REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

LEAH EMPESANDO, ET. AL.,

Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE

Respondent.

CTA CASE NO. 9093

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:
DEC 14 2018
10:58 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution are the following:

1) Respondent's "Motion for Partial Reconsideration (Decision dated September 17, 2018)"[1] filed on October 03, 2018, with Petitioner's "Comment/Opposition to Respondent's Motion for Partial Reconsideration" filed on November 07, 2018; and

2) Petitioners' "Motion for Partial Reconsideration"[2] filed on October 08, 2018, without comment thereon[3].

Both Respondent and Petitioners move for the partial reconsideration of the Court's Decision[4] dated August 06, 2018 ("Assailed Decision"), the dispositive portion of which reads:

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1 Docket, pp. 648 to 658.
2 *Id.*, pp. 659 to 676.
3 Records Verification Report of the Judicial Records Division dated November 08, 2018 stating that Respondent failed to file his comment on Petitioners' MPR.
4 Docket, pp. 646 to 647.

"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to refund in favor of Petitioners the amount of Thirty-One Million One Hundred Eighty-Six Thousand One Hundred Thirty-Six Pesos and 47/100 (Php31,186,136.47), to be individually allocated based on the tabular summary provided earlier, representing their erroneously and illegally collected income tax on compensation income from the Asian Development Bank for taxable year 2012.

SO ORDERED."

Respondent, in his "Motion for Partial Reconsideration (Decision dated September 17, 2018)", assails the aforesaid Decision on the ground that the Court erred in ruling that Revenue Memorandum Circular ("RMC") No. 31-2013 was retroactively applied.

Respondent contends that RMC No. 31-2013 was not applied retroactively because the basis of the tax obligations of the Petitioners for taxable year 2012 are their being Filipino citizens and residents pursuant to Section 23 of the National Internal Revenue Code ("NIRC") of 1997, as amended, and not due to issuance of the said RMC.

Respondent also submits that the same issue was already ruled upon and was decided in favor of Respondent in *Edzen Jogie B. Garcia v. Commissioner of Internal Revenue*[5] and *Christian Oliver C. Mercado v. Commissioner of Internal Revenue*[6].

To answer this, Petitioners in their "Comment/Opposition to Respondent's Motion for Partial Reconsideration" maintains that Respondent's motion for partial reconsideration deserves scant consideration and should be denied. Petitioners posit that while the general principles of taxation are embodied in the NIRC of 1997, as amended, the fact remains that the Agreement Establishing the Asian Development Bank ("ADB Charter") granted tax exemptions to Filipino employees of the Bank. In addition, it required enabling legislation for the reservation of the right to tax could be considered in effect. The passage of the NIRC of 1997, as amended, was not the enabling legislation that triggered the reservation of such right. Hence, RMC 31-2013 is an illegal imposition.

Petitioners aver that assuming the RMC was valid upon its issuance, and assuming further that it did in fact clear up any ambiguity in the NIRC of 1997, as amended, then Petitioners cannot be made to suffer retroactively for something curative in nature. Petitioners underscore that the fact that the tax

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[5] CTA Case No. 9075, February 09, 2017.
[6] CTA Case No. 9330, March 05, 2018.

treatment under the law was ambiguous and open to various interpretations, indicates the need for the issuance of such RMC to clarify the same.

On the other hand, Petitioners, in their "Motion for Partial Reconsideration (Decision dated September 17, 2018)", assail the Decision on the following grounds:

1) RMC No. 31-2013 was already invalidated by the Regional Trial Court of Mandaluyong City, Branch 213. The case had already reached the Supreme Court thru a Petition for Review on Certiorari. Thus, the issue in the instant case should have been limited to whether or not Petitioners had complied with the requisites of a valid refund. The Court should no longer have touched upon the validity of the said RMC owing to judicial courtesy;

2) In the ADB Charter, non-taxation of the salary is the general rule, while its taxation is the exception. As an exception to the general rule of the treaty provision, it is taxability that should be strictly construed;

3) There must be a form of enabling law that should follow the ratification of the ADB Charter that specifically mandates the tax treatment of the employees that are citizens of the Member State. The NIRC of 1997, as amended, is not the implementing law nor the expression of the reservation to tax Philippine citizens. When a treaty, as part of the law of the land, imposes tax exemption as the general rule, the exception to it must be established in the manner provided by the treaty, which is by way of depositing an instrument retaining the right of the member-state to tax its nationals; and

4) Respondent failed to present justification that Petitioner has not complied with the requirements to be entitled to the tax refund for taxes paid for 2012 and 2013.

We find both motions lacking in merit.

As to Respondent's "Motion for Reconsideration", we find that his argument against non-retroactivity ignores the basic tenets of good faith, equity and fair play.

The Court does not have any misgivings or doubts as to Respondent's position with regards to the taxable status of Filipino ADB employees, such as

Petitioner. Thus, We have painstakingly discussed in the Assailed Decision that under Sections 23 and 24 of the NIRC of 1997, as amended, compensation income of resident citizens is subject to the graduated income tax rates unless expressly exempted under treaty. Because of the reservation by the Republic of the Philippines of its power to tax its nationals in the ADB Charter and the 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"), the rule is that resident citizens employed by ADB are subject to graduated income tax rates.

However, it must be pointed out and emphasized that notwithstanding above, compensation income of Filipino personnel employed by ADB were not subjected to income tax in the past. It was only by the issuance of RMC No. 31-2013 that then Commissioner Kim Henares categorically clarified that their compensation is subject to tax. Moreover, it was provided in the RMC that due to the fact that ADB as employer is exempt from withholding the Withholding Tax on Compensation ("WTC") on these employees, they themselves must file their own Annual Income Tax Return with the Revenue District Office having jurisdiction either over ADB's principal office or their legal residence or principal place of business.

In other words, RMC 31-2013 was issued to shed light on the "confusion" relative to the correct tax treatment of the compensation income earned by Filipino personnel employed by ADB. It addressed the inadequacy of the current Bureau of Internal Revenue ("BI"R) regulations on the matter and devised a mode for the said employees to pay their income tax obligations to the government, which was not provided for previously. The fact that the issuance of the said RMC was rendered necessary leads to no other conclusion than that the matter in issue has been obscure and ambiguous. Hence, the Filipino employees of ADB should not be prejudiced, penalized nor castigated for their failure to comply with their income tax obligations under our tax laws, having taken guidance from the policies, pronouncements, issuances and actuations of the BIR prior to RMC No. 31-2013.

This Court is not unaware of the well-entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. In fact, utmost caution should be taken in this regard. But, like other principles of law, this also admits of exceptions in the interest of justice and fair play.[7]

RMC No. 31-2013 was issued only April 12, 2013. By virtue thereof, Respondent collected Petitioners' income tax for their compensation for calendar year 2012. This notwithstanding the fact that previously, Petitioners' income was not subjected to tax. Unlike regular employees whose withholding

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[7] ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. L-52306, October 12, 1981.

tax on compensation were withheld by their employer in monthly installments minimizing the impact in the employees' pockets, Petitioners, just like other Filipino personnel employed by ADB, were forced to procure a substantial amount for an individual in order to settle their income tax liability for 2012. Where they are supposed to get it from, either from their savings if they possess one or from a personal loan, is their own concern.

That is indeed a reality this Court refuses to ignore. The Court is neither blind nor is it turning a deaf ear on the plight of the ADB Filipino employees who were in 2013 constrained to file and pay their income tax for the previous year, for which no money was set aside for later use. Consistent with the basic notions of fairness and equity, RMC No. 31-2013 should be applied prospectively. The compensation income earned by Petitioners should only be taxable beginning calendar year 2013, the year RMC No. 31-13 took effect. By 2013, Filipino personnel employed by ADB such as Petitioners had already taken cognizance of the said RMC and are already mindful of their obligation to retain money from their salaries in payment for their tax liabilities.

Again, this Court is not only a court of law but also of justice. Faced with a choice between a decision that will serve justice and another that will deny it because of a too strict interpretation of the law, We must resolve in favor of the former, for the ultimate end of the law is justice.[8] *Bonus judex secundum aequum at bonum judicat stricto juri praefert.*[9]

As to Petitioners' "Motion for Partial Reconsideration (Decision dated September 17, 2018)", we find the same also bereft of merit.

Only decisions of the Supreme Court, the highest Court of the land, constitute binding precedents, forming part of the Philippine legal system.[10] The ruling made by a lower court such as the Regional Trial Court shall not in any way restrict or inhibit this Court's duty to study all facets of the claim, both legal and factual, to determine whether or not the same should be granted. Said ruling can only serve as reference or guide in our final adjudication of the merits of a claim. Nevertheless, it is not a magic word that once invoked will automatically sway this Court to rule in favor of Petitioners. In determining the instant claim for refund, an analysis of the ADB Charter, ADB Headquarters Agreement, relevant laws and regulations and principles of interpreting treaties/conventions was an essential and necessary task to come up with the conclusion set forth in the Assailed Decision. This includes examination, analysis and determination of the wisdom of the provisions of RMC 31-2013.

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8 Pangan v. Court of Appeals and Teodora Garcia, G.R. No. L-39299, October 18, 1988.
9 A good judge decides according to justice and right and prefers equity to strict law.
10 Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013 *citing* Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, February 12, 2013.

Moreover, it is also well established that this Court's jurisdiction extends to the review of the rulings of the Commissioner of Internal Revenue as conferred by Republic Act ("RA") No. 1125[11], as amended by RA No. 9282[12], and as enunciated by the Supreme Court in the case of *Banco de Oro v. Republic of the Philippines*[13].

With the above disquisitions, the Court will no longer belabor on the rest of the arguments raised therein, which were sufficiently addressed in the Assailed Decision.

Accordingly, We find no justifiable reason to deviate from Our finding that Petitioners' claim for refund amounting to Php31,186,136.47 (to be individually allocated based on the tabular summary in the Assailed Decision), representing their erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012, is valid.

WHEREFORE, premises considered, Respondent's "Motion for Reconsideration" and Petitioners' "Motion for Partial Reconsideration" are **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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11 An Act Creating The Court Of Tax Appeals, June 16, 1954.

12 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 Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.

13 G.R. No. 198756, January 13, 2015.