REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

ANTHONY ORTILE TUASON,
Petitioner,

\- **versus** -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9041

Members:

DEL ROSARIO, *Chairperson*,
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
FEB 23 2017 : 11:31 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on May 12, 2015 by petitioner Anthony Ortile Tuason, pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 (a)(2) of the Revised Rules of the Court of Tax Appeals (RRCTA) praying for the refund of the income tax payment made by petitioner in the amount of **TWO HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED EIGHTY-EIGHT** and **4/100 PESOS (P264,588.04)** for taxable year 2012 which petitioner claimed to have been erroneously/illegally collected by respondent.

THE PARTIES

Petitioner Anthony Ortile Tuason is of legal age, Filipino and is employed at the Asian Development Bank (ADB), which office is located at 6 ADB Ave, Mandaluyong City 1550.[1]

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[1] Par. 2 of Petition for Review which was admitted in respondent's Answer, CTA Docket, pp. 12 and 83.

Respondent Commissioner of Internal Revenue ("CIR") is vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[2]

THE FACTS

On April 12, 2013, respondent CIR issued Revenue Memorandum Circular (RMC) 31-2013[3] (*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 states that only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax, pertinent part of which provides:

> "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
>
> Section 45

[2] Par. 3 of Petition for Review which was admitted in respondent's Answer, CTA Docket, pp. 12 and 83.

[3] Par. 11 of Petition for Review which was admitted in respondent's Answer, CTA Docket pp. 14 and 83.

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

Claiming to have been ordered to pay income tax on his salary pursuant to the aforesaid RMC,[4] petitioner filed his Amended Annual Income Tax Return and paid the amount of P264,588.04[5] on May 15, 2013 as income tax on his salary for 2012. On the same date, petitioner sent a Letter to the Commissioner of Internal Revenue stating that he is availing the abatement of surcharge, interest and/or compromise penalty under Revenue Regulations No. 7-2013.[6]

Allegedly, in February 2014, two Filipino ADB employees on behalf of the other Filipino employees of the ADB questioned the legality of RMC No. 31-2013 with the Regional Trial Court (RTC) of Mandaluyong City.[7]

On September 30, 2014, Branch 213 of RTC of Mandaluyong City in *Erwin Salavera and Portia Gonzales by themselves and as Attorneys-in-Fact of the concerned Filipino employees of the Asian Development Bank vs. Commissioner of Internal Revenue, Civil Case No. MC14-8775*, promulgated a Decision 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, and due to absence of legislation and/or regulation to the contrary.[8] A Motion for Reconsideration was filed by the CIR on November 11, 2014, but the same was denied on January 9, 2015.[9]

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[4] Paragraphs 12 and 13 of Petition for Review, CTA Docket, P. 15.
[5] Exhibits "P-2" and "P-3", CTA Docket, pp. 155-158.
[6] Exhibit "P-4", CTA Docket, p. 159.
[7] Petition for Review, CTA Docket, p. 16.
[8] Petition for Review, and Annex "F", CTA Docket, pp. 16, 43-74.
[9] Petition for Review in relation to Annex "G", CTA Docket, pp. 17 and 75.

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On March 25, 2015, petitioner filed a claim for refund of income taxes erroneously and/or illegally collected by respondent.[10]

Due to the alleged inaction on his claim for refund and due to the two-year prescriptive period which accordingly would soon lapse, petitioner was prompted to file the present Petition for Review.[11]

On June 26, 2015, respondent filed her Answer,[12] with the following Special and Affirmative Defenses:

> "3. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 4. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
>
> 5. In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.
>
> 6. Petitioner's claim for refund/issuance of tax credit in the amount of Php264,588.04 as alleged erroneously paid income tax for taxable year 2012 were not duly substantiated by proper documentary evidence.
>
> 7. Petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR.
>
> 8. Petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code.
>
> 9. Petitioner failed to comply with the requirements under Sections 204 of the 1997 Tax Code in relation to Section 229 of the same Code.
>
> 10. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

On August 20, 2015, petitioner filed his Pre-Trial Brief[13] while respondent filed his Pre-Trial Brief[14] on August 24, 2015.

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[10] Exhibit "P-5", CTA Docket, pp. 21-34.
[11] CTA Docket, pp. 10-20.
[12] CTA Docket, pp. 83-85.
[13] CTA Docket, pp. 91-95.
[14] CTA Docket, pp. 96-97.

Pre-Trial Conference was held on August 27, 2015.[15] The parties filed their Joint Stipulation of Facts and Issues[16] on October 22, 2015, and the same was approved in the Resolution[17] dated November 11, 2015. In the same Resolution, the Court terminated the Pre-Trial.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in his Formal Offer of Documentary Evidence,[18] were admitted in the Resolution dated August 23, 2016.[19] Respondent, on the other hand, posted a Manifestation and Motion[20] on June 6, 2016 stating that he will no longer present evidence in this case and moved to submit the case for resolution based on legal arguments and records presented.

Considering the filing of petitioner's Memorandum[21] on September 23, 2016 and respondent's Memorandum[22] on October 7, 2016, the case was submitted for decision on October 14, 2016.[23]

THE PARTIES' ARGUMENTS

Petitioner posits that the income tax payment made was erroneously and/or illegally collected by the respondent by virtue of [his] failure to recognize the tax-exempt status granted by treaty to ADB employees like the petitioner.[24]

Petitioner contends that in their particular case as Filipino ADB employees, they were exempt from paying taxes since day one of the establishment of the ADB. Petitioner elaborates that its exempt status has always been observed and practiced because there was no subsequent legislation or enabling law that would have modified or interpreted the section of the ADB Charter on "Exemption from Taxation."[25]

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[15] CTA Docket, pp. 101-103, 105-106.
[16] CTA Docket, pp. 118-121.
[17] CTA Docket, p. 123.
[18] CTA Docket, pp. 148-152.
[19] CTA Docket, pp. 190-191.
[20] CTA Docket, pp. 178-179.
[21] CTA Docket, pp. 192 to 203.
[22] CTA Docket, pp. 206 to 211.
[23] CTA Docket, p. 216.
[24] Par. 21, Petition for Review, CTA Docket, p. 17; Petitioner's Memorandum, CTA Docket, pp. 197-198.
[25] Par. 22, Petition for Review, CTA Docket, p. 18; Petitioner's Memorandum, CTA Docket, p. 198.

Petitioner further contends that with the RTC Decision, there was a reversion to the default status of exemption, and the taxes previously paid in compliance with RMC No. 31-2013 are erroneous that should be returned to the taxpayers like the petitioner.[26]

Petitioner also asserts that the Court may allow the claim for refund notwithstanding the petition in the Supreme Court filed by respondent involving the validity of RMC No. 31-2013. Petitioner claims that the appeal process merely serves as an avenue to question the correctness of the RTC Decision upholding the tax exemption and that without any pronouncement from a higher court to the contrary, the RTC Decision is the prevailing norm and may already be the basis for the recovery of the tax paid.[27]

Respondent, on the other hand, submits the following propositions: (1) petitioner, being a Filipino employee of the ADB, is taxable on his income derived from sources within (including his salaries and emoluments) and without the Philippines, pursuant to Sections 24 and 51 of the Tax Code and the ADB Headquarters Agreement, as clarified by RMC Nos. 31-2013 and 73-2013;[28] (2) taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, and hence, not refundable;[29] (3) in an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim;[30] (4) petitioner's claim for refund/issuance of tax credit in the amount of Php264,588.04, as alleged erroneously paid income tax for taxable year 2012 were not duly substantiated by proper documentary evidence;[31] (5) petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR;[32] (6) petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code and the requirements prescribed under Sections 204 of the 1997 Tax Code in relation to Section 229 of the same Code;[33] and, (7) petitioner failed to overcome the presumption that claim for tax refund is in the nature of tax exemptions, as such, it is construed *strictissimi juris* against it.[34]

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[26] Par. 24, Petition for Review, CTA Docket, p. 18; Petitioner's Memorandum, CTA Docket, p. 199.
[27] Petitioner's Memorandum, CTA Docket, pp. 200-201.
[28] Memorandum for the Respondent, CTA Docket, p. 206.
[29] CTA Docket, p. 84.
[30] Id.
[31] Id.
[32] Id.
[33] Id.
[34] Memorandum for the Respondent, CTA Docket, p. 210.

ISSUE

Whether or not petitioner is entitled to the claimed refund in the amount of Php264,588.04 as alleged to be erroneously paid income tax for taxable year 2012.[35]

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

The crux of the controversy is the entitlement of petitioner to income tax refund which he asserts could be allowed by this Court in view of 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 irrelevant 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.

The Supreme Court pronouncement in *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[36] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[37] *and Philex Mining Corporation vs. Commissioner of Internal Revenue*[38] finds relevance in resolving 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

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[35] Joint Stipulation of Facts and Issues, CTA Docket, p. 118.
[36] G.R. No. 187485, February 12, 2013.
[37] G.R. No. 196113, February 12, 2013.
[38] G.R. No. 197156, February 12, 2013.

> 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 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 stating 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.

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[39] G.R. No. 210987, November 24, 2014.

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 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;"
>
> 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

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

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 individual citizen from all sources within or without the Philippines.

On the other hand, Section 32 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.
>
> (5) ***Income Exempt under Treaty.* – Income of any kind to the extent required by a treaty obligation binding upon the Government of the Philippines**. (*Boldfacings 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

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

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:

"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>**;

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[43] Executed on December 4, 1965 by several countries as signatories.
[44] Entered into and signed on December 22, 1966.

xxx" (*Boldfacing* and *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, 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**." *(Boldfacings* and *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 retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such 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".***

[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*, Annex "F," CTA Docket, pp. 43-74.

Petitioner contends that ADB employees are exempt from paying taxes since day one of the establishment of the ADB. According to petitioner, the norm or default status, as to them, is therefore tax exemption because there was no subsequent legislation or enabling law that would have modified or interpreted otherwise that section of the ADB Charter on "Exemption from Taxation."[46]

The Court finds petitioner's contention untenable.

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 be read in relation to the phrase that followed it ---- "*that the Philippines <u>declares</u> that it <u>retains</u> for itself and its political subdivision <u>the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines</u>.*"

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

[46] Petition for Review, CTA Docket, p. 18.
[47] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

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. It 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 Bank to citizens or nationals of the Philippines**"* 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 has chosen to maintain and preserve its right to tax its own citizens or nationals. The pronouncement of the Supreme Court in *Borromeo vs. Mariano,*[48] is instructive:

"The office of a proviso is to limit the application of the law. It is contrary to the nature of a proviso to enlarge the operation of the law. It should not be construed so as to repeal or destroy the main provisions of the statute. A proviso which is directly repugnant to the purview or body of an Act is inoperative and void."

The phrases "...subject to the power of the Government to tax its nationals" and "...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" **are clearly provisos which limit the application of the ADB Charter**. It cannot be interpreted as a condition that an enabling law is needed before ADB employees who are nationals can be subject to the payment of income tax. What petitioner postulates is

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[48] *Borromeo vs. Mariano,* G.R. No. L-16808, January 3, 1921.

an implied exemption which is contrary to the basic principles of taxation where tax exemptions are strictly construed against the taxpayer. The disquisition in *Commissioner of Internal Revenue vs. A.D. Guerrero*[49] is most enlightening, *viz.:*

> "From Justice Street: 'Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point.'"

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 derived 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.[50] 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.[51] The power of taxation is a high prerogative of sovereignty and its relinquishment is never presumed.[52] 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.[53]

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

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[49] G.R. No. L-20942, September 22, 1967.
[50] *Lung Center of the Philippines vs. Quezon City*, G.R. No. 144104, June 29, 2004.
[51] *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*, GR No. 159471, January 26, 2011.
[52] *Floro Cement Corporation vs. Gorospe*, GR No.L-46787, August 12, 1991.
[53] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

Philippines are subject to income tax pursuant to Section 24(A)(1)(a) of the NIRC of 1997, as amended. Since 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, it cannot be the proper subject of refund under Section 229 of the NIRC of 1997, as amended.

Failure to collect taxes does not become a practice that would ripen into custom

Petitioner avers that the income tax-exempt status of the ADB employees enjoyed by them for close to five decades was only "disturbed" with the issuance of respondent's RMC No. 31-2013.[54]

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." Custom can never be a valid basis of tax exemption.

Thus, this Court holds that petitioner is not entitled to the refund of the amount of P264,588.04, representing the income tax paid on salaries and emoluments received from ADB for the calendar year 2012.

WHEREFORE, in light of the foregoing, the Petition for Review filed by Anthony Ortile Tuason on May 12, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[54] Petition for Review; CTA Docket, p. 18.

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