing statute is passed by the Legislature which is wanting in the present case. On this account, the general tax-exemption privileges found in the ADB Charter in favor of ADB foreign manpower must equally apply to them.

Further, their income tax-exempt status as regards their compensation income was already enjoyed by them for more than four (4) decades, thus, may not be taken away by mere issuance of RMC No. 31-2013. Besides, the said issuance is neither a law nor a treaty, hence, may not be a valid source of taxing power. They reiterate that the ruling of the RTC of Mandaluyong invalidating the said circular and accordingly upheld their income tax-exempt privileges.

THE RULING OF THE COURT

The Petitions for Review separately filed by the Filipino ADB Employees and the CIR are both devoid of merit, hence, should be denied.

The income tax treatment of individuals who are residents and citizens of the Philippines is governed by Sections 23(A) in relation to 24(A)(1)(a) of the NIRC, as amended, respectively providing as follows:

> **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;
>
> xxx xxx xxx
>
> **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;

Irrefragably, Philippine income taxes are imposed on the taxable income realized by resident citizens in a taxable year derived from sources within or outside the Philippines. Taxable income means gross income less statutory deductions and/or personal exemptions, if applicable.[16] Among the items of gross income is the compensation received by an individual taxpayer arising from services rendered pursuant to an employer-employee relationship.[17] Thus, [u]nder the NIRC, every form of compensation for personal services is subject to income tax and, 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.[18]

Consistent with the above observations, all the claimants in this case are Filipino citizens realizing gains by virtue of their employment at the ADB. *Ergo,* they are subject to pertinent income taxes on their compensation income under Section 23 in relation to Section 24(A)(1)(a) of the Tax Code. The Filipino ADB Employees nonetheless contend that they are excused from the imposition of income taxes under the general tax-exempt provision of the ADB Charter.

The contention is more apparent, than real.

Section 32(B)(5)[19] of the NIRC, as amended decrees that income exempted by a treaty shall not form part of a

---

[16] See Section 31 of the NIRC, as amended; and Section 36, Revenue Regulations No. 2.

[17] See Section 32(A)(1) of the NIRC, as amended; and *Confederation for Unity and Advancement of Government Employees (COURAGE), et al. vs. Commissioner, Bureau of Internal Revenue,* G.R. Nos. 213446 & 213658, July 3, 2018.

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

[19] **(B) Exclusions from Gross Income.** - The following items shall not be included in gross income and shall be exempt from taxation under this Title: xxx

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

W

taxpayer's gross income and consequently, not subject to income taxes *to the extent that it is binding upon the Philippine government*. Their alleged absolution from income taxes is pivoted on Article 56(2) of the ADB Charter,[20] which states as follows:

> Article 56
> EXEMPTION FROM TAXATION
>
> 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, <u>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.</u>[21]

Evident from the foregoing that as a *general rule*, taxes may not be imposed on salaries and emoluments earned by ADB Employees. 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. This declaration in turn was embodied in Senate Resolution No. 6 dated March 16, 1966, which reads as follows:

> NOW THEREFORE, be it known that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the <u>Agreement Establishing the Asian Development Bank</u> done on December 4, 1965 at Manila, Philippines, do hereby in pursuance of the aforesaid concurrent of the Senate of the Philippines, <u>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.</u>[22]

The term reservation is legally defined as the establishment of a limiting condition or qualification; esp., a nation's formal declaration, upon signing or ratifying a treaty, that its *willingness to become a party to the treaty is*

---

[20] Agreement Establishing the Asian Development Bank, executed on December 4, 1965.
[21] Underscoring supplied.
[22] Emphasis supplied.

conditioned on the modification or amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty.[23]

The Filipino ADB Employees construed the Philippine government's reservation as pertaining to the general grant of tax-exemption rather than the latter's retention of its taxing power on its citizens.

They should be corrected.

In *Philippine International Trading Corporation vs. Commission on Audit,*[24] the Supreme Court *En Banc* eloquently ruled that words in a statute should be read as a whole, and not in piecemeal parts to ascertain its true meaning, thus:

> It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, ***i.e.***, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.

Perusal of the subject Declaration clearly shows the Philippine government reserved its right to retain its taxing power over its citizens or nationals under the employ of ADB. In fact, nowhere in the subject Declaration may it be inferred that the Philippine government had endowed upon its citizens employed at the ADB the privilege of being excused from the imposition of Philippine income taxes on their earned salaries and emoluments. If indeed the objective was to exempt their compensation income from taxes, then the Philippine government would have totally assented to the ADB Charter without any restrictive proviso or reservation. Clearly, upon the Philippine Government's accession to the ADB Charter, its intention all along was to maintain its taxing power on the Filipino ADB employees.

---

[23] See Black's Law Dictionary, Eight Edition, p. 1334, emphasis supplied.
[24] G.R. No. 183517, June 22, 2010.

Also as diametrically opposed with the Filipino ADB Employees' pretense, Congress need not enact an enabling statute for the CIR to impose taxes on their compensation income since the revenue measures upon which their tax liability was predicated, i.e., Sections 23(A) and 24(A)(1) of the NIRC, as amended, were in full force and effect after the Philippine government made clear its subject reservation and retention to tax its citizens.

Neither does the established practice of not taxing Filipino ADB Employees, tax-exemptions granted by other ADB member-States on its nationals, as well as executive issuances respecting the ADB Charter could save the day for them. The reason is evident – 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.[25]

Nor should the Filipino ADB Employees be permitted to casually challenge the constitutionality of RMC No. 31-2013 to suit their cause.

In *Lawyers against Monopoly and Poverty (LAMP), represented by its Chairman and counsel, Ceferino Padua vs. The Secretary of Budget and Management,*[26] the Supreme Court *En Banc* spelled out the conditions *sine qua non* for a court to exercise its power of judicial review in the following fashion:

> Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (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

[25] See *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006.
[26] G.R. No. 164987, April 24, 2012.

w/

> 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.

Of the four (4) elements just mentioned, only the *third* and *fourth* are to be considered here.

Anent the *third* requisite, case-law has it that the earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before a competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.[27]

Significantly, the alleged infringement of the equal protection clause by the CIR's issuance of RMC No. 31-2013 was not raised by the Filipino ADB Employees in their pleadings before the Court in Division. Such alleged constitutional defect was raised for the first time in their Petition for Review before the Court *En Banc*, hence, it is just a mere afterthought which should not be tolerated.

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 application of the statute or the general law*. The movant must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[28] 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.[29]

As mentioned earlier, the Philippine government retained its right to tax Filipino ADB Employees. On that

---

[27] See *Matibag vs. Benipayo, Jr.*, G.R. No. 149036, April 2, 2002.

[28] *Congressman Enrique T. Garcia of the 2nd District of Bataan vs. The Executive Secretary*, G.R. No. 157584, April 2, 2009, italics in the original. Words in brackets, supplied.

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

score alone, the general tax-exempt provision of the ADB Charter is unavailing in their cases. Without any tax-exemption in their favor, the compensation income they received, and will receive at the ADB will be proper subject of Philippine income taxes in conformity with Sections 23 in relation to 24(A)(1)(a) of the NIRC, as amended. Given that the merits of the present controversy can be fully addressed without the need of touching the constitutional issue raised by them, it cannot be gainsaid that the same is the very *lis mota* of this case.

Further, the Decision[30] of the RTC of Mandaluyong 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."[31]

More importantly, plethora of cases[32] teach us that the exclusive jurisdiction over issues involving the constitutionality and/or legality of revenue regulation, ruling, or issuance/s such as RMC No. 31-2013 is vested with the Court of Tax Appeals. Verily, the RTC of Mandaluyong is without the requisite legal competence to adjudicate Civil Case No. MC14-8775, hence, its decision may not be a valid source from which the alleged right for the Filipino ADB Employees may spring.

However, all is not lost for the Filipino ADB Employees. Section 246 of the NIRC, as amended fosters the policy against retroactive application of among others, circulars

---

[30] Civil Case No. MC14-8775.

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

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

issued by the BIR, if the same is prejudicial to the taxpayer, *viz*:

> **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.

The insertion of Sec. 338-A[33] into the National Internal Revenue Code xxx is indicative of legislative intention to support the principle of good faith. In fact, in the United States, xxx it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer.[34] This is in keeping with the civil law principle that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[35] Thus, *en contra* with the CIR's posture, Section 246 of the NIRC, as amended, does not allow and in fact, proscribes retroactivity of circulars, such as RMC No. 31-2013 if it will be prejudicial to the taxpayer.

The Filipino ADB Employees equitably assumed that the general tax-exempt privileges stated under the ADB Charter were applicable to them. Prior to being consistently classified in RMC No. 31-2013 as taxable individuals, several

---

[33] Now Section 246 of the NIRC, as amended.
[34] See *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals,* G.R. No. L-52306, October 12, 1981.
[35] **Article 19.** Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

vacillating opinions[36] were handed down by the BIR apparently unsure on how to treat their income for tax purposes. Now, they have been put on the receiving end by being made to account for income taxes on their compensation earned in TY 2012 despite the effectivity of RMC No. 31-2013 only in 2013. This is the sort of unwarranted taxpayer's treatment which Section 246 of the NIRC, as amended side by side with pertinent doctrinal precepts seeks to obviate. Having relied in good faith that they are exempted from income tax based on the ADB Charter, RMC No. 31-2013 should only be made to apply on the Filipino ADB Employees' income realized *after* its efficacy in TY 2013 onwards. Thus, the income taxes that the BIR collected pertaining to TY 2012 must accordingly be returned to them.

On a final note, the Court is fully cognizant of the well-entrenched principle that the Government is not estopped from collecting taxes because of mistakes or errors on the part of its agents. But, like other principles of law, this also admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.[37]

WHEREFORE, the Petition for Review dated June 7, 2018, filed by the Commissioner of Internal Revenue and the Petition for Review dated June 18, 2018 filed by Licel Calderon, et al., are **DENIED**. The challenged Decision dated March 27, 2018 and Resolution dated May 23, 2018, both rendered by the Court in Division are **AFFIRMED**.

---

[36] a. In BIR Ruling No. 029-99 dated March 11, 1999, former BIR Commissioner Beethoven Rualo, in response to a query on the taxability of the compensation income of ADB personnel, opined:

> "Such being the case, Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank xxx xxx are subject to the preferential tax of 15% of their gross compensation income."

b. In a Letter Opinion dated January 29, 2001, BIR Regional Director Antonio Ortega confirmed that officers and staff of the ADB need not secure Tax Identification Numbers (TINs) since their salaries are exempt from taxation.

c. In an Opinion issued by the Chief of the Legal Division of Revenue Region No. 7 dated February 6, 2013, Amado Rey B. Pagarigan reiterated the opinion of Mr. Rualo and stated that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

[37] See *Commissioner of Internal Revenue vs. Benguet Corporation,* G.R. No. 145559, July 14, 2006.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(I join PJ's Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
(With due respect, I join PJ's Concurring and Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 consolidated cases were 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

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LICEL CALDERON, et al.,
Respondent.

CTA EB NO. 1876
(CTA Case No. 9090)

x--x

LICEL CALDERON, et. al.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1878
(CTA Case No. 9090)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 02 2019
3:12 p.m.

x--x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino, in holding that: *(i)* the Philippine Government, in its declaration embodied in Senate Resolution No. 6, dated March 16, 1966, reserved its right to retain its taxing power over its citizens or nationals employed by the Asian Development Bank (ADB); *(ii)* Congress need not enact an enabling statute for the Commissioner of Internal Revenue (CIR) to impose taxes on their compensation income since the revenue measures upon which their tax liability was predicated, *i.e., Section 23(A) and 24(A)(1) of the National Internal Revenue Code (NIRC), as amended,* were in full force and effect after the Philippine Government made clear its reservation to tax its citizens; *(iii)* the practice of not taxing Filipino ADB employees in the past does not constitute a valid basis for tax exemption since there is no law or treaty explicitly sparing their compensation income earned at the ADB from Philippine taxes; and *(iv)* the merits of the present controversy can be fully addressed without the need of touching the constitutional issue relating to Revenue Memorandum Circular No. 31-2013.

I also concur with the *ponencia* in affirming the assailed Decision and Resolution of the Court in Division but only insofar as it denies the claim for refund of the claimant-taxpayers for taxable year 2013. I, however, cannot give my assent to the *ponencia's* affirmation of the Court in Division's order to refund in favor of claimant-taxpayers the amount of P30,543,307.80 representing the alleged illegally collected income taxes for taxable year 2012.

To my mind, there is no basis to hold that the income received by resident citizens employed with ADB is subject to income tax beginning the year 2013 only, when RMC 31-2013 took effect in view of the provision of Section 246 of the NIRC on non-retroactivity of rulings.

With utmost respect, I submit that taxation of salaries and emoluments paid by ADB to its officers and employees who are resident citizens is not anchored on the application of RMC 31-2013, but based on Section 24(A)(1)(a) of the NIRC of 1997, as amended. This point was elaborated in the unanimous Decision of the CTA First Division in ***Garcia vs. CIR***,[1] *viz.*:

> "*Resident citizens who are officers and employees of ADB are subject to income tax on salaries and emoluments they receive from ADB*
>
> xxx xxx xxx
>
> Evidently, the ADB Charter provides a *tax exemption provision* with respect to the salaries and emoluments paid by ADB to its officers and employees,

[1] CTA Case No. 9075, February 9, 2017; penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justices Erlinda P. Uy and Cielito N. Mindaro-Grulla; affirmed by the Court *En Banc* in the Decision dated December 6, 2018 in CTA EB No. 1674.

but the same also contains a proviso wherein a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country which declaration must be made in the instrument of ratification or acceptance. Similarly, the ADB Headquarters Agreement recognizes the tax exemption privilege of ADB officers and employees but said Agreement also declares in no uncertain terms that the same is subject to the power of the Government to tax its nationals.

Pursuant to Article 56 (2) of the ADB Charter, the Philippine government made a specific declaration, when it ratified and confirmed the ADB Charter, through Senate Resolution No. 6, that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals. Said declaration of the Philippine government's right to tax its citizens is categorical in the proviso ***'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'***.

xxx xxx xxx

In this case, in interpreting the pertinent provision of the ratification document of the ADB Charter, the Court finds that the word *'reservation'* must not be read or interpreted in isolation. Instead, the phrase that followed it ---- *'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'* ---- must be considered in order to ascertain its meaning.

Furthermore, in interpreting the word 'reservation', it should be done not in its usual or ordinary sense, but more importantly, by the legal definition it bears and the way in which it was used in Senate Resolution No. 6.

The 1969 Vienna Convention on the Law of Treaties defines 'reservation' as:

'Article 2
Use of Terms

1. For the purposes of the present Convention:

ON

xxx xxx xxx

> (d) **'reservation'** means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, **whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State**;' (Boldfacing supplied)

On the other hand, Black's Law Dictionary (8th edition) defines 'reservation' as:

> 'The establishment of a limiting condition or qualification; esp. a nation's formal declaration, upon signing or ratifying a treaty, that its willingness to become a party to a treaty is conditioned on the modification or amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty.'

As can be gleaned from the above-mentioned definitions, the term **'reservation' refers to the formal declaration made by the State upon signing or ratifying the treaty which states the conditions for its agreement thereto.**

As afore-stated, the word reservation must be read in the whole context in which it was written in Senate Resolution No. 6. Taken as a whole, the entire provision *'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'* clearly means that **the Philippine government, at the time of the ratification of the ADB Charter, already opted to reserve and retain its right to tax the salaries that will be paid by ADB to its citizens and nationals.** The entire provision means that despite the tax exemption granted to ADB officers and employees, the Philippine government chose to maintain and preserve its right to tax its own citizens or nationals.

Truth to tell, there is nothing in the ratification document which would suggest, even remotely, that the

Philippine government has granted tax exemption to its citizens or nationals with respect to salaries and emoluments paid by ADB. Had it been the intention of the Philippine government to exempt from income tax the salaries or emoluments that its citizens or nationals would derive from ADB, a full ratification of the ADB Charter could have been made, without any declaration as to the retention of its right to tax its citizens or nationals.

xxx xxx xxx

In the absence of a specific grant of income tax exemption, the Court holds that **salaries and emoluments received by officers and employees of ADB who are resident citizens or nationals of the Philippines are subject to income tax pursuant to Section 24(A)(1)(a) of the NIRC of 1997, as amended**. Hence, petitioner's income tax payment for salaries and emoluments received from ADB for the taxable year 2012 was not illegally or erroneously collected by the BIR, hence, it cannot be the proper subject of refund under Section 229 of the NIRC of 1997, as amended.

Taxation of salaries and emoluments paid by ADB to its officers and employees who are resident citizens is not anchored on the retroactive application of RMC 31-2013

xxx xxx xxx

As afore-discussed, resident citizens or nationals of the Philippines who are working with ADB are taxable on their income from all sources, including those income derived from ADB. To emphasize, **the taxability of the income they received from ADB is not dependent on the validity or invalidity of RMC 31-2013 as the same is based on existing provisions of the NIRC of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB**. Irrespective of the existence of RMC 31-2013, the obligation of resident citizens or nationals to pay income tax on salaries and emoluments paid to them by ADB commenced on the taxable year that they were employed by ADB.

xxx xxx xxx

> Lastly, petitioner also claims 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.
>
> The Court holds that the failure of the BIR to collect income tax from ADB employees who are resident citizens 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." *(Emphases in the original removed; Boldfacing with underscoring supplied for new emphasis)*

The *ponencia* also mentions that prior to the issuance of RMC 31-2013, the BIR handed down the following opinions: (i) ***BIR Ruling No. 029-99 dated March 11, 1999 of former BIR Commissioner Beethoven Rualo*** stating that "Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank are subject to the preferential tax of 15% of their gross compensation income"; (ii) ***Letter Opinion dated January 29, 2001 of BIR Regional Director Antonio Ortega***, confirming that officers and staff of ADB need not secure Tax Identification Numbers (TINs) since their salaries are exempt from taxation; and (iii) ***Opinion issued by the Chief of the Legal Division of Revenue Region No. 7 dated February 6, 2013***, reiterating the opinion of Mr. Rualo that Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

The Opinion of BIR Regional Director Antonio Ortega cannot be considered as a valid ruling of the BIR to justify the exemption of income of the Filipino ADB employees from taxation. Apparently, said Opinion of BIR Regional Director Ortega is in stark contrast with BIR

Ruling No. 029-99. While CIR has an authority to delegate his powers vested under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, the power, however, **to issue rulings of first impression or to reverse, revoke or modify any existing ruling** of the Bureau is non-delegable.[2] It is settled principle that acts executed against the provisions of mandatory or prohibitory laws shall be void.[3]

BIR Ruling No. 029-99, on the other hand, is clear in stating that *"Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank are subject to the preferential tax of 15% of their gross compensation income."* This only shows that the CIR was already firm at the time that Filipino ADB employees are subject to income tax, *albeit* at a rate of 15% of the gross compensation income pursuant to Section 25(C) of the NIRC of 1997.

Notwithstanding the aforesaid BIR Ruling, it is well-entrenched rule that erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute. Prolonged practice of the Bureau of Internal Revenue in not collecting the tax cannot validate what is otherwise an erroneous application and enforcement of the law. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.[4]

On the basis of the foregoing pronouncement, I submit that claimants-taxpayers did not make erroneous payment of their income taxes for taxable years 2012 and 2013 as their income from ADB are properly subject to income tax pursuant to Section 24(A)(1)(a) of the NIRC of 1997, as amended.

All told, I vote to (i) **DENY** the Petition for Review filed by Licel Calderon, et. al.; (ii) **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue; (iii) **REVERSE** and **SET ASIDE** the March 27, 2018 Decision and May 23, 2018 Resolution of the Court in Division; and, (iv) **DENY** the claim for refund of Licel Calderon, et. al. for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[2] Sec. 7, NIRC.
[3] Art. 5, Civil Code.
[4] La Suerte Cigar & Cigarette Factory vs. Court of Appeals and CIR, G.R. No. 125346, November 11, 2014.