REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IRISH FE N. AGUILAR, MAJELLA R. CANZON, ARLENE B. CHAVEZ, HELEN B. CRUDA MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VERGEL K. LATAY, PRINCESS D. LUBAG, RUTH C. MANGROBANG, SHEILA MARIE F. MARIANO, AND ARLENE P. PORRAS,
Petitioners,

- versus -

HON. KIM S. JACINTO-HENARES, in her capacity as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9073

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 08 2018
1:10 p.m.

x -x

AMENDED DECISION

CASANOVA, *J.*:

For resolution are the following:

1. petitioners' **Motion for Partial Reconsideration (of the Decision dated 1 December 2017)**, filed on December 20, 2017 without respondent's Comment as per Records Verification Report dated February 13, 2018; and

2. respondent's **Motion for Reconsideration**, filed by registered mail on December 20, 2017 and received by this Court on January 3, 2018, with petitioner's **Opposition (to Respondent's Motion for Reconsideration dated 20 December 2017)**, filed on January 15, 2018.

Both parties seek reconsideration of this Court's Decision dated December 1, 2017, portion of which reads:

"In light of the foregoing, We **PARTIALLY GRANT** petitioners' Petition for Review in the aggregate sum of ₱4,626,335.18.

Name of Employee	Amount of Tax Refund
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	362,118.14
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Sheila Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	₱ 4,626,335.18

Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the reduced amount of **₱4,626,335.18** to be individually allocated based on the aforementioned tabular summary, representing the illegally collected income taxes for taxable year 2012.

SO ORDERED."

In the said Decision, the Court partially granted petitioners' claim for refund in the sum of ₱4,626,335.18 representing the illegally collected income taxes for taxable year 2012. The Court also noted that, out of the ₱479,113.76 refund claim of Vergel K. Latay, only the amount of ₱362,118.14 was duly supported by proof of payment. Thus, the remaining claim of Vergel K. Latay in the amount of ₱116,995.62 was denied for being unsupported.

Petitioners' Motion for Partial Reconsideration

Petitioners move to reconsider the above Decision based on the following grounds:

1. This Court erred when it denied petitioner, Vergel K. Latay's claim for refund in the amount of ₱116,995.62 considering that the petitioner presented substantial documentary and evidentiary requirements that unequivocally proved his claim for refund; and

2. That the Court erred when it did not award legal interest on each claim of refund of the petitioners.

Petitioners allegedly presented in evidence to this Court the 1) Annual Income Tax Return of Petitioner Vergel K. Latay, dated 15 April 2013, admitted as Exhibit "P-32"; and 2) Metrobank Deposit Slip BTR-BIR C/A No. 066706631212, admitted as Exhibit "P-36", both showing payment of income tax amounting to One Hundred Sixteen Thousand, Nine Hundred Ninety-Five and 62/100 (₱116,995.62).

Petitioners allege that Vergel K. Latay has sufficiently proven his claim for refund and the payments made were never assailed, disputed, or denied by the public respondent. In this regard, an order to refund the remaining claim of Vergel K. Latay in the amount of ₱116,995.62 is prayed for.

Petitioners further move that a judgment be issued ordering respondent to pay interest. Citing the case of *Philex Mining Corporation vs. Commissioner of Internal Revenue*[1], the Supreme Court enunciated that the award of interest on tax refund is warranted in certain instances, to wit:

> "...[T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of

[1] G.R. No. 120324, April 21, 1999.

> tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions."

Petitioners aver that the act of respondent in collecting income taxes from Asian Development Bank (ADB) employees despite the fact that Revenue Memorandum Circular (RMC) No. 31-2013 was not yet effective at that time, is arbitrary to the prejudice of petitioners' rights and that the collection of taxes made by respondent was allegedly a blatant disregard of the rule on effectivity of laws which warrants the award of legal interest.

We find petitioners' motion partly meritorious.

Based on records, the remaining claim of petitioner Vergel K. Latay in the amount of ₱116,995.62 was substantially proven and payment of which was duly supported.

It was noted that Vergel K. Latay's Annual Income Tax Return dated April 15, 2013 marked as Exhibit "P-32" was initially denied for failure to identify the duly marked exhibit. However, in petitioners' motion for reconsideration of the resolution on its Formal Offer of Evidence, the same was subsequently admitted since the admission of the same was not disputed by respondent. The rule is that evidence not objected to, is deemed admitted and may be validly considered by the court in arriving at its judgment.[2]

Consequently, the remaining claim of Vergel K. Latay in the amount of ₱116,995.62 should also be granted.

As to the payment of legal interest on the refund claim, it is already settled that the government cannot be required to pay interest on tax refunds in the absence of statutory provision clearly or expressly directing or authorizing such payment,[3] unless the collection of the tax was attended with arbitrariness.[4]

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[2] *Bank of the Philippine Islands vs. Mendoza*, G.R. No. 198799, March 20, 2017.
[3] *Commissioner of Customs vs. Borres*, G.R. No. L-12867, November 28, 1959.
[4] *Collector of Internal Revenue vs. Binalbagan Estate, Inc.*, G.R. No. L-12752, January 30, 1965.

In the instant case, petitioners are not correct in their assertion that the act of respondent in collecting income taxes from ADB employees despite the fact that RMC No. 31-2013 was not yet effective at that time is arbitrary.

In the same case cited[5] by petitioners, they failed to consider that "**[A]n action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached**. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions."

In the case at bench, the act of respondent in collecting income taxes from ADB employees was an exercise of respondent's honest belief that the taxability of the income received by the petitioners from ADB is based on the existing provisions of the NIRC of 1997 as amended, in relation to the treaty/agreement between the Government of the Philippines and ADB. Thus, the same cannot be considered inexcusable or obstinate disregard of legal provisions.

Therefore, there is no reason why petitioner should be entitled to the payment of interest. The award thereof cannot be granted.

Respondent's Motion for Partial Reconsideration

In his motion, respondent maintains that RMC No. 31-2013 merely seeks to clarify the existing law on tax exemption from withholding taxes on the compensation of officials and employees of foreign government/embassies/diplomatic missions and international organizations. It does not create new rules. Its application, therefore, is the effectivity of the law which it clarifies-the NIRC of 1997, as amended.

Respondent states that it is the NIRC of 1997, as amended which imposes tax on Filipino ADB employees and not the RMC No. 31-2013. Also, respondent claims that the Court erroneously interpreted Section 246 (Non-Retroactivity of Rulings) of the NIRC of 1997, as amended in favor of petitioners.

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[5] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 120324, April 21, 1999.

Lastly, respondent avers that tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the entity claiming the same.

On the other hand, petitioners maintain that as employees of ADB, they are exempt from the payment of income tax pursuant to the doctrine of *pacta sunt servanda*. Also, in their opposition to respondent's motion, petitioners stated that the Court correctly ruled that RMC No. 31-2013 may only be applied prospectively considering that the same is clear and unequivocal.

Petitioners contend that there is no indication that RMC No. 31-2013 may operate retroactively. Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation.

Petitioners, citing several cases decided by the Supreme Court, stressed that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers. Thus, petitioners contend that a retroactive application of RMC No. 31-2013 would be prejudicial to taxpayers who merely believed in good faith that they are exempt from income tax.

Based on the foregoing, the Court finds that respondent failed to raise any new or substantial matter, or a compelling reason to justify the reversal or modification of the Court's findings in the assailed Decision. The same are mere reiterations of his arguments which have already been passed upon extensively in the assailed Decision. Thus, the Court finds the motion for respondent bereft of merit.

WHEREFORE, premises considered, petitioners' **Motion for Partial Reconsideration (of the Decision dated 1 December 2017)** is **PARTIALLY GRANTED**, while respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

Accordingly, the Decision dated December 1, 2017 is modified to read as follows:

> 'In light of the foregoing, We **PARTIALLY GRANT** petitioners' Petition for Review.

Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of ₱4,743,330.80, representing the illegally collected income taxes for taxable year 2012, to be individually allocated as follows:

Name of Employee	**Amount of Tax Refund**
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	479,113.76
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Sheila Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	₱ 4,743,330.80

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With due respect, I reiterate my Dissenting Opinion.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice