REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

EDZEN JOGIE B. GARCIA, *Petitioner,*	**CTA Case No. 9075**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 09 2017 3:38 p.m.

x- -x

DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review filed by petitioner Edzen Jogie B. Garcia, seeking for a refund of his income tax in the amount of Four Hundred Twenty Six Thousand Two Hundred Forty Five Pesos and Twenty Seven Centavos (₱426,245.27) covering calendar year 2012 alleged to have been erroneously assessed and collected from his tax-exempt income from the Asian Development Bank.

PARTIES

Petitioner Edzen Jogie B. Garcia ("Garcia") is of legal age, Filipino, residing at 77 Centro Guyong, Sta. Maria, Bulacan, and is employed at Asian Development Bank ("ADB") which office is located at 6 ADB Ave., Mandaluyong City 1550. He is a staff member of the ADB, currently holding the position of Senior Integrity Officer at the Office of Anti-Corruption and Integrity.[1] He may be served with

[1] Exhibit "P-1", CTA Docket, p. 334.

[initials]

summons and other processes of the Court thru the office of his counsel at 207 Tindalo-Santiago Sts., Sta. Clara, Sta. Maria, Bulacan.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to issue rulings, memorandum circulars and other rules and regulations pursuant to the provisions of the Tax Code. Respondent CIR may be served with summons, pleadings and other processes of the Court at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

FACTS

On April 12, 2013, respondent CIR issued Revenue Memorandum Circular ("RMC") 31-2013 (*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*), which provides, among others, that officers and staff of the ADB who are **<u>not</u>** Philippine nationals shall be exempt from Philippine income tax,[4] to wit:

> "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:

[2] Petition for Review, CTA Docket, p. 11.
[3] Petition for Review, CTA Docket, pp. 11-12.
[4] Exhibit "P-7", CTA Docket, pp. 340-363.

> "ARTICLE XII
>
> xxx
>
> Section 45
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> xxx
>
> (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank **subject to the power of the Government to tax its nationals;"**
>
> From the above, **only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax**." (Emphases supplied)

On July 15, 2013, petitioner Garcia filed his Annual Income Tax Return for 2012 and paid the income tax due of ₱426,245.27.[5]

On February 14, 2014, other Filipino employees of the ADB, represented by Mr. Erwin Salaveria and Ms. Portia Gonzales, filed a Petition to Nullify Revenue Memorandum Circular 31-2013, particularly Section 2 (d) (1), with Branch 213 of Regional Trial Court ("RTC") in Mandaluyong City, docketed as Civil Case No. MC14-8775.[6]

On April 15, 2014, petitioner Garcia filed his Income Tax Return for calendar year 2013 reflecting therein an overpayment of income tax in the amount of ₱426,245.27.[7] According to petitioner, the overpayment reflected in said 2013 ITR is premised on the illegality of the assessment and collection of income tax on July 15, 2013 under RMC 31-2013.[8]

On September 30, 2014, the RTC promulgated a decision in Civil Case No. MC14-8775 declaring Section 2 (d) (1) of RMC 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law due to absence of legislation and/or

---

[5] Exhibit "P-6", CTA Docket, p. 29.
[6] Petition for Review, CTA Docket, p. 15.
[7] Exhibit "P-8", CTA Docket, pp. 364-367.
[8] Petition for Review, CTA Docket, p. 15.

regulation to the contrary.[9] A Motion for Reconsideration was filed by the CIR, but was denied on January 9, 2015.[10]

On January 14, 2015, petitioner Garcia filed his formal request for tax refund of the income tax paid on July 15, 2013 for calendar year 2012, in the amount of ₱426,245.27.[11]

Alleging inaction of respondent CIR on his claim for refund, petitioner Garcia filed the instant Petition for Review on June 22, 2015.[12]

On July 27, 2015, the Office of the Solicitor General ("OSG") filed a Manifestation and Motion, praying that they be excused from filing an Answer, as mandated by the Memorandum of Agreement dated March 17, 2010 between the Bureau of Internal Revenue ("BIR") and the OSG.[13] The Court noted and granted the Manifestation and Motion in an Order dated August 12, 2015.[14]

On July 28, 2015, respondent CIR filed a Motion for Extension of Time to File Answer,[15] which the Court granted in an Order dated July 30, 2015, thereby extending respondent's time to file an Answer until August 12, 2015.[16]

On August 12, 2015, respondent CIR filed an Answer[17] stating, among others, that petitioner, being a Filipino citizen and resident of the Philippines, is subject to the Philippine Income Tax; that in signing the ADB Headquarters Agreement in 1956, the Philippine government accorded tax exemption privileges to ADB and its staff but held on to the State's inherent power to tax its nationals; and that in ratifying the agreement with ADB, the Philippines, by making a "reservation", simply intimated that only the income of ADB is exempt from tax but not the income derived by Filipinos from ADB.

Petitioner Garcia filed his Reply on September 3, 2015.[18]

---

[9] Petition for Review, CTA Docket, p. 16.
[10] Petition for Review in relation to Annex "H", CTA Docket, pp. 16 & 92.
[11] Exhibit "P-11", CTA Docket, pp. 25-26.
[12] Petition for Review, CTA Docket, pp. 10-24.
[13] CTA Docket, pp. 100-109.
[14] CTA Docket, p. 122.
[15] CTA Docket, pp. 95-98.
[16] CTA Docket, p. 99.
[17] CTA Docket, pp. 111-121.
[18] CTA Docket, pp. 123-132.

On September 17, 2015, respondent CIR filed a Pre-Trial Brief,[19] while petitioner Garcia filed his Pre-Trial Brief on December 16, 2015.[20]

In his Pre-Trial Brief, petitioner stated that the RTC Decision in Civil Case No. MC14-8775 was elevated by respondent to the Court of Appeals ("CA") under Rule 41 of the Rules of Civil Procedure, entitled *Erwin Salaveria, et. al. vs. Commissioner of Internal Revenue*, CA-GR CV No. 104374.[21] The CA promulgated a Resolution dated July 3, 2015 dismissing the appeal with a pronouncement that the same should have been raised by Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure with the Supreme Court.[22] A Motion for Reconsideration[23] was filed by respondent CIR, but the same was denied by the CA on January 4, 2016.[24]

In the Pre-Trial Conference held on January 28, 2016, the Court ordered both parties to submit a Joint Stipulation of Facts and Issues.[25] As per Records Verification dated March 9, 2016, however, the parties failed to do so. The Court deemed the right of both parties to submit a Joint Stipulation of Facts and Issues as waived.[26] The Court then issued a Pre-Trial Order on May 12, 2016.[27]

At the hearing on May 17, 2016, petitioner Garcia proceeded to present his evidence. On the other hand, a manifestation that no evidence will be presented was made by respondent CIR.[28]

Petitioner Garcia filed his Formal Offer of Evidence on May 27, 2016,[29] without respondent's comment despite notice as per Records Verification dated June 23, 2016.[30] The Court admitted all the evidence offered by petitioner Garcia, except for Exhibit "P-5", which was denied for failure to present the original for comparison.[31]

---

[19] CTA Docket, pp. 138-143.
[20] CTA Docket, pp. 146-154.
[21] CTA Docket, p. 148.
[22] Exhibit "P-12", CTA Docket, pp. 404-410.
[23] Exhibit "P-13", CTA Docket, pp. 411-420.
[24] Exhibit "P-14", CTA Docket, pp. 422-426.
[25] CTA Docket, pp. 274-276.
[26] CTA Docket, pp. 294-295.
[27] CTA Docket, pp. 307-314.
[28] CTA Docket, pp. 324-325.
[29] CTA Docket, pp. 329-333.
[30] CTA Docket, p. 428.
[31] CTA Docket, pp. 439-440.

Petitioner Garcia submitted his Memorandum on August 23, 2016,[32] while respondent CIR submitted a Memorandum on September 6, 2016.[33]

The case was submitted for decision on September 14, 2016.[34] Hence, this decision.

ISSUES

The parties submitted the following issues for the Court's resolution:

1. Whether petitioner Garcia is entitled to a tax refund of his income tax paid on his 2012 compensation from ADB, considering that Section 2(d)(1) of Revenue Memorandum Circular 31-2013, the basis of the BIR assessment of his income tax for 2012, was declared void by a court of general jurisdiction; and,

2. Whether RMC 31-2013 dated April 12, 2013, assuming it is valid, can be applied retroactively.[35]

PETITIONER'S ARGUMENTS

In support of his petition, petitioner Garcia raises the following arguments:

1. Petitioner Garcia's income is tax-exempt under the ADB Charter and the exemption cannot be withdrawn by RMC 31-2013;

2. Retroactive application of RMC 31-2013 is contrary to law and existing jurisprudence;
3. Section 2 (d) (1) of RMC 31-2013 was declared void by the RTC in Civil Case No. MC14-8775; and,

4. The Court should take judicial notice of material facts, such as the ADB Charter, facts, laws and jurisprudence cited in public

---

[32] CTA Docket, pp. 441-480.
[33] CTA Docket, pp. 486-495.
[34] CTA Docket, p. 497.
[35] Pre-Trial Order dated May 12, 2016, CTA Docket, p. 308.

documents including the September 30, 2014 Decision of the RTC in Civil Case No. MC14-8775, Resolutions of the CA in CA GR No. 104374, which have the same facts and issues raised in this petition and are applicable therein.

RESPONDENT'S COUNTER-ARGUMENTS

On the other hand, respondent CIR's counter-arguments are as follows:

1. Petitioner Garcia is not entitled to the refund of his income tax for taxable year 2012 for failure to substantiate his claim;

2. Petitioner Garcia is not entitled to a refund being a Filipino citizen and a resident of the Republic of the Philippines, pursuant to Section 23 and 22 (E) of the 1997 National Internal Revenue Code, as amended;

3. In signing the ADB Headquarters Agreements in 1956, the Philippine government accorded tax exemption privileges to ADB and its staff, but held on to the State's inherent power to tax, and thus made a clear limitation in so far as its right to tax its nationals; and,

4. RMC 31-2013 is valid because it is only a mere clarification of existing policies etched in Philippine law.

THE COURT'S RULING

RTC Decision in Civil Case No. MC14-8775 declaring Section 2 (d) (1) of RMC 31-2013 as void is not a binding precedent

At the outset, the Court is tasked to rule on the entitlement of petitioner to income tax refund, taking into consideration the RTC Decision in Civil Case No. MC14-8775 declaring void Section 2(d)(1) of Revenue Memorandum Circular 31-2013.

The Court holds that the RTC Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. While petitioner does not appear to be a party in Civil Case No. MC14-8775, on which the doctrine of *res judicata* may possibly apply, the decision therein is not a binding precedent that forms part of the Philippine legal system.

Apt is the discussion of the Supreme Court in *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[36] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[37] *and Philex Mining Corporation*[38] as to what constitutes a binding precedent, *viz.*:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:
>
> > x x x Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character**. Let it be warned that to defy our decisions is to court contempt.
>
> The same basic doctrine was reiterated by this Court in *De Mesa v. Pepsi Cola Products Phils., Inc.*:
>
> > The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
> >
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
> >
> > It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that

---
[36] G.R. No. 187485, February 12, 2013.
[37] G.R. No. 196113, February 12, 2013.
[38] G.R. No. 197156, February 12, 2013.

> once a question of law has been examined and decided, it should be deemed settled and closed to further argument."

Interestingly, the RTC Decision in Civil Case No. MC14-8775 even 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***,[39] the Supreme Court was categorical in saying that **the Court of Tax Appeals (CTA) 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.

Taxation of income derived by resident citizens of the Philippines

Taxation is an inherent attribute of sovereignty. It is a power that is purely legislative. Essentially, this means that in the legislature primarily lies the discretion to determine the nature (kind), object (purpose), extent (rate), coverage (subjects) and situs (place) of taxation. It has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and where it shall be imposed.[40]

In this jurisdiction, resident citizens are taxed on income derived from all sources within and without the Philippines as provided under Sections 23(A) and 24(A)(1)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, *viz.*:

> "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;"

---

[39] G.R. No. 210987, November 24, 2014.
[40] Chamber of Real Estate & Builders' Association, Inc. vs. Executive Secretary Alberto Romulo, et al., G.R. No. 160756, March 9, 2010.

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 by every individual citizen of the Philippines residing therein**;" *(Boldfacing supplied)*

The NIRC of 1997, as amended, is clear and categorical in its imposition of income tax on *taxable income* derived from all sources of a resident-citizen. *Taxable income* means the pertinent items of gross income less deductions and/or personal and additional exemptions.[41] *Gross income*, in turn, is defined as all income derived from whatever source, including but not limited to *"compensation for services in whatever form paid, like fees, salaries, wages, commissions"*.[42] In other words, the NIRC of 1997, as amended, imposes tax on the income of a resident citizen from all sources, such as compensation received for services performed in the Philippines.

On the other hand, Section 31 of the NIRC of 1997, as amended, enumerates certain items which are excluded from gross income and thus, exempted from taxation, *viz.*:

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:

xxx xxx xxx.

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

(1) Life Insurance . – xxx xxx xxx.

xxx xxx xxx.

---

[41] Sec. 31, NIRC.
[42] Sec. 32, NIRC.

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

Stated differently, a resident citizen is taxable on all income derived from all sources within and without the Philippines, except in a situation where the resident citizen is exempt under the provisions of a treaty, which is binding upon the Philippine government.

Resident citizens who are officers and employees of ADB are subject to income tax on salaries and emoluments they receive from ADB

The ***Agreement Establishing the Asian Development Bank***[43] (ADB Charter, for brevity) which has been relied upon by petitioner in claiming tax exemption, states:

> "Article 56
> EXEMPTION FROM TAXATION
>
> 1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
>
> 2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, **except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member**."

Also, Article XII, Section 45 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***[44] (ADB Headquarters Agreement, for brevity) provides:

---

[43] Executed on December 4, 1965.
[44] Entered into and signed on December 22, 1966.

"ARTICLE XII
Privileges and Immunities of Governors and
Other Representatives of Members, Directors,
President, Vice-President and Others
xxx xxx xxx

Section 45.

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

(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 <u>subject to the power of the Government to tax its nationals</u>**;

xxx" (Boldfacing & underscoring supplied)

The aforesaid ADB Charter was ratified and confirmed by the Philippine Government through Senate Resolution No. 6 dated March 16, 1966, *viz.*:[45]

"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, <u>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>**." *(Boldfacing & underscoring supplied)*

Evidently, the ADB Charter provides a ***tax exemption provision*** with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a **proviso wherein a member-country may opt to <u>retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such</u>**

[45] RTC Decision in Civil Case No. MC14-8775 entitled Erwin Salavera and Portia Gonzales, by themselves and as Attorneys-in-Fact of the concerned Filipino employees of Asian Development Bank vs. Commissioner of Internal Revenue, Exhibit "9"; CTA Docket, pp. 369-400, 392.

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".***

Petitioner contends that "reservation" of the right to tax modifies the legal effect of the treaty exemption provision as it connotes something that may or may not be exercised, and necessitates an operative act or enabling law for the modification to be realized.[46]

The Court finds petitioner's contention bereft of merit.

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. Consistent with the fundamentals of statutory construction, **all the words in the statute must be taken into consideration in order to ascertain its meaning**.[47]

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

---

[46] Petition for Review; CTA Docket, p. 19.
[47] Philippine International Trading Corporation vs. Commission on Audit, G.R. No. 183517, June 22, 2010.

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:
>
> 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***

<u>Bank to citizens or nationals of the Philippines</u>" 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.

Worthy to re-echo that an intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction.[48] A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken.[49] The power of taxation is a high prerogative of sovereignty and its relinquishment is never presumed.[50] Since taxes are the lifeblood of the government, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.[51]

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.

---

[48] Lung Center of the Philippines vs. Quezon City, G.R. No. 144104, June 29, 2004.
[49] Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159471, January 26, 2011.
[50] Floro Cement Corporation vs. Gorospe, GR No.L-46787, August 12, 1991.
[51] Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010.

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

The second issue raised by the parties seeks the Court's resolution on whether RMC 31-2013 dated April 12, 2013, assuming it is valid, may be applied retroactively.

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.

In his Petition for Review, petitioner cites the Letter of BIR Regional Director Antonio I. Ortega dated 29 January 2001[52] wherein he confirmed the opinion that officers and staff of ADB are not required to secure Tax Identification Number (TIN) since the salaries and emoluments of ADB's officers and staff are exempt from taxation.

The Court notes that said Letter-Opinion of Regional Director Ortega, which is in response to the letter of ADB dated 24 January 2001 concerning the latter's requests for exemption from the coverage of TIN, was issued by said official of the BIR *sans* any valid delegation of authority from the CIR.

Parenthetically, the CIR may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank, but he cannot delegate certain powers enumerated in Section 7 of the NIRC of 1997, as amended,[53] which provides:

---

[52] Annex "E" of the Petition for Review, CTA Docket, pp. 34-35.
[53] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005.

> "SEC. 7. Authority of the Commissioner to Delegate Power. – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) **The power to issue rulings of first impression** or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate under Section 204(A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Boldfacing supplied)*

Thus, while the CIR is authorized to delegate to his subordinates the powers vested in him, he is precluded from delegating the power to issue rulings of first impression.[54] Necessarily, a ruling or opinion on matters of first impression issued merely by the CIR's subordinate is a patent nullity for having been issued without a valid authority.

As the subject matter of the letter involved a novel issue, the exercise of CIR's own **power to issue a ruling of first impression was required**. Conversely, in issuing the said Letter-Opinion, BIR Regional Director Ortega clearly conferred unto himself an authority

---

[54] Secretary of Finance vs. La Suerte Cigar and Cigarette Factory, G.R. No. 166498, June 11, 2009.

which rightfully belongs to the CIR, thus, his Letter-Opinion is not binding upon the government.

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.

On the basis of the foregoing disquisition, this Court holds that petitioner is not entitled to the refund of the amount of ₱426,245.27, representing the income tax paid on salaries and emoluments received from ADB for the calendar year 2012.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Edzen Jogie B. Garcia on June 22, 2015 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice