REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

**CTA EB NO. 2104**
(CTA Case No. 9094)

- versus -

**MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MARIA ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA MACALINTAL, GEOVANNA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINE MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO**

**MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, JOSELITO MENDEZ, RACHELLE MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALISSON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCUPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARA MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVA NUESTRO,**
**MA. CARMELA NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE OLIVER, RONALD MARK OMANA, CAROL ONCHANGCO, DINO TANTE ORDONEZ, MARIA CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINA ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILLE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA TERESA PAGKALINAWAN, ZENAIDA PANGAN, CORAZON**

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**PANGANIBAN, AILEEN PANGALINAN, MARIA VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARIO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,**

Respondents.

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**MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MA. ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA SOCORRO MACALINTAL, GEOVANA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAMPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINA MANRIQUE, MARIROSE MAPUA, ROSELYN**

**CTA EB NO. 2110**
(CTA Case No. 9094)

MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, MA-LYN THERESA MEDINA, JOSELITO MENDEZ, RACHEL MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALLISON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCOPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARAH MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO JOSEFINA NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVIA NUESTRO, MA. CARMEN NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE LEE OLIVER, RONALD MARK OMAÑA, CAROL ONGCHANGCO, DINO TANTE ORDONEZ, MARIAN CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINE ORQUIOLA, MARIA ROSA ORTEGA, LEA x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

**MARIA ORTIZ, CECILE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA THERESA PAGKALIWANGAN, ZENAIDA PANGAN, MARIA CORAZON PANGANIBAN, AILEEN PANGILINAN, MA. VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONNABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARCO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,**

Petitioners,

*Present*:

**DEL ROSARIO,** ***P.J.***,
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,** *and*
**REYES-FAJARDO,** ***JJ.***

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**

Respondent.

Promulgated:
NOV 0 5 2021 11:49am

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# RESOLUTION

***BACORRO-VILLENA, J.:***

For the Court's resolution is a Motion for Reconsideration[1] (**MR**) filed by respondents in CTA EB No. 2104 and petitioners in CTA EB No. 2110, Ma. Carmela Locsin, et al. (**the "Locsin Group"**). The MR assails this Court's Decision[2] (**assailed Decision**) promulgated on 13 January 2021 in the above-captioned cases. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, the foregoing considered, the Amended Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 2104, is hereby **GRANTED**. On the other hand, the Amended Petition for Review filed by Ma. Carmela Locsin, et al., docketed as CTA EB No. 2110, is hereby **DENIED** for lack of merit.
>
> Accordingly, the Decision and Resolution dated 04 February 2019 and 02 July 2019, respectively, of the Court's Special Third Division in CTA Case No. 9094 entitled *Ma. Carmela Locsin, et al. v. Commissioner of Internal Revenue*, granting the claim of refund of Ma. Carmela Locsin, et al., are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**
>
> ...

The assailed Decision reversed the original decision[3] rendered by this Court's Special Third Division[4] on 04 February 2019, partially granting the Locsin Group's Petition for Review in CTA Case No. 9094, to wit:

> ...
>
> **WHEREFORE**, the Petition for Review dated July 14, 2015 is **PARTIALLY GRANTED**.
>
> Respondent is hereby ORDERED TO REFUND or TO ISSUE TAX CREDIT CERTIFICATE in the total amount of P33,704,567.53, broken down, as follows:

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1 Rollo, pp. 290-297.
2 Id., pp. 245-271.
3 Division Docket, Volume II, pp. 602-630.
4 Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

| NAME OF PETITIONER | Income Tax Paid For 2012 |
|---|---|
| Ma. Carmela Locsin | 3,022,590.18 |
| Nerissa Loria | 213,578.84 |
| Krista Camille Lozada | 490,048.48 |
| Maria Isabelita Lozano | 315,708.90 |
| Heidee Lozari | 703,092.43 |
| Maria Criselda Lumba | 148,453.68 |
| Leah Jean Luna | 177,330.16 |
| Ma. Solita Mabaquiao | 515,525.34 |
| Marianne Macabingkil | 163,459.79 |
| Emerlinda Macalintal | 162,336.80 |
| Geovanna Maceda-Papa | 36,856.67 |
| Ritchelle Ann Madrigal | 178,814.24 |
| Maria Angela Malihan | 100,872.84 |
| Maureen Mamayson | 234,414.86 |
| Imelda Mampusti | 299,155.00 |
| Ma. Theresa Manahan | 366,266.84 |
| Ma. Rowena Manalansan | 214,246.15 |
| Nemrod Manalo | 700,279.56 |
| Buena Marie Manansala | 224,483.44 |
| Elnora Mangampat | 371,725.82 |
| Joelito Manigo | 321,969.67 |
| Madeline Manrique | 251,495.00 |
| Marirose Mapua | 227,511.80 |
| Roselyn Marantal | 223,379.24 |
| Liza Marasigan | 253,091.09 |
| Maritess Marcelino | 166,027.00 |
| Ruzette Mariano | 176,142.51 |
| Victoria Fe Mariano | 594,514.68 |
| Girard Pacifico Marin | 452,387.38 |
| Ma. Isabel Martin | 152,005.48 |
| Eloise Valerie Martinez | 232,457.37 |
| Balbina Grace Matullano | 233,521.19 |
| Ma Lyn Theresa Medina | |
| Joselito Mendez | 704,088.68 |
| Rachelle Mendinueto | 156,118.83 |
| Teresa Mendoza | 451,398.60 |
| Vivian Meneses | 231,234.07 |
| Kathrina Millan | 135,160.40 |
| Marichu Milward | 305,446.00 |
| Alvin Morales | 611,181.80 |
| Allison Grace Miravite | 82,540.82 |
| Marie Jessamine Mitra | 264,959.94 |
| Modesto Modesto | 1,100,851.83 |
| Caren Joy Mongcupa | 170,322.70 |
| Michael John Monreal | 214,907.25 |
| Jemellee Monzuela | 269,538.10 |
| Sara Mei Mora | 294,866.40 |
| Jackie Moreno | 123,046.33 |
| Wesam Mostadi | 109,600.09 |
| Edgardo Nacpil | 557,670.42 |
| Aldalyn Nada-Bere | 473,213.38 |

| | |
|---|---|
| Gilda Nanquil | 372,471.94 |
| Socorro Narvasa | 261,758.68 |
| Laarni Nasi | 164,759.79 |
| Jennifer Navarro | 313,075.04 |
| Ma. Agnes Navera | 418,010.08 |
| Suzanne Nazal | 296,098.52 |
| Belen Kim Ngwe | 267,482.75 |
| Maria Oliva Nuestro | 566,741.61 |
| Ma. Carmela Nuñez | 335,374.03 |
| Lawrence Obias | 129,515.90 |
| May Oblefias | 143,912.67 |
| Athena Ocampo | 267,524.61 |
| Laura Ocampo | 291,221.19 |
| Joseph Ochoada | 362,461.97 |
| Marjorie Oliver | 249,237.62 |
| Ronald Mark Omana | 215,062.18 |
| Carol Onchangco | 317,652.68 |
| Dino Tante Ordonez | 211,287.83 |
| Maria Cynthia Orendain | 629,320.00 |
| Josephine Orense | 301,729.90 |
| Christina Orquiola | 437,127.60 |
| Maria Rosa Ortega | 503,836.18 |
| Lea Maria Ortiz | 337,273.24 |
| Cecille Pacheco | 270,798.47 |
| Madelyn Paclibar | 221,760.19 |
| Ruperto Padilla | 552,920.28 |
| Rino Paez | 98,102.00 |
| Maria Teresa Pagkalinawan | 288,724.85 |
| Zenaida Pangan | 251,860.21 |
| Corazon Panganiban | 564,160.00 |
| Aileen Pangalinan | 209,744.01 |
| Maria Virginia Panis | 145,297.69 |
| Socorro Panis | 823,129.20 |
| Melissa Pascua | 363,318.57 |
| Pia Angelica Pascual | 167,019.52 |
| Wilhelmina Paz | 955,070.05 |
| Santiago Raymond Pe-Aguirre | 332,078.92 |
| Ma. Agnes Pedro | 153,650.18 |
| Michelle Penalosa | 155,411.54 |
| Cecilia Peralta | 143,091.88 |
| Paulita Perez de Tagle | 173,804.34 |
| Roslyn Perez | 271,525.06 |
| Donabelle Pineda | 202,487.10 |
| Ma Eloisa Pineda | 262,236.49 |
| Mitzi Gay Piol | 210,035.91 |
| Dario Ponciano | 305,319.80 |
| Lilibeth Poot | 447,970.83 |
| Mario Antonio Portugal | 82,557.14 |
| Grace Potente | 327,102.08 |
| Elenita Pura | 152,567.14 |
| **TOTAL** | **33,704,567.53** |

**SO ORDERED.**

...

Contrary to the Third Division's findings, the Court *En Banc*, in its assailed Decision, concluded that the income taxes paid by the Locsin Group in 2012 and 2013 as Filipino employees of the Asian Development Bank (**ADB**) were neither illegally collected nor erroneously paid thus, a refund thereof is unavailing.

In the instant motion, the Locsin Group raises arguments which may be summed up as follows:

1) A specific legislation separate from the National Internal Revenue Code (**NIRC**) of 1997, as amended, must be passed in order to enforce the taxability of ADB's Filipino employees; and,

2) Assuming that the foregoing employees are subject to income tax under the NIRC of 1997, as amended, their taxability should apply prospectively from the passing of Revenue Memorandum Circular (**RMC**) No. 31-13[5] on 12 April 2013 thus making their income in 2012 not subject to income tax.

It must be emphasized that the foregoing arguments are literal restatements of those found in the Locsin Group's Petition for Review in CTA EB No. 2110 – the same issues which this Court has already passed upon and exhaustively discussed in the assailed Decision. Although a reiteration of the issues in an MR raised by the parties and passed upon by the court does not immediately make the MR *pro forma*[6], the Locsin Group's MR does little to convince the Court to reverse its previous ruling.

As regards the first argument, We cite the following disquisitions contained in the assailed Decision, to wit:

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5 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.

6 *Philippine National Bank v. Hon. Paneda*, G.R. No. 149236, 14 February 2007.

...

Moreover, the ADB Charter, which the Philippine Government ratified and confirmed, provides the following reservation:

> ...
>
> 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**.
>
> ...

The same reservation is incorporated in the ADB Headquarters Agreement which was signed on 22 December 1966, to wit:

> ...
>
> **ARTICLE XII**
> **Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others**
>
> ...
>
> Section 45
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;
>
> (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals[.]
>
> ...

From the foregoing, it is clear that the Philippine Government reserved its right to tax its nationals. As such, the Filipino employees of the ADB would fall under the resident citizen tax classification, who are taxable on *all* income **derived from *all* sources within and outside** the Philippines.[7]

...

7 Rollo, pp. 262-263; Citations omitted.

On this note, the Locsin Group cites the definition of the term, "reservation" under the Vienna Convention on the Law of Treaties[8] which is defined as "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".[9]

The Locsin Group puts heavy emphasis on the word "purport" found in the foregoing definition. They contend that, according to Merriam-Webster online, the word "purport" means "to claim to be or do a particular thing when this claim may not be true". Based on this, they claim that the reservation of the Philippine government as regards the taxability of its Filipino employees both in the ADB Charter and the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank* (**ADB Headquarters Agreement**) is merely implied and that a tax burden cannot be imposed under unclear terms.

Contrary to the Locsin Group's view, the taxability of their income is clearly expressed under the NIRC of 1997, as amended, to wit:

> ...
>
> **Sec.** 23. *General Principles of Income Taxation in the Philippines.* – Except when otherwise provided in this Code:
>
> (A) <u>A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines</u>[.]
>
> ...
>
> **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

8 Dated 23 May 1969.
9 Article 2, Use of Terms, Vienna Convention on the Law of Treaties.

> 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[.]
>
> ...
>
> **Sec. 31.** *Taxable Income Defined.* – The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.
>
> ...
>
> **Sec. 32.** *Gross Income.* –
>
> (A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items[.][10]
>
> ...

Both the ADB Charter and ADB Headquarters Agreement were ratified in 1966. A perusal of all their pertinent provisions clearly show that the Philippine government reserved the right to tax its own citizens regardless of their employment with the ADB. Subsequently, the current NIRC of 1997, as amended, was enacted in 1997. The foregoing provisions thereof are without qualification as to their application to Filipino citizens residing within Philippine territory making the NIRC of 1997, as amended, applicable to ADB's Filipino employees.

As regards the second argument, We have previously discussed that RMC No. 31-13 as an administrative issuance is not the source of the Locsin Group's obligation to pay income taxes. We reiterate the following discussion in our assailed Decision based on the Supreme Court's ruling in *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, et al.,*[11] *viz:*

[10] Underscoring supplied.
[11] G.R. No. 108524, 10 November 1994.

> ...
>
> When an administrative agency renders an opinion by means of circulars or memoranda, they are to be treated as interpretative rules designed to provide guidelines to the law which the administrative agency is in charge of enforcing. Therefore, RMC 31-2013 was issued merely to construe the provisions of the NIRC of 1997, as amended, in relation to the various existing treaty obligations of the State. The circular was not issued to impose additional tax burdens not otherwise already found in existing law.[12]
>
> ...

RMC No. 31-13's clarification on the status of Filipino ADB employees does not take away the fact that even prior to its issuance, the income of Filipino ADB employees was subject to income tax. Therefore, there is no legal basis to deny the Philippine government from collecting income tax on the Locsin Group's income for taxable year 2012.

With no new issues and arguments raised in the instant MR, the Court sees no further need of another comprehensive discussion on the issues at hand as Our findings regarding the same have already been explained in length in the assailed Decision of the above-captioned cases.

**WHEREFORE**, the foregoing considered, the Motion for Reconsideration filed by the Locsin Group on 09 February 2021 is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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12 Supra at note 2, p. 265.

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

Ma. Belen
*(With due respect, I maintain my Concurring and Dissenting Opinion)*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
*(With due respect, I maintain my Dissenting Opinion dated January 13, 2021)*
**CATHERINE T. MANAHAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice