REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

ERWIN CASACLANG, Petitioner,	**CTA Case No. 9386**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE (RDO 041 Mandaluyong City), Respondent.	***Promulgated:*** OCT 23 2019 9:46 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Refund of Tax Payment* filed by Erwin R. Casaclang on July 13, 2016, seeking the refund of income tax payment in the amount of ₱104,420.00, allegedly, as tax erroneously paid.

THE FACTS

Petitioner Erwin R. Casaclang, is Filipino, of legal age, married, with address at 29 Franc Street, CBE Townhomes, Pasong Tamo, Quezon City.[1] He is an employee of the Asian Development Bank (ADB).[2]

Respondent is the Bureau of Internal Revenue (BIR) (RDO 041), a government institution, with address at Boni Ave., Malamig, Mandaluyong City.[3]

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[1] Par. 1, *Petition for Refund of Tax Payment*, vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 63, respectively.
[2] Exhibit "P-6", Docket, p. 243.
[3] Par. 2, *Petition for Refund of Tax Payment*, vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 63, respectively.

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013,[4] which petitioner treated as a directive to pay income tax.[5] Thus, petitioner filed his Income Tax Return for the period January to December 2013,[6] and subsequently paid the amount of ₱104,420.00,[7] representing income tax for the said period on July 15, 2014.

On September 30, 2014, the Regional Trial Court of Mandaluyong City – Branch 213 (RTC – Branch 213) issued a Decision in Civil Case No. MC14-8775,[8] declaring Section 2(d)(1) of RMC No. 31-2013 as void, for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary.

On the basis thereof, on July 12, 2016, petitioner filed the letter dated July 8, 2016 with the Revenue District Office (RDO) No. 41 of the BIR,[9] requesting for the refund of the said income tax payment. On the same date, petitioner filed an *Application for Tax Credits / Refunds* (BIR Form No. 1914),[10] covering the same refund claim.

Thereafter, on July 13, 2016, petitioner filed the instant *Petition for Refund of Tax Payment* before this Court.

Respondent filed his *Answer* on September 5, 2016,[11] contending, *inter alia*, the following: (1) RTC – Branch 213 has no jurisdiction in taking cognizance of the case filed by the employees of the ADB, pertaining to the validity of RMC No. 31-2013; (2) RMC No. 31-2013 is valid because it is only a mere clarification of existing policies embodied in the law; (3) petitioner, being a Filipino citizen and resident of the Republic of the Philippines, is subject to income tax; (4) petitioner must prove that he was able to comply with the documentary and legal requirements as provided under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended; (5)

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[4] SUBJECT: 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

[5] Exhibit "P-5", Docket, pp. 219 to 242, vis-à-vis petitioner's *Formal Offer of Evidence*, Docket, p. 184.

[6] Exhibit "P-2", Docket, p. 18.

[7] Exhibits "P-3" and "P-3-1", Docket, pp. 19 to 20.

[8] Exhibit "P-4", Docket, pp. 187 to 217.

[9] Exhibit "P-1", Docket, p. 16.

[10] Exhibit "P-1-1", Docket, p. 17.

[11] Docket, pp. 63 to 73.

taxes collected are presumed to be in accordance with law and regulations; and (6) petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected.

Pre-Trial Conference was initially set on January 26, 2017.[12] However, upon respondent's *Motion for Resetting of Pre-Trial Conference* filed on January 20, 2017,[13] the same was re-scheduled by the Court, and was held on April 20, 2017.[14] By agreement of the parties' counsels during pre-trial, they filed their *Compliance Joint Stipulation of Facts and Issues* (CJSFI) on May 2, 2017.[15] The CJSFI was approved by the Court in the Resolution dated May 22, 2017,[16] and terminated the Pre-Trial.

During trial, petitioner Casaclang testified by way of *Judicial Affidavit*[17] to support the material allegations in the instant *Petition*. Thereafter, petitioner filed his *Formal Offer of Evidence* on May 30, 2018,[18] offering Exhibits "P-1", "P-1-1", "P-2", "P-3", "P-3-1", "P-3-2", "P-4", "P-5", "P-6", "P-7", and "P-7-1".

In the Resolution dated September 26, 2018,[19] the Court admitted all of petitioner's formally offered Exhibits. In the same Resolution, petitioner was given thirty (30) days from receipt thereof within which to file his memorandum, considering the manifestation of respondent that he will not be presenting evidence in this case, and in view of the filing of respondent's *Memorandum* on June 1, 2018[20]. On November 5, 2018, petitioner filed his *Memorandum*.[21]

Thus, the instant case was deemed submitted for decision, in the Resolution dated November 16, 2018.[22]

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[12] Notice of Pre-Trial Conference dated September 13, 2016, Docket, pp. 74 to 75.
[13] Docket, pp. 78 to 80.
[14] Order dated January 24, 2017, Docket, pp. 87 to 88; Minutes of the hearing held on, and Order dated, April 20, 2017, Docket – Vol. 1, pp. 95 to 97, and 100 to 101, respectively.
[15] Docket, pp. 103 to 104.
[16] Docket, p. 107.
[17] Exhibit "P-7", Docket, pp. 117 to 122.
[18] Docket, pp. 183 to 185.
[19] Docket, pp. 275 to 276.
[20] Docket, pp. 244 to 266.
[21] Docket, pp. 278 to 284.
[22] Docket, p. 287.

Hence, this Decision.

THE ISSUES

The sole issue stipulated by the parties for the consideration of this Court is as follows:

> "Is petitioner entitled to a refund of income tax paid in the amount of ₱104,420.00?"[23]

Petitioner's arguments:

It is the primary argument of petitioner that he is entitled to the refund of tax erroneously paid.

Petitioner contends that the tax was paid pursuant to Section 2(d)(1) of RMC No. 31-2013, which has since been declared void by the Regional Trial Court, Branch 213 of Mandaluyong City.

According to petitioner, when the provision directing the ADB employees was declared void, all taxes that have been paid in compliance with it lost their legal basis; and thus, it can be considered as tax that was erroneously paid.

Petitioner further avers that in its Decision, the RTC – Branch 213 declared an action of respondent, in collecting income taxes from employees of the ADB as void, or having no legal effect. Petitioner, being an employee of ADB, the said ruling is necessarily applicable to the treatment of his compensation income. Hence, the tax paid by petitioner is considered as tax erroneously paid for which he is entitled to claim for a refund.

Furthermore, petitioner argues that while it is true that the Decision of the RTC – Branch 213, declaring Section 2(d)(1) as void, is still pending before the Court of Appeals, a refund is necessary in the interest of substantial justice and equity. Allegedly, if the refund is not granted at the present time, petitioner would lose the two-year period under the law to request for refund.

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[23] *Compliance Joint Stipulation of Facts and Issues*, Docket, p. 103.

In the event that the appealed decision is upheld in the future, there would not be any other recourse in law left for petitioner to claim for the tax erroneously paid under the void directive of respondent.

Respondent's counter-arguments:

On the other hand, respondent counters that petitioner is not entitled to the refund of his income tax payments for the taxable year 2013, for failure on his part to substantiate his claim for refund.

Respondent asserts that the RTC Decision in Civil Case No. MC14-8775, declaring Section 2(d)(1) of RMC No. 31-2013 being void, is not a binding precedent. He points out that resident citizens, who are officers and employees of ADB, are subject to income tax on salaries and emoluments they receive from ADB. Allegedly, taxation of salaries and emoluments paid by ADB to its officers and employees, who are resident citizens, is not anchored on the retroactive applications of RMC No. 31-2013.

Finally, respondent emphasizes that petitioner failed to prove compliance with documentary and legal requirements under Section 229 of the 1997 NIRC, as amended, as to be entitled to refund income taxes paid for taxable year 2013.

THE COURT'S RULING

The instant *Petition for Refund of Tax Payment* must fail.

RTC – Branch 213 is without jurisdiction to take cognizance of Civil Case No. MC14-8775.

Petitioner heavily relies on the Decision of the RTC - Branch 213,[24] declaring Section 2(d)(1) of RMC No. 31-2013 as void, for having been issued without legal basis, in excess of authority, and/or without due process of law; and in the absence of legislation and/or regulation to the contrary. In fact, his main thesis of the subject refund claim rests on the said declarations of RTC - Branch 213.

However, petitioner's reliance on the said Decision is misplaced.

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[24] Exhibit "P-4", Docket, pp. 187 to 218.

In *Banco De Oro, et al. vs. Rizal Commercial Banking Corporation,*[25] the Supreme Court, in no uncertain terms, ruled as follows:

> "Republic Act No. 9282,[26] a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax or regulations. Except for local taxes, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> Furthermore, **with respect to administrative issuance (revenue orders, <u>revenue memorandum circulars</u>, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws.** Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. **Hence, the determination of <u>the validity of these issuances</u> clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, <u>subject to prior review by the Secretary of Finance</u>, as required under Republic Act No. 8424.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the power to review the validity or constitutionality of RMCs issued by the Commissioner of Internal Revenue is initially lodged with the Secretary of Finance. Thereafter, it is this Court which has exclusive appellate jurisdiction to determine the validity or constitutionality of the said administrative issuances.

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[25] G.R. No. 198756, August 16, 2016.

[26] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

MD

Needless to a state, a judgment rendered without jurisdiction is a void judgment.[27]

Such being the case, RTC - Branch 213 is without jurisdiction to decide on the validity or constitutionality of Section 2(d)(1) of RMC No. 31-2013, and therefore, its Decision dated September 30, 2014, is a nullity.

Moreover, even granting that RTC - Branch 213 has jurisdiction, and thus, its Decision is valid, the same is not binding upon this Court. It must be remembered that only decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction,[28] and these decisions become judicial precedents to be followed in subsequent cases by all courts in the land.[29] The subject decision of RTC - Branch 213, or any of its decisions for that matter, does not enjoy the same status, as the decisions of the Supreme Court.

In any case, the Decision dated September 30, 2014 of RTC - Branch 213 is clearly erroneous.

Section 2(d)(1) of RMC No. 31-2013 merely implemented or reiterated what the law states.

We reproduce herein pertinent portions of RMC No. 31-2013, including Section 2(d)(1) thereof, *viz*:

> "SECTION 1. BACKGROUND.—
>
> xxx xxx xxx
>
> Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:
>
> > 'SECTION 23. General Principles of Income Taxation in the Philippines.—

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[27] *Imperial, et al. vs. Armes, et al. etseq.*, G.R. Nos. 178842 and 195509, January 30, 2017.
[28] Refer to *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al.*, G.R. No. L-25291, January 30, 1971, citing *Miranda, et al. vs. Imperial, et al.*, 77 Phil. 1066.
[29] Refer to *De Mesa vs. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685, 691 (2005).

> (A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
>
> xxx
>
> (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; xxx'

As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/ diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.

The tax consequence of compensation income received by those employed by foreign governments/ embassies/diplomatic missions situated in the Philippine hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. **It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended** ('Tax Code').

This Circular is being issued to evoke compliance by Philippine nationals and individual aliens who are liable to Philippine income tax under the provisions of the Tax Code and who were not given exemption under the terms of duly recognized international agreements or other Philippine laws.

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

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

xxx xxx xxx

(b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank **subject to the power of the Government to tax its nationals**;" Underscoring supplied

From the above, **only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.**" *(Emphases supplied)*

Based on the foregoing, respondent, in effect, concluded that while the *Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank* (RP-ADB Agreement) grants income tax exemption on the salaries and emoluments of officers and staff of ADB, as well as to experts and consultants performing missions therefor, such income tax exemption does not extend to ADB's officers and staff, who are Philippine nationals.

As a corollary, the following provisions of the NIRC of 1997, as amended by Republic Act No. 9504 (the law in effect for the periods of the refund claims), are the legislation for the imposition of income tax <u>on Philippine nationals or citizens</u>, to wit:

> "SEC. 23. *General Principles of Income Taxation in the Philippines.* — Except when otherwise provided in this Code:
>
> **(A) A <u>citizen of the Philippines</u> residing therein is taxable <u>on all income derived from sources within or without the Philippines</u>**;" *(Emphasis and underscoring supplied)*
>
> "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 <u>by every individual citizen of the Philippines</u> residing therein**;
>
> xxx xxx xxx
>
> (2) *Rates of Tax on Taxable Income of Individuals.* – **The tax shall be computed in accordance with and at the rates established in the following schedule:**

Not over ₱10,000............................	5%
Over ₱10,000 but not over ₱30,000......	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000......	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000.....	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000...	₱22,500+25% of the excess over ₱140,000
Over ₱250,000 but not over ₱500,000...	₱50,000+30% of the excess over ₱250,000
Over ₱500,000................................	₱125,000+32% of the excess over ₱500,000

xxx xxx xxx." *(Emphases and underscoring supplied)*

"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." *(Emphasis supplied)*

"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) **<u>Compensation for services</u> in whatever form paid, including, but not limited to** fees, **<u>salaries</u>, wages**, commissions, and similar items;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, the compensation for services, which includes salaries, of **Philippine nationals or citizens** are subject to income tax at the rates stated under Section 24(A)(1)(a) of the NIRC of 1997, as amended.

Thus, notwithstanding the income tax exemption given under Section 45(b) of the RP-ADB Agreement, the salaries and emoluments paid by the ADB to its directors, alternates, officers or employees, experts or consultants, who are Philippine nationals or citizens are subject to income tax under prevailing Philippine laws.

Petitioner, being a resident citizen, is not entitled to a refund of the income tax he paid for taxable year 2013.

Section 229 of the NIRC of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Section 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is

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defined as one levied without statutory authority,[30] or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[31] In other words, for taxes to be refunded, it must be shown to have been erroneously or illegally collected. However, as earlier discussed, the Court finds no erroneously or illegally collected income tax from petitioner.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[32]

As it is undisputed that petitioner is a Philippine citizen or national, and a resident of the Philippines,[33] he is not entitled to invoke the income tax exemption granted under Section 45(b) of the RP-ADB Agreement. Such being the case, petitioner's claim for refund of the income tax he paid must necessarily fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Refund of Tax Payment* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[30] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005, citing Black's Law Dictionary, 8th Ed., pp. 1496-1497.

[31] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

[32] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[33] Par. 1, *Petition for Refund of Tax Payment*, vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 63, respectively.

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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