REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

LENNIE DE SAGUN, CARMELA ESPINA, ANNA FRIEDA LOPEZ, ARLENE PANTUA, JULIE ANN VILLANUEVA, CATHERINE VIOLA, MARIA CARMINA CAJIGAL, MA. MARGARITA SALVADOR, KRISTINE MARIE SAN JUAN, CALIXTO SEROJE JR., GRACE AGNES SEVILLA, JESUSA TARUN, CHARISSE TUBIANOSA, GEMMA BADE, LOUISE BALBIN, RONALD BUTIONG, MARIA MINERVA CARMONA, ANDREW CARLOS CERVANTES, MARIA VICTORIA DELA CRUZ, METIS ILIGAN, RUBY RAZON LEDESMA, ANGELINA LICUP, RACHEL MACALINCAG, JOSEFINA MIRANDA, MA. LUISA PABORADA, AURORA PULISAN[1], MALAYA RIVERA, MARIA ALOHA SAMOZA, DIANA BIANCA SAMSON, EMILEE SANTOS, MARIA VICTORIA SIDDAYAO, CORDEL TRINCHERA, FRANCIA SOCORRO TRINCHERA, ROWENA VILLAFUERTE, MARIE ANTOINETTE VIRTUCIO, ALFIE ZAFRA-DULAY[2], SOCORRO REGALADO, *Petitioners*, *-versus-*	**CTA CASE NO. 9084** *Members:* **UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*

[1] Aurora Pulusan, Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p.49.
[2] Alfie A. Zafra, Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p.59. h

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 14 2021
2:09 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

This resolves the Motion for Reconsideration filed by petitioners on 26 June 2020[3] with respondent's Comment/Opposition to petitioners' Motion for Reconsideration, dated 26 June 2020 ("Comment"), filed on 2 September 2020.[4]

In the Motion for Reconsideration, petitioners allege that under the ***Agreement Establishing the Asian Development Bank ("ADB Charter")***, non-taxation of the salary is the general rule while taxation is the exception. Consequently, there is a need for an implementing law to give life to the reservation by the State to tax its citizens. They stress that the ***Tax Code*** is not that law and, as the Philippine government has not yet passed a law specifically imposing tax on petitioners' salaries, the same remain tax-exempt.

Petitioners further argue that under the Vienna Convention on the Law of Treaties, subsequent practice defines how a treaty shall be interpreted. The fact that the Philippine government previously failed to tax petitioners' salaries (prior to the issuance of ***Revenue Memorandum Circular No. 31-2013 ("RMC 31-13")***) shows that there was no intention under the ***ADB Charter*** to tax the same without a particular law enacted to the contrary.

Without such an implementing law (imposing taxes on petitioners' salaries), petitioners complain that respondent has an unbridled power to tax which may be arbitrarily or whimsically exercised. In fact, this occurred when Asian Development Bank ("ADB") employees paid income taxes either using the 32% graduated rate or the 15% preferential rate as there was no clear rule as to which rate to apply. They also point out that respondent's arbitrary exercise of the power to tax becomes apparent when ***RMC 31-13*** was made to retroact to cover taxation of income earned a year prior to its effectivity.

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[3] Records, Vol. 2, pp. 990-1005.
[4] *Id.*, no page number.

Moreover, petitioners disagree with this Court's ruling that they failed to discharge the burden of proving the existence and timeliness of the administrative claims for refund. While they failed to formally offer such evidence, their administrative claims for refund were nonetheless made part of the records of the case and were duly identified by their witness, Atty. Maricris Connie B. Pua, in her judicial affidavit. Consequently, they call for this Court to liberally apply the rules of procedure, otherwise substantial justice would be denied them due to a mere technicality.

In his Comment, respondent refutes petitioners' arguments. He alleges that strict interpretation of tax exemptions is the principle adhered to in this jurisdiction and the burden to prove tax exemption or refund falls on the person claiming the same. He insists that there is no need for a passage of a specific law to tax petitioners' salaries. When the Philippine Congress issued ***Resolution No. 06,*** it made a reservation with regard to its right to tax salaries and emoluments paid by the bank to its citizens or nationals of the Philippines, pursuant to ***Article 56, paragraph 2*** of the ***ADB Charter.*** Thus, the Philippine government had already manifested its intention to tax the salaries and other income derived by its citizens from ADB.

In insisting that there is no need for an enabling law that would expressly subject petitioners' salaries to tax, respondent stresses that the ***Tax Code*** in all its different forms has time and again (both before and after the Philippine government's acquiescence to the ***ADB Charter***) subjected to tax the income of resident citizens regardless if earned from within or outside of the Philippines. He also counter-argues that the previous practice of not subjecting to tax petitioners' salaries did not create a right in their favor as it is a standard rule that customs which are contrary to law shall not be countenanced.

In addition, respondent disagrees with this Court's ruling that ***RMC 31-13*** should only be applied prospectively. He posits that the ***Tax Code*** clearly provides that resident citizens are subject to income tax for all income derived from within and outside the Philippines. Consequently, in the absence of an express tax exemption, officers and employees of ADB who are resident citizens are subject to income tax. The taxability of their income did not arise from the issuance of ***RMC 31-13*** (hence, not dependent on its validity) but from the provisions of the ***Tax Code***. Regardless of the existence of ***RMC 31-13***, the obligation of resident citizens to pay income tax on the salaries paid to them by the ADB commenced on the taxable year that they were employed by the latter.

Finally, respondent emphasizes that petitioners were not able to prove that they are entitled to a refund of the income tax actually paid for taxable year 2012. Basic is the rule that a formal offer of evidence is necessary as judges are mandated to rest their findings of facts and their judgment only and strictly upon evidence offered by the parties at trial.

We deny the Motion for Reconsideration.

First and foremost, a perusal of the contents of the Motion for Reconsideration would show that the arguments raised therein are a mere reiteration of those alleged in the Petition for Review ("Petition") which have already been adequately touched and ruled upon in the Decision, dated 11 March 2020. On this note alone, this Motion for Reconsideration deserves scant consideration. Nonetheless, we will address each point raised therein to foreclose any doubt in petitioners' mind on the lack of merit of their case.

<u>There is no need for an enabling law to subject petitioners' salaries to income tax.</u>

There is no need for an enabling law that would expressly subject petitioners' salaries to income tax. As stated in the Decision, dated 11 March 2020, ***Section 23 (A) in relation to Sections 24, 31, and 32 (A) (1) of the Tax Code*** specifically mandated that the income of a resident citizen, whether derived from sources within or outside the Philippines, is subject to income tax. Consequently, there is no need for another statute expressly subjecting petitioners' salaries to income tax since there is already an existing one (*i.e.*, the ***Tax Code***). To require the passage of such law would be a mere surplusage because these ***Tax Code provisions*** already provide the source for the taxability of petitioners' salaries.

In fact, this Court in ***Maria Lorena Dino, et al. v. Commissioner of Internal Revenue***,[5] categorically declared that there is no need for an enabling law in order for ADB employees who are resident citizens to be subjected to income tax since the ***Tax Code*** already fulfilled this purpose, *viz.*:

> "In our analysis of the taxability of the compensation received by Filipino employees of the ADB, we go no further than the statements contained in the ADB Charter and the presidential ratification which followed where then President Ferdinand Marcos declared that the Philippine government 'retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals of the Philippines.' This Court finds that this particular statement overrules and clarifies any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB and upholds

[5] CTA Case No. 9083, 25 September 2018.

the applicability of national laws on taxation insofar as their compensations are concerned.

Under our national tax laws, Philippine citizens are taxable on their income derived from both inside and outside the country.

Section 23 of the 1997 National Internal Revenue Code (NIRC) specifically provides as follows:

> 'Section 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.'
>
> 'Section 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.'

We cannot take cognizance of the declarations made by the RTC in its decision in the case entitled "Erwin Salavera and Portia Gonzales vs. Commissioner of Internal Revenue," which declared void the provisions of RMC No. 31-2013 issued on April 12, 2013 for being issued without legal basis. Decisions of lower courts are not binding precedents as succinctly enunciated by the Supreme Court in the case of Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, 36 viz.:

> 'Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.'

We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord with the ADB Charter and the subsequent ratification made by the President of the Philippines.

The contention of the petitioners that the exclusion of Filipino employees from the tax-exempt provisions of the ADB Charter would entail an enactment of an enabling law to put this into effect is bereft of merit as it is clear that the Philippines had already enacted its own Tax Code at the time of the ratification of

> **the ADB Charter imposing the types and rates of tax of citizens of the Philippines. The word 'reservation' in the aforequoted ratification therefore is to be construed as an excepting clause to the tax exemptions found in the treaty establishing the ADB."** (Emphasis, Ours)

Contrary to petitioners' asservations, ***Section 23 (A) in relation to Sections 24, 31, and 32 (A) (1) of the Tax Code*** serves as the positive act by the Philippine government in exercising its power to tax ADB employees who are resident citizens which was expressly accorded to the Philippines in: a) the reservation made by the Philippine Congress in ***Resolution No. 06***; and b) ***Sections 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"***.[6]

Thus, on the basis solely of ***Section 23 (A) in relation to Sections 24, 31 and 32 (A) (1) of the Tax Code,*** petitioners, as ADB employees who are resident citizens, are liable for income tax on their salaries. Accordingly, there is no need for another law mandating such in order for income tax liability to accrue against petitioners.

<u>Filipino ADB employees are liable for income tax but only from the date RMC 31-13 was issued.</u>

While petitioners are liable for income tax on their salaries, this liability shall accrue only prospectively starting from the date ***RMC 31-13*** was issued. Against respondent's insistence, ***Section 246 of the Tax Code***[7] protects

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[6] "Article 56

EXEMPTION FROM TAXATION

xxx xxx xxx

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."

[7] "SEC. 246. *Non-Retroactivity of Rulings.* - **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or **circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith."

taxpayers from the retroactive application of any revocation, modification or reversal of revenue rules and regulations, rulings or circulars which will be prejudicial to the taxpayers' interests.

While it is clear under ***Section 23 (A) in relation to Sections 24, 31 and 32 (A) (1) of the Tax Code*** that all income derived by resident citizens from all sources within or outside the Philippines is taxable, respondent previously issued several contradictory rulings on the taxability of the salaries received by ADB officers and employees who are Philippine nationals or citizens causing confusion among them prior to finally settling the issue in ***RMC 31-13*** on 12 April 2013, to wit:[8]

1. On **11 March 1999,** former Commissioner Beethoven L. Rualo issued a ruling that ADB Filipino employees holding managerial and technical positions are **subject to a preferential rate of 15%**;[9]

2. On **29 January 2001,** the BIR, through its Regional Director (RD) which had the jurisdiction over the ADB, issued an opinion stating that salaries and emoluments received by ADB officers and staff are **exempt from taxation;**[10] and

3. On **6 February 2013,** the Chief, Legal Division of Revenue Region No.7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are **subject to the preferential tax rate of 15%** on their compensation income.[11]

Following this, when the Filipino ADB officers and employees received their 2012 salaries, respondent's position then was that said compensation was tax-exempt. Correspondingly, these ADB officers and employees who are Philippine nationals or citizens did not pay income tax on their 2012 salaries. They cannot be faulted for believing that they were exempt from paying income tax for such belief was brought about by an opinion issued by respondent himself, who, after all, is in charge of implementing the country's tax laws.

To retroactively apply ***RMC 31-13*** (*i.e.,* require Filipino ADB officers and employees to pay income tax using the graduated rates on their 2012 compensation) would be prejudicial to the Filipino ADB officers and

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[8] Commissioner of Internal Revenue v. Licel Calderon, et al., CTA EB Nos. 1876 and 1878, CTA Case No. 9090, 2 July 2019, and The Concurring and Dissenting Opinion of Associate Justice Catherine T. Manahan, Edzen Jogie B. Garcia v. Commissioner of Internal Revenue, CTA EB Case No. 1674, 6 December 2018.

[9] BIR Ruling No. 029-99, 11 March 1999.

[10] Commissioner of Internal Revenue v. Licel Calderon, et al., CTA EB Nos. 1876 and 1878, CTA Case No. 9090, 2 July 2019, and The Concurring and Dissenting Opinion of Associate Justice Catherine T. Manahan, Edzen Jogie B. Garcia v. Commissioner of Internal Revenue, CTA EB Case No. 1674, 6 December 2018.

[11] *Id.*

employees as they may be issued deficiency income tax assessments for compensation which at the time of payment was declared tax-exempt by respondent CIR. Thus, the retroactive application of ***RMC 31-13*** will violate ***Section 246 of the tax Code.***

Although it can be argued that ***RMC 31-13*** is a mere interpretation of existing law (*i.e.,* ***Section 23 (A) in relation to Sections 24, 31 and 32 (A) (1) of the Tax Code)*** and should thus be applied even to the compensation of petitioners for 2012, this Court finds that it should only be applied prospectively in the interest of justice and equity. When petitioners received their compensation for 2012, they were of the honest belief – and neither did respondent enforce rules to the contrary – that the same is exempt from tax.[12]

Commissioner of Internal Revenue v. Licel Calderon, et al.,[13] is instructive, *viz*:

> "The insertion of Sec. 338-A[14] into the National Internal Revenue Code xxx is indicative of legislative intention to support the principle of good faith. In fact, in the United States, xxx it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer. **This is in keeping with the civil law principle that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.** Thus, *en contra* with the CIR's posture, **Section 246 of the NIRC, as amended, does not allow and in fact, proscribes retroactivity of circulars, such as RMC No. 31-2013 if it will be prejudicial to the taxpayer.**
>
> The Filipino ADB Employees equitably assumed that the general tax-exempt privileges stated under the ADB Charter were applicable to them. Prior to being consistently classified in RMC No. 31-2013 as taxable individuals, several vacillating opinions were handed down by the BIR apparently unsure on how to treat their income for tax purposes. Now, they have been put on the receiving end by being made to account for income taxes on their compensation earned in TY 2012 despite the effectivity of RMC No. 31-2013 only in 2013. This is the sort of unwarranted taxpayer's treatment which Section 246 of the NIRC, as amended side by side with pertinent doctrinal precepts seeks to obviate. **Having relied in good faith that they are exempted from income tax based on the ADB Charter, RMC No. 31-2013 should only be made to apply on the Filipino ADB Employees' income realized after its efficacy in TY 2013 onwards.** Thus, the income taxes that the BIR collected pertaining to TY 2012 must accordingly be returned to them.

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[12] Leah Empesando, et al. v. Commissioner of Internal Revenue, CTA Case No. 9093, 17 September 2018.
[13] CTA EB Nos. 1876 and 1878, CTA Case No. 9090, 2 July 2019.
[14] Now Section 246 of the NIRC.

> On a final note, the Court is fully cognizant of the well-entrenched principle that the Government is not estopped from collecting taxes because of mistakes or errors on the part of its agents. But, **like other principles of law, this also admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer."**
> (Emphasis, Ours)

Thus, the salaries of petitioners, who are Filipino ADB officers and employees, should only be subjected to income tax beginning 2013 as ***RMC 31-13*** only took effect on 12 April 2013.

Further, respondent has not even demonstrated that the petitioners committed malice or bad faith in not paying their taxes. As such, there is no basis to apply the exception under ***Section 246 of the Tax Code*** to effect the retroactive application of ***RMC 31-13***.

As petitioners failed to present evidence on the fact of filing a prior administrative claim, they are not entitled to a refund of the income tax actually paid for 2012.

Following the above discussions, petitioners are entitled to claim tax refund for any income tax they actually paid for their salaries earned during 2012. However, petitioners failed to present valid proof that they filed an administrative claim with respondent prior to filing suit with this Court. As this Court has duly found, proof of petitioner's filing of an administrative claim for refund and its contents were mere photocopies attached in the Petition as Annexes 'A' to 'H'.[15] The original or certified true copies of these documents were not filed or submitted before this Court. Moreover, these documents were not marked as these were not included in the Pre-Trial Order.[16] It was only during the Hearing conducted on 24 October 2017 that petitioners' counsel tried to surreptitiously identify and mark the said documents which this Court appropriately did not permit.[17] Consequently, no proof was adduced before this Court on the fact of filing of a prior administrative claim for refund (before instituting the present judicial action for refund) and its contents.

[15] Records, Vol. 1, pp. 61-151.
[16] *Id.*, at pp.402-414.
[17] TSN, Hearing, dated 24 October 2017.

It may be pointed out by petitioners that the originals of the administrative claims for refund are not needed to be presented since the truth of its contents is not in issue but only the fact of their existence (the prior execution of the administrative claim before the filing of the present Petition) is needed to be proved; hence, *parol evidence* is allowed. Still, petitioners' counsel did not even offer the photocopies of the administrative claim for refund as evidence in petitioners' Formal Offer of Evidence.[18]

In a last ditch effort, petitioners are now alleging that evidence not formally offered may be admitted, provided that the evidence has been identified by testimony duly recorded and has been incorporated in the records of the case.[19] Petitioners argue that they have complied with this exception through the testimony of Atty. Maricris Connie B. Pua who has testified on the fact of filing of a prior administrative refund claim in her judicial affidavit, which was not objected upon by respondent.

This is misplaced. Nowhere in the testimony of Atty. Pua is there mention of any prior administrative claim. Instead, she merely testified on the fact of filing of a request before the Revenue Accounting Division of the Bureau of Internal Revenue for a certification on the amount of taxes paid by petitioners for their 2012 and 2013 salaries as ADB employees. Her entire Jucicial Affidavit[20] is hereby quoted, to wit:

> **"JUDICIAL AFFIDAVIT OF ATTY. MARICRIS CONNIE B. PUA**
>
> I, Atty. Maricris Conie B. Pua, Filipino, of legal age, employed as Tax Lawyer of Chato and Vinzons-Chato Law Offices with office address at 8/F Strata 2000 Building, F. Ortigas, Jr. Road, Ortigas Center, Pasig City, after having been sworn in accordance with law, hereby respond to the following questions being propounded by Atty. Ramon Luis C. Sto. Domingo of the same law firm, with consciousness that my answers are being given under oath, that I may otherwise face criminal liability for false testimony or perjury, and that the copies of the documents attached hereto are faithful reproductions of genuine and original documents:
>
> Offer of Testimony by counsel:
>
> We are offering the testimony of this witness to establish the following:

[18] Records, Vol. 2, pp. 757-767.
[19] *citing* Ramos v. Dizon, G.R. No. 137247, 7 August 2006, 498 SCRA 17, 31; Mato v. CA, 320 Phil. 344, 350, 1995.
[20] Records, Vol. 1, pp. 436-443.

That she is a lawyer of the Chato and Vinzons-Chato Law Offices which firm is handling the claim for refund of the petitioners in this case;

That as one of the counsels for petitioners herein, she is privy to a previous request made to the Revenue Accounting Division of the Bureau of Internal Revenue to certify the amounts paid by each petitioner by way of income tax for salaries earned in year 2012 and 2013;

That in response to the request from her law firm, the Revenue Accounting Division issued Certifications for this purpose;

That as one of the handling lawyers of this case, she has personal knowledge of the request for refund previously filed with the Commissioner of Internal Revenue to refund the amounts paid by each petitioner by way of income tax for salaries earned in year 2012 and 2013;

That in filing the administrative claim for refund, the petitioners submitted to the law firm copies of their respective proof of payment of said taxes;

That she will testify to such other matters in relation to the foregoing

[The Judicial Affidavit shall be requested to be marked in evidence as Exhibit "P-1"]

1. Q: *In your narration of personal circumstances, you mentioned that your name is Maricris Connie B. Pua and that you are a Tax Lawyer of the Chato and Vinzons-Chato Law Offices. This pending petition is undersigned by the late Atty. Esther Ibañez and one Atty. Maricris Connie B. Pua of the said law office. How are you related to this Atty. Pua?*

A: I am the same person, Sir.

2. Q: *What have you done on behalf of the petitioners in this case as one of their handling lawyers in relation to their claim for refund of income taxes paid?*

A: On their behalf, we previously requested the Revenue Accounting Division (RAD) of the Bureau of Internal Revenue (BIR) to certify the amount of taxes they paid for their 2012 and 2013 salaries as employees of the Asian Development Bank (ADB).

3. Q: *What can you show to establish that your firm made this request?*

A: Sir, I have this letter from our firm addressed to the Revenue Accounting Division of the BIR dated March 5, 2015 requesting the issuance of certifications as proof of actual payments made by our clients, employees of the Asian Development Bank for taxable years 2012 and 2013. The names of the petitioners in this case are included in the annexed list of names requested to be certified.

[Witness handed over to counsel a letter dated March 5, 2015 and a photocopy thereof. The photocopy shall be compared to the original and requested to be marked in evidence as **Exhibit "P-2"**]

4. Q: *After serving this letter-request, what was the action of the Revenue Accounting Division?*

A: Our office followed-up the matter. So far, the Revenue Accounting Division has issued separate Certifications covering different sets of ADB employees on whose behalf we requested the certification.

5. Q: *Who among the petitioners in this particular case were already covered by the Certifications issued by the Revenue Accounting Division?*

A: I have already noted the names of the taxpayers / petitioners in these Certifications and the corresponding amounts they paid.

[Witness handed over to counsel nine (9) Certifications and photocopies thereof. The photocopy shall be compared to the original and requested to be marked in evidence as **Exhibits "P-3" to "P-11" with submarkings**]

6. Q: *I noticed that in the photocopies, certain names and amounts have been highlighted. Who are these persons whom you highlighted?*

A: Those are the taxpayers/ ADB employees who are covered by this petitioner, Sir.

7. Q: *For the record, can you cite the individuals who are petitioners in this case and whom you noted in these Certifications?*

A: Yes, Sir. They are as follows:

xxx xxx xxx

[Witness pointing the entries and names of the petitioners in this case listed in the Certifications. We are adopting the self-made sub-markings made by the Witness on the photocopies,

Exhibits "P-3-1" to **"P-11-4"**, and move that they be considered official sub-markings]

8. Q: *Madam witness, there are thirty seven (37) individual petitioners in this case. So far, have you established their proof of payment from the Certifications of the Revenue Accounting Division?*

A: No, sir. We still have eleven petitioners whose payments for certain years have yet to be established as their names did not appear in the certifications which have been issued to us so far. They are:

Anna Frieda Lopez- proof of payment for 2013
Arlene Pantua- proof of payment for 2012
Catherine Viola- proof of payment for 2012
Ma. Margarita Salvador- proof of payment for 2013
Kristin Marie San Juan- proof of payment for 2013
Josefina Miranda -proof of payment for 2013
Malaya Rivera - proof of payment for 2013
Diana Bianca Samson-proof of payment for 2013
Rowena Villafuerte- proof of payment for 2013
Marie Antoinette Virtucio - proof of payment for 2013
Socorro Regalado - proof of payment for 2013

9. *What are you doing to regarding this matter?*

A: We are continuously following-up the issuance of Certifications from the Revenue Accounting Division, Sir. What we have received is just a partial listing and hopefully, the office can complete its certification as soon as possible. It is my understanding that because of the number of refund claimants, the Revenue Accounting Division can only come out with certifications in batches.

10. Q: *Would you have any other proof then as regards the payments made by these employees?*

A: In lieu of a RAD certification, proof of tax payment will be established through the income tax returns, official receipts, bank payment / deposit slips and other documents. We requested individual records of the proof of payment from the petitioners not covered by the RAD certifications. However, the issuance of RAD certifications is still on-going and hopefully the next batch of certifications will already include all the petitioners in this case.

> 11. Q: *All of the petitioners in this case were employees of the ADB during the tax periods in question, is that correct?*
>
> A: Yes, sir. That is correct.
>
> 12. Q: *Do you have any proof of this?*
>
> A: Yes, sir. We have individual certifications from the HR Operations and Health Division of the ADB attesting to the fact of employment of the petitioners.
>
> [Witness pointing the entries and names of the petitioners in this case as listed in the individual Certifications. All the certifications were previously marked in the original as **Exhibits "P-12"** to **"P-48"**]
>
> That would be all for this witness at this time. We shall be seeking a continuance to allow the presentation of the additional Certifications from the Revenue Accounting Division of the BIR or of alternate proof of payment such as receipts or tax returns, as well as originals of documents listed in petitioners' pre-trial brief."

These requests are in no manner equivalent to an administrative claim for refund, which seeks the refund of erroneously or illegally collected taxes.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice