REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MARIA LORENA DINO, ET. AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9083

Members:

CASTAÑEDA, JR., *Chairperson*
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 25 2018

3:10 p.m.

x- x

DECISION

MANAHAN, *J.*:

This case is a consolidation of the various claims for refund of alleged erroneous/illegal payment of income taxes in the total amount P20,452,112.00 on the compensation income of several Filipino employees of the Asian Development Bank (ADB) during the periods 2012 and 2013.[1]

PARTIES

Petitioners are all Filipinos, of legal age and employees of ADB.

The Commissioner of Internal Revenue ("respondent") is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

[1] Petition for Review, pp. 10-22, Court Docket.

FACTS

On December 4, 1965, the ADB was established[2]. Among the provisions of its Charter ("ADB Charter") is Article 56, with regard to its exemption from taxation as well as the income of its employees, *viz*[3]:

> "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.
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> 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.*"(italics ours)
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> xxx xxx xxx

The ratification made by then President Marcos on said agreement was couched in the following manner, viz:

> NOW THEREFORE, be it know 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.*[4] (Italics ours)

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[2] Agreement Establishing The Asian Development Bank.
[3] *Id.*
[4] Regional Trial Court Decision dated September 30, 2014, Exhibit "P-1", pp. 406-436, Volume I, Court Docket. *au*

On March 16, 1966, *Senate Resolution No. 6* was adopted whereby the Senate of the Philippines concurred in the ratification by then President Marcos on the ADB Charter with the declaration that "it 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 pursuant to Article 56, paragraph 2 of the Agreement.[5]

On December 22, 1966, the Government of the Republic of the Philippines (GRP), represented by then Secretary of Foreign Affairs, Narciso C. Ramos, and the ADB, represented by its President, Takeshi Watanabe, entered into an *"Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank"* regarding the establishment of the principal office of the ADB in Manila, its privileges, immunities, and facilities to be granted by the GRP ("ADB Headquarters Agreement").

The privileges and immunities of ADB from GRP are contained in the following provision:

> "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 subject to the power of the Government to tax its nationals;*" (*italics ours*)
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> xxx xxx

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[5] *Ibid.*

On May 18, 1967, the Senate of the Philippines, under P.S.R. No. 38[6] ratified said agreement.

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013 entitled *"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"*. Included therein is a provision pertaining to the tax exemptions enjoyed by the employees of ADB. Section 2(d)(1) of said RMC provides the following:

> "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
>
> (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
>
> <u>Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank</u>, shall enjoy the following privileges and immunities:

[6] Resolution Concurring in the Ratification of the Headquarters Agreement Between the Government of the Philippines and the Asian Development Bank, Done at Manila on December 22, 1966, Philippine Law Journal, Vol.42, No. 3, July 1967.

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(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."

As a result, Filipino employees of the ADB, including the petitioners, were ordered to declare their income for 2012 onwards and pay taxes thereon as the RMC was given retroactive effect. Prior to the issuance of RMC No. 31-2013, the Filipino employees of ADB did not pay income taxes since its establishment in 1966.[7]

Conversely, section 2 (d) (1) of RMC 31-2013 applies squarely to the compensation income of the concerned ADB employees, thus:

"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 Philippines regarding the Headquarters of the Asian Development Bank provides:

[7] Court of Appeals Resolution dated July 3, 2015, Exhibit "P-7", pp. 438-443.

> "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."

A challenge on the legality of RMC 31-2013 as well as the authority of the respondent Commissioner to issue said circular was formalized by two Filipino ADB employees who filed a petition with the Regional Trial Court (RTC) of Mandaluyong City in February 2014, seeking to nullify the aforequoted Section 2 (d) (1) of said RMC.[8] The RTC ruled in favor of the Filipino employees in a Decision dated September 30, 2014 and nullified Section 2 (d) (1) of the aforequoted RMC.

Respondent appealed said decision to the Court of Appeals docketed as CA-G.R. CV No. 104374 which ruled in favor of the petitioners under its Resolution dated July 3, 2015. Respondent moved for its reconsideration but was also denied under Resolution dated January 6, 2016[9].

Respondent elevated the case before the Supreme Court by filing a Petition for Review on Certiorari entitled "*Commissioner of Internal Revenue v. Erwin Salaveria and Portia Gonzales*" docketed as G.R. No. 222214. The case is still pending resolution.[10]

On the basis of the decision of the RTC declaring the invalidity of the pertinent provisions of RMC 31-2013, petitioners allege that they filed two (2) consolidated letters embodying their claims for refund with the office

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[8] Petition for Review, paragraph 16-17, pp. 19-20, Volume I, Court Docket.
[9] Docket, Vol. I, Exhibit "P-13-1", pp. 395-400.
[10] Memorandum with Manifestation for the Petitioners, pp. 492-500, Volume II, Court docket.

of the respondent Commissioner on May 14, 2015[11] and June 5, 2015.[12]

In response to the above claims for refund, respondent CIR issued a letter dated May 26, 2015 and received by counsel for the petitioner on June 30, 2015.[13] In this letter, respondent CIR informed the claimants that there is no legal basis to support the claim for refund and that their Office has already appealed the RTC decision to the proper appellate court, hence the ruling therein is not yet final and executory. Portions of the letter are quoted below, thus:

xxx xxx xxx

> "In reply, please be informed that there is no legal basis to support your claim for refund. This Office has appealed the RTC Decision, and hence, for all legal intents and purposes, it is not yet final and executory.
>
> Moreover, assuming that your clients are legally entitled to refund, per Revenue Delegation Authority (RDAO) No. 03-02 dated February 15, 2002, claims for tax refund shall be processed by the Revenue District Office (RDO) of the Bureau of Internal Revenue where the taxpayer is registered or required to be registered. In the instant case, since your clients are registered at RDO No. 41-Mandaluyong City, the said office has the proper jurisdiction to process the claims. Accordingly, in the meantime, the docket of your claims for tax refund shall be indorsed to RDO 41."

xxx xxx xxx

On July 9, 2015, petitioners filed the instant Petition for Review transforming their cause into a judicial claim for refund and praying for the Honorable Court to order respondent to refund the income tax payments of petitioners in the total amount of Php20,452,112.00 representing alleged erroneously paid income tax payments for the years 2012 and 2013.

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[11] Exhibit "P-4", pp. 45-53, Volume I, Court Docket;
[12] Exhibit "P-5", pp. 54-65, Volume I, Court Docket.
[13] Annex "C" of the Petition for Review, page 66, Volume I, Court Docket.

On August 26, 2015, respondent filed his Answer to the Petition for Review.[14]

On September 23, 2015, the respondent filed his Pre-Trial Brief[15] while petitioners filed their Pre-Trial Brief on September 28, 2015[16]. Subsequently, a pre-trial conference was held on October 29, 2015 where the parties were given fifteen (15) days to submit their Joint Stipulation of Facts and Issues ("JSFI").

On December 1, 2015, the parties filed their JSFI[17] where the sole issue for resolution was laid down and documents and witnesses were identified. The Court approved the JSFI and terminated the pre-trial in the Pre-Trial Order[18] dated January 10, 2016.

On February 13,2017, petitioner filed its Formal Offer of Evidence[19]. Records show that respondent failed to file his Comment (to the Formal Offer of Evidence) within the time prescribed by the Court.[20]

In a resolution dated August 29, 2017, the Court resolved petitioner's Formal Offer of Evidence,[21] admitting the exhibits offered by petitioner with a few exceptions due to failure to present the original for comparison and failure of the exhibits to correspond with the documents actually marked.

On October 5, 2017, petitioner filed a *Motion for Partial Reconsideration* requesting the Court to admit the exhibits which were denied in the Resolution of the Court dated August 29, 2017.

In a Resolution dated January 22, 2018,[22] the Court resolved to admit all the exhibits offered by the petitioner.

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[14] Pages 117-125, Volume I, Court Docket.
[15] Pages 131-133, Volume I, Court Docket.
[16] Pages 135-138. Volume I, Court Docket.
[17] Pages 258- 260, Docket.
[18] Pages 262- 264, Docket
[19] Pages 399-405, Volume I, Court Docket
[20] Page 451, Volume II, Court Docket.
[21] Court Resolution, pp. 475-476, Volume II, Court Docket.
[22] Pages 489-490, Volume II, Court Docket.

Respondent no longer filed his Formal Offer of Evidence.

On May 31, 2017, respondent filed his Memorandum[23] followed by Petitioners' "Memorandum with Manifestation" [24]filed on January 29, 2018.

The parties having submitted their respective Memoranda, the Court issued a Resolution on January 31, 2018, submitting this case for Decision.

ISSUE

The sole issue raised by the parties is:

> "Whether or not petitioners are entitled to claim the refund of income taxes paid in taxable years 2012 and 2013 alleged to be erroneously and/or illegally paid."

Petitioner's Arguments

Petitioners proffer the theory that Philippine nationals employed by ADB are exempt from income tax on the compensation they received on the basis of categorical provisions contained in the ADB Charter. Thus, the income tax payments made for the taxable years 2012 and 2013 were erroneously and illegally collected by the government qualifying such payments as proper subjects of refund.

In paragraph 13 of their Petition for Review, petitioners presented a table providing their names, the amount of taxes paid for the years 2012 and 2013 and the total amount of taxes claimed by each.[25]

Further, petitioners challenge the legality of the provisions of RMC No. 31-2013 which served as the focal point of the then Commissioner's authority to demand

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[23] Pages 452-472, Volume II, Court Docket.
[24] Pages 492-501, Volume II, Court Docket.
[25] Petition for Review, pp. 17-18,Volume I, Court Docket.

income tax payments from the compensation received by Filipino employees of the ADB.

Up until the issuance of RMC 31-2013, petitioners claim that Filipino employees of ADB were enjoying the tax exempt privileges on their compensation income for almost five (5) decades by virtue of the relevant provisions of the ADB Charter.

Petitioners find extra comfort in the fact that the Court of Appeals in a decision promulgated on July 3, 2015[26] dismissed the appeal of the respondent Commissioner (of the subject RTC decision) on the ground that the appeal was improperly elevated to them as it should have been raised by a petition for review on certiorari to the Supreme Court as it raised questions of law.

In its Memorandum, petitioners manifest that they have no objection if the Court decides to defer the resolution of the instant claim for refund until after the Supreme Court resolves the aforementioned appeal in G.R. No. 222214. However, they do submit the theory that the Court may allow or grant the claims for refund notwithstanding the pending petition filed by the respondent with the Supreme Court

<u>Respondent's Counter-Arguments</u>

Respondent provides the following propositions to counter petitioners' allegations:

1. Petitioners are all Philippine citizens and as such are subject to Philippine income tax law, specifically Sections 23 and 22 (E) of the 1997 National Internal Revenue Code (NIRC), whether they be resident or non-resident;
2. The ADB Headquarters Agreement, specifically Article XII, Section 45 (b) made a clear limitation in so far as its right to tax its nationals , thus:

> "Article XII. – Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others

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[26] Ibid.

> 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) Exemptions 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.* Xxxx" (italics ours)."

Respondent avers that such tax exemption is still subject to the power of the Government to tax its nationals.[27]

Aside from these two main points, respondent raised the following conditions before a claim for refund may be granted:

1. Petitioners must prove that they were able to comply with the following documentary and legal requirements as provided under Section 229 of the 1997 National Internal Revenue Code (NIRC);
2. Petitioners must prove that their incomes are not taxable or exempt from income tax;
3. Petitioners must provide the basis for the alleged tax exemptions. Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority.

In conclusion, respondent avers, that such tax exemption is still subject to the power of the Government to tax its nationals and it is clear that the compensation/salaries of the Filipino employees of the ADB are still subject to income tax under the relevant provisions of the Tax Code.

RULING OF THE COURT

The petition is partly meritorious.

[27] Answer of Respondent, pp. of Docket.

Foremost among the issues to be resolved in claims for refund is the timeliness of the administrative and judicial claims for refund which determines the jurisdiction of this Court to take cognizance thereof.

Section 229 of the NIRC provides that:

> 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, of any sum alleged to have been excessively or in any manner wrongfully 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. (Italics ours)

Applying the afore-quoted provisions, this Court finds that petitioners have established that they were able to file both their administrative and judicial claims for refund for 2012 and 2013 within the two-year period.

As shown by the tabular summary below, the dates of the administrative as well as the judicial claims for refund were filed within the two (2)-year period from payment of the taxes alleged to have been illegally collected by respondent, thus:

Petitioners/Claimant	Date of full payment of 2012 Income Tax	Date of full payment of 2013 Income Tax
Maria Lorena Dino	7/11/2013	4/10/2014
Benedict Lamberte	7/12/2013	3/21/2014
Ma. Luisa Panlilio	7/12/2013	4/14/2014
Elsa Mariano	7/12/2013	3/4/2014

Zynthia Potian	7/12/2013	4/2/2014
Ana Clarissa Araullo	7/12/2013	4/11/2014
Maria Charmina Yabut	7/12/2013	4/11/2013
Angela Cecilia Concio	7/15/2013	3/21/2014
Jocelyn Erlinda Munsayac	7/15/2013	4/11/2014
Marife Principe	7/15/2013	4/10/2014
Raneliza Samiano	7/15/2013	4/4/2014
Josefina Tolentino	7/15/2013	3/21/2014
Lalinka Padrinao	7/15/2013	4/11/2014
Cinderella Tiangco	7/15/2013	4/11/2014
Gloria Gerilla-Teknomo	7/15/2013	4/10/2014
Rosanna Raymundo	7/15/2013	4/11/2014
Arlene Dogelio	7/15/2013	4/7/2014
Maria Rose Rhodora King	7/15/2013	4/8/2014
Carmela Theresa Littaua	7/15/2013	4/11/2014
Sharon Zafra	7/15/2013	4/8/2014
Marizenia Estrella	7/15/2013	4/11/2014
Sonia Marie Arceo	N/A	4/14/2014

The earliest payment date as shown by the table above, was on July 11, 2013. Counting two (2) years from July 11, 2013, the last day for filing the judicial claim for refund is on July 11, 2015. The records of this case show that the administrative claims for refund were filed on May 14, 2015 and June 5, 2015, presented to the Court as Exhibits "P-4[28] and "P-5"[29], respectively. The Petition for Review was filed with this Court on July 9, 2015. It is clear that both the administrative and judicial claims for refund of the alleged excess/erroneously paid income tax payments were filed within the two (2) year period provided under the afore-quoted section 229 of the 1997 NIRC.

It is also worthy to note that peculiar to this case, is the letter issued by the respondent denying the claims for refund of petitioners, as earlier mentioned. This letter denial dated May 26, 2015 was received by counsel for petitioners on June 30, 2015. Petitioner then filed a Petition for Review with this Court on July 9, 2015, well within the thirty-day period pursuant to the provisions of Section 3 (a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), and we quote:

"Section 3. *Who may appeal; period to file petition.-*

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[28] Ibid, footnote No. 11.

[29] Ibid, footnote No. 12.

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments."** xxx xxx xxx (italics ours)

Having shown that petitioners timely filed their administrative and judicial claims for refund well within the two- year period from dates of payment, we can thus conclude that this Court has jurisdiction to adjudicate the appeal filed by petitioners in accordance with Section 7 (a) of Republic Act (RA) No. 1125 which reads as follows:

"Section 7. Jurisdiction. – The CTA shall exercise

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. *Decisions of the Commissioner of Internal Revenue* in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees, or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (italics ours)

We now proceed to the main issue of this case.

Petitioners rely heavily on Chapter VIII, Article 56 (2) of the ADB Charter as the basis of the non-imposition of income tax on their compensation as ADB employees and we quote:

"CHAPTER VIII

Article 56.

(2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the 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.*" (italics ours)

The above proviso in the ADB Charter has in effect been "carved in stone" as it has been the practice for several decades of the ADB not to withhold tax on the compensation of the people covered by the aforequoted Section 56 (including Filipino employees) which practice was claimed to have been disturbed only by the issuance of RMC 31-2013 dated April 12, 2013, the relevant portions of which were quoted earlier.

The ADB Charter and the ADB Headquarters Agreement" both partake the nature of a treaty or an international agreement.[30]

As an international agreement, it forms part of the law of the land in accordance with Section 2, Article II of the 1987 Constitution which reads as follows:

Article II

Section 2. The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the*

[30] Memorandum Circular issued by the Office of the President on May 31, 1994 and signed by President Fidel Ramos which in part provides, thus,:

" The Charter and the Headquarters Agreement, which are *international treaties* executed by the Executive Branch of the Government of the Republic of the Philippines and ratified by the Senate of the Republic of the Philippines, are incorporated as part of the law of the Republic of the Philippines." (italics ours).

> *law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations." (italics ours)

This constitutional principle adheres to the basic tenet of international law of *pacta sunt servanda* or international comity which demands the performance in good faith of treaty obligations as aptly defined in the case of *Deutsche Bank AG Manila Branch v. CIR*[31], and we quote:

> "Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of pacta sunt servanda demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction."

The instant case, however, clearly indicates that the issue at bar is not a controversy suggestive of whether our country should observe its commitments under an international agreement but rather centers on its coverage of the privileges and the interpretation which may or may not include tax exemption of Filipino employees of the ADB on their compensation income.

The very same provisions, both of the ADB Charter and the ADB Headquarters Agreement, relied upon by the petitioners are the same ones that would produce the bases of this Court's denial of their petition. An examination of the entirety of Section 56(2), Chapter VIII of the ADB Charter clearly contains an exception to the tax exempt privilege accorded by this Agreement to the covered ADB personnel as encapsulated by the clause "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."

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[31] G.R. No.188550 promulgated on August 19, 2013.

The grant of tax exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens i.e. Philippine citizens, or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments".[32] (italics ours)

However, unlike the municipal laws of a member country, treaties or international agreements are not enacted by the Legislative branch of the government but instead ratified by the Philippine Senate as what was done in the case of the ADB Charter. Under the 1935 Philippine Constitution which was the prevailing Constitution in 1966, it is the President of the Philippines, as head of State who ratifies the treaty while the Philippine Senate concurs with the President's ratification.[33] Then as now, in strict constitutional legalese, ratification of treaties is made by the President while concurrence is done by two thirds of all the members of the Senate.[34] Such ratification and concurrence are the operative acts that endow the ADB Charter with the character of a law.

Treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.[35]

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

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[32] Philip Morris Inc. vs. Court of Appeals, G.R. No. 91332 dated July 16, 1993.

[33]Article VII, Section 10 of the 1935 Philippine Constitution:
"The President shall have the power, with the concurrence of two thirds of all the members of the Senate to make treaties xxx xxx. " ."

[34] Article VII, Section 21 of the 1987 Constitution. " No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

[35] Pharmaceutical & Health Care Assn. of the Philippines vs. Health /secretary Duque, et. Al. , G.R. No. 173034 dated October 19, 2007.

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 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.

In the case of *PHAP vs. Duque*[37], the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

> "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by *transformation* or *incorporation*. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism *such as local legislation*. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.
>
> Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional

[36] G.R. No. 197525 dated June 4, 2014.
[37] G.R. No. 17303 4 dated October 9, 2007.

> international law *must go through a process prescribed by the Constitution for it to be transformed into municipal law* that can be applied to domestic conflicts. (italics ours)

By the same token, both the ADB Charter and the ADB Headquarters Agreement became valid and effective and had the force and effect of a municipal law upon the concurrence of the Senate as prescribed by the Constitution. Such process no longer necessitated a local legislation for it to take effect as the concurrence of the Senate was sufficient to transform the treaty as part of the "domestic law" of the land.

There should be no question then that the compensation income of the Filipino employees of the ADB is subject to tax and that respondent Commissioner of Internal Revenue did not abuse his discretion in issuing the controverted RMC No. 31-2013.

In saying this, it is vital at this point to legally scrutinize the application of the provisions of RMC 31-2013 to the instant claims for refund.

Section 7 of RMC 31-2013 clearly provides that the provisions thereof "shall take effect immediately" which means that it should take effect starting May 2, 2013 the date when a copy was officially submitted to the Office of the National Administrative Register of the UP Law Center pursuant to the requirement of the Administrative Code, Section 3, Chapter 2, Book VII, which provides:

> *Filing.* (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

Pursuant to the abovementioned provision, the Supreme Court emphasized in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission, G.R. No. 163935, February 2, 2006* that both the **requirements of publication and filing of administrative issuances are mandatory for their effectivity.**

However despite these clear wordings on its effectivity, respondent still proceeded to collect income tax payments from petitioner starting 2012. Seen against the backdrop of confirmations and affirmations of various revenue officials that their income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the principles of fair play and substantial justice dictate that its provisions should apply to claims starting only from 2013 and onwards.

For emphasis, we provide below the various pronouncements of revenue officials with regard to the taxability of the income tax payments of ADB personnel, to wit:

1. In BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, in response to a query on the taxability of ADB personnel, stated as follows:

   > "Such being the case, Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank xxx xxx are subject to the preferential tax of 15% of their gross compensation income."

2. In a Letter Opinion dated January 29, 2001, BIR Regional Director Antonio Ortega confirmed that officers and staff of the ADB need not secure Tax Identification Numbers (TINs) since their salaries are exempt from taxation.

3. In an opinion issued by the Chief of the Legal Division of Revenue Region No. 7 dated February 6, 2013, Amado Rey B. Pagarigan reiterated the opinion of Mr. Rualo and stated that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

The ADB as employer as well as the concerned employees should not be faulted on the apparently confirmatory but inconsistent opinions of senior officials of the BIR. It was only by the issuance of RMC 31-2013 that then Commissioner Kim Henares categorically clarified that they are subject to tax. Pertinent portions of the said RMC are quoted below:

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

More than the lifeblood doctrine, we find that the principles of fundamental fairness and equity behoove us to apply the non-retroactive rule under Section 246 of the Tax Code and we quote:

> 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.
>
> (italics ours)

In the case of *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*[38], the Supreme Court rejected the retroactive application of rulings and circulars when such would cause prejudice to the taxpayers, thus:

[38] G.R. No. L-52306 dated October 12, 1981.

> "It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers. The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated regulations promulgated by the Commission
>
> xxx xxx xxx
>
> " without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax ."

Further in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.,*[39] the Supreme Court enunciated the non-retroactivity principle in this manner:

> "However, well entrenched is the rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers."
>
> "Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

It bears stressing that the retroactive application of the provisions of RMC 31-2013 to income received by the petitioners in 2012 made prior to its publication in 2013 already caused serious prejudice to the Filipino employees who relied heavily on the pronouncements/interpretations made by the

[39] G.R. No. 117982 dated February 6, 1997.

government officials earlier mentioned. To put it more concretely, the Filipino employees were not ready to incur such huge tax obligations for the past taxable year 2012, neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits, assets if they fail to settle such deficiency income tax assessment.

WHEREFORE, in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED.**

Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of Php9,566,626.40 to be individually allocated based on the tabular summary provided below, representing the illegally collected income taxes for taxable year 2012:

Employee's Name	Tax Paid for 2012 Income			Refundable Tax Paid for 2012 Income
	Per Petition for Review	Per Supporting Documents	Exhibit No.	
Araullo, Anna Clarissa C.	₱ 303,495.63	₱ 303,495.73	P-9, P-9-1, P-32	₱ 303,495.63
Arceo, Sonia Marie P.	-	-		-
Concio, Angela Cecilia C.	621,429.38	621,429.38	P-10, P-32	621,429.38
Dino, Maria Lorena L.	376,639.78	376,639.78	P-11, P-32	376,639.78
Dogelio, Arlene C.	258,276.76	258,276.76	P-12, P-32-2	258,276.76
Estrella, Marizenia G.	242,292.12	244,292.12	P-27, P-32	242,292.12
Gerilla-Teknomo, Gloria P.	480,177.03	480,177.03	P-13, P-32	480,177.03
King, Marie Rose Rhodora	188,629.68	188,629.68	P-14, P-32	188,629.68
Lamberte, Benedict M.	621,863.83	621,861.83	P-15, P-32	621,861.83
Littaua, Carmela Theresa E.	181,148.85	181,148.55	P-28, P-32	181,148.55
Mariano, Elsa Del Valle	205,111.89	205,111.89	P-16, P-32	205,111.89
Munsayac, Jocelyn Erlinda S.	1,321,840.39	1,321,840.39	P-32, P-32	1,321,840.39
Padrinao, Lalinka Yana M.	175,467.85	175,417.85	P-18, P-32	175,417.85
Panlilio, Maria Luisa T.	877,655.53	877,655.53	P-19, P-32	877,655.53
Potian, Zynthia Albina N.	932,679.37	932,679.37	P-20, P-32	932,679.37
Principe, Marife B.	485,086.76	485,086.76	P-21, P-32	485,086.76
Raymundo, Rosanna R.	316,431.19	316,431.19	P-22, P-32	316,431.19
Samiano, Raneliza D.	348,144.67	348,144.67	P-23, P-23-1, P-32	348,144.67
Tiangco, Cinderella C.	700,835.89	700,835.89	P-24, P-32	700,835.89
Tolentino, Josefina A.	440,413.94	440,413.94	P-25, P-32	440,413.94
Yabut, Maria Charmina G.	201,211.78	201,211.78	P-29, P-32	201,211.78
Zafra, Sharon S.	287,846.38	287,846.38	P-30, P-32	287,846.38
Total	**₱9,566,678.70**	**₱9,568,626.50**		**₱9,566,626.40**

However, with regard to the claims for refund covering the year 2013, the same is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MARIA LORENA DINO, ET AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9083

Members:

Castañeda, Jr., *Chairperson,*
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

SEP 2 5 2018

x--x

3:10 p.m.

DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

With due respect to the ponente, I voice my dissent to the grant of refund of ₱9,566,626.40 representing income taxes paid by the petitioners for taxable year 2012.

I maintain the view that the refund should be denied under Sections 23(A) and 24(A)(1)(a) of the 1997 National Internal Revenue Code (NIRC), as amended.

The discussion below reiterates the position I have taken in my dissent in *Cristeta May Galang, et al. v. Commissioner of Internal Revenue (CIR),*[1] *Rowena Vicente, et al. v. CIR*[2] and *Irish Fe Aguilar, et al. v. CIR.*[3]

As in the previous cases, all the petitioners in this case, who are claiming for refund of allegedly erroneously and/or illegally collected

[1] CTA Case No. 9081, June 8, 2017.
[2] CTA Case No. 9096, July 7, 2017.
[3] CTA Case No. 9073, December 1, 2017.

income tax under Section 229, are Filipino employees of the Asian Development Bank (ADB).

First, a review of the relevant treaty and legislative provisions will demonstrate that Congress really intended to tax the salaries and emoluments received by Filipinos from ADB.

On December 4, 1965, the "Agreement Establishing the Asian Development Bank" (ADB Charter) was executed.

Thereafter, in a Senate Resolution No. 6 dated March 16, 1966, the ADB Charter was ratified and confirmed by the Philippine Government with a reservation of its right to tax the Filipino employees of ADB, thus:

> "NOW THEREFORE, be it known that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the Agreement Establishing the Asian Development Bank done on December 4, 1965 at Manila, Philippines, do hereby in pursuance of the aforesaid concurrent of the Senate of the Philippines, ratify and confirm the said Agreement and every article and clause thereof, <u>subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines</u>." (*underscoring supplied*)

On December 22, 1966, 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) was signed, which provides in pertinent part:

> "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: ℊ

(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 subject to the power of the Government to tax its nationals; xxx." (*underscoring supplied*)

The 1997 NIRC, a subsequent legislation which took effect on January 1, 1998,[4] is the law that implements the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under its Sections 23(A) and 24(A)(1)(a), as amended:

"**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;" (*underscoring supplied*)

Second, it is discussed in the *ponencia* that Revenue Memorandum Circular (RMC) No. 31-2013, which was issued only on April 12, 2013, should not be given retroactive application pursuant to the prohibition under Section 246.[5]

[4] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130; Section 8, Republic Act No. 8424.

[5] "**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:

It bears emphasis, however, that RMC 31-2013 merely *reiterates* the general principles laid down in Section 23(A) and *amplifies* Section 24(A)(1)(a), both of which have been in effect since January 1, 1998, before the income tax payments in 2012 and 2013.

The preface of RMC 31-2013 in Section 1 states these objectives when it cites Sections 23 and 24 of the 1997 NIRC as its foundation and states that the guidelines were intended to address the "confusion on the correct tax treatment of the compensation income earned by Philippine nationals xxx employed by foreign governments/embassies/diplomatic missions and international organizations xxx," thus:

> "**SECTION 1. BACKGROUND.—**
>
> Foreign governments/embassies/diplomatic missions and international organizations situated in the Philippines acting as employers enjoy immunity from collecting taxes on salaries and emoluments of their employees, whether they are foreigners or Philippine nationals. This immunity from being constituted as withholding agents of the Philippine Government is accorded to these entities on the basis of international comity as embodied in several international agreements to which the Philippines is a signatory, such as, the Vienna Convention for International Relations (for embassies and diplomatic missions), Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of Specialized Agencies (for the various agencies of the United Nations), Asian Development Bank Headquarters Agreement (for ADB), Articles of Agreement of the International Finance Corporation, among others.
>
> In recognition of this immunity, the Withholding Tax Regulations (Revenue Regulations No. 2-98, as amended), clearly reiterate the exemption from the withholding tax system of the remunerations being paid by foreign governments and international organizations to their employees who are residents or nationals of the Philippines. Section 2.78.1(B)(5) provides thus:
>
> xxx xxx xxx
>
> However, it has been observed that the foregoing provisions have been a source of confusion on the correct tax treatment of the

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(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."

compensation income earned by Philippine nationals and alien individuals employed by foreign governments/embassies/diplomatic missions and international organizations. **To clarify, the exemption from withholding taxes on the compensation of officials and employees applies to foreign governments/embassies/diplomatic missions and international organizations. Since the withholding of tax is merely a method of tax collection, the exemption from withholding taxes does not equate to the exemption from paying the income tax itself**.

Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxations of citizens and alien individuals, to wit:

xxx xxx 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 Philippines 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')." (*underscoring and emphases supplied*)

Section 246 on the non-retroactivity of issuances should be carefully read when viewed in the light of *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals et al.*,[6] an *assessment* case cited in the *ponencia*, wherein the revocatory administrative issuances were not given retroactive application. In said case, the Supreme Court held

[6] G.R. No. L-52306, October 12, 1981, 108 SCRA 148.

that there will be an injustice and it would be violative of fair play if the withholding agent would be made to pay additional withholding taxes for 1965 to 1968 under the provisions of a circular later issued in 1971.

The facts of the case at bench, a *refund* of income taxes paid by the taxpayers only in 2012, are different from that of *ABS-CBN*. It is submitted that there was *no violation* of the rules of justice and fair play when petitioners paid the income taxes. It is not in question that when the taxes were paid, the Reservation Clause in Senate Resolution No. 6 and the provisions of Sections 23(A) and 24(A)(1)(a) have long been in force and effect *prior* to these payments.

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law.*[7] RMC 31-2013, therefore, was issued merely to construe the *existing* provisions of the 1997 NIRC in relation to the various *existing* treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law.

Third, construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law.[8] It is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies.[9] RMC 31-2013 was precisely issued to fill in the details and manner of the enforcement of Sections 23(A) and 24(A)(1)(a) pursuant to Section 4[10] of the 1997 NIRC, as amended.

RMC 31-2013 belongs to a group of issuances that "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders

[7] *La Suerte Cigar and Cigarette Factory et al. v. Court of Tax Appeals et al.,* G.R. No. L-36130, January 17, 1985, 134 SCRA 39.

[8] *Senator Heherson T. Alvarez, et al. v. Hon. Teofisto T. Guingona, Jr., in his capacity as Executive Secretary, et al.*, G.R. No. 118303, January 31, 1996, 252 SCRA 703.

[9] *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003.

[10] "**SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[11] Based on this definition, RMC 31-2013 is an *interpretative rule* issued by the administrative agency headed by the respondent.

In *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.*,[12] the Supreme Court held that Administrative Order No. 7, an administrative regulation issued by the Department of Health, and BFAD Circulars No. 1 and 8, issued by the Food and Drug Administration (FDA), were all valid issuances of administrative agencies tasked to implement the law. It discussed the nature and function of *interpretative rules* in this wise:

> "Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. <u>Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single</u>

[11] Section 3(g), Revenue Administrative Order No. 1-2003 provides:

"SECTION 3. *Classification of BIR Rulings and Issuances.* — The following terms shall have the meaning described below:

xxx xxx xxx

g) *Revenue Memorandum Circulars (RMC)* — These issuances shall disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."

[12] G.R. No. 190837, March 5, 2014, 718 SCRA 160-162.

> person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the 'Administrative Code of 1987,' on prior notice, hearing, and publication in order to be valid and binding, **except when the same is merely an interpretative rule. This is because '[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.'" (*underscoring and emphases supplied; citations omitted*)

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*,[13] the Supreme Court upheld the validity of RMC 25-2011, issued in 2011, and ruled that the *retroactive* application of the circular to the taxable transaction in 2009 did not contravene Section 246, thus:

> "Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted." (*underscoring supplied*)

Fourth, even assuming for the sake of argument that there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such shortcoming does not operate to estop the government from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals*:[14]

---

[13] G.R. No. 210987, November 24, 2014, 741 SCRA 601.

[14] G.R. No. 125346, November 11, 2014, 739 SCRA 561.

"The cigarette manufacturers contend that for a long time prior to the transactions herein involved, the Collector of Internal Revenue had never subjected their purchases and importations of stemmed leaf tobacco to excise taxes. This prolonged practice allegedly represents the official and authoritative interpretation of the law by the Bureau of Internal Revenue which must be respected.

We are not persuaded.

In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*, this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a misapprehension of law may be corrected when the true construction is ascertained. Thus:

> The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an authoritative construction of great weight. *This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained.* Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here. (Emphasis supplied)

This court reiterated this rule in *Abello v. Commissioner of Internal Revenue* where it **rejected** petitioners' claim that the prolonged practice (since 1939 up to 1988) of the Bureau of Internal Revenue in not subjecting political contributions to donor's tax was an authoritative interpretation of the statute, entitled to great weight and the highest respect:

> *This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed. It is a well-entrenched rule that* [:]
>
> > *...erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.* (Emphasis supplied, citations omitted)

> **Prolonged practice of the Bureau of Internal Revenue in not collecting the specific tax** on stemmed leaf tobacco **cannot validate what is otherwise an erroneous application and enforcement of the law**. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.
>
> In *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*, this court upheld the validity of a revenue memorandum circular issued by the Commissioner of Internal Revenue to correct an error in a previous circular that resulted in the non-collection of tobacco inspection fees for a long time and declared that estoppel cannot work against the government:
>
> xxx xxx xxx" (Underscoring and emphases supplied; citations omitted)

As a final word, taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.[15] Any claim for refund take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[16]

Therefore, I vote to deny the petition entirely.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[15] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 417.

[16] *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001, 360 SCRA 583.