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.*

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1 Aurora Pulusan, Verification/Certification of Non-Forum Shopping, Docket (Vol. I), p.49.
2 Alfie A. Zafra, Verification/Certification of Non-Forum Shopping, Docket (Vol. I), p.59.

-*versus*-

Promulgated:

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MAR 1 1 2020
2:06 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

This is a *Petition for Review* ("Petition") filed by petitioners against respondent praying that he be ordered to refund petitioners' income tax payments for taxable years ("TY") 2012 and 2013 in the total amount of Php23,011,311.95, broken down as follows:

	Petitioner	Tax Paid for TY 2012 Income (In Php)	Tax Paid for 2013 Income (In Php)	Total Claim of Petitioner (In Php)
1	Lennie De Sagun	353,975.92	360,712.00	714,687.92
2	Carmela Espina	573,993.97	575,287.00	1,149,280.97
3	Anna Frieda Lopez	222,916.38	253,921.00	476,837.38
4	Arlene Pantua	192,480.68	183,631.00	376,111.68
5	Julie Ann Villanueva	220,699.61	243,188.00	463,887.61
6	Catherine Viola	328,496.59	358,811.00	687,307.59
7	Maria Carmina Cajigal	450,655.15	447,629.00	898,284.15
8	Ma. Margarita Salvador	375,514.61	210,976.00	583,490.61
9	Kristine Marie San Juan	250,362.47	142,549.00	392,911.47
10	Calixto Seroje Jr.	478,882.84	272,633.00	751,515.84
11	Grace Agnes Sevilla	338,864.79	193,292.00	532,156.79
12	Jesusa Tarun	453,862.15	265,705.00	719,567.15
13	Charisse Tubianosa	236,847.76		236,847.76
14	Gemma Bade	344,801.82	266,103.00	610,904.82
15	Louise Baldin	307,564.78	305,573.00	613,137.78
16	Ronald Butiong	923,863.62		923,863.62
17	Maria Minerva Carmona	273,894.24	290,922.90	564,817.14
18	Andrew Carlos Cervantes	255,712.47	275,114.00	530,826.47
19	Maria Victoria Dela Cruz	375,443.42	377,663.00	753,106.42
20	Metis Ilagan	394,885.82	395,458.00	790,343.82
21	Ruby Razon Ledesma	313,968.10		313,968.10
22	Angelina Licup	260,744.76	301,480.00	562,224.76
23	Rachel Macalincag	257,778.60	253,279.00	511,057.60
24	Josefina Miranda	323,656.30	339,233.00	662,889.30
25	Ma. Luisa Paborada	141,056.70	83,404.00	224,460.70
26	Aurora Pulisan[3]	429,305.44	428,240.00	857,545.44
27	Malaya Rivera	211,591.18	207,680.00	419,271.18
28	Maria Aloha Samoza	197,571.02		197,571.02
29	Dana Bianca Samson	171,174.41	190,858.00	362,032.41
30	Emilee Santos	212,711.12		212,711.12
31	Maria Victoria Siddayao	569,321.02		569,321.02
32	Cordel Trinchera	774,556.36	760,857.00	1,535,413.36

[3] Aurora Pulusan, See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 49.

33	Francia Socorro Trinchera	547,432.71	545,326.00	1,092,758.71
34	Rowena Villafuerte	231,216.10	213,689.56	444,905.66
35	Marie Antoinette Virtucio	509,037.00	532,258.00	1,041,295.00
36	Alfie Zafra-Dulay[4]	283,769.88	286,546.00	570,315.88
37	Socorro Regalado	428,225.70	235,458.00	663,683.70
	Total Claim of Petitioners			**23,011,311.95**

THE PARTIES

Petitioners are of legal age, Filipinos, and are employed at the Asian Development Bank ("ADB"), which office is located at 6 ADB Ave., Mandaluyong City 1550. They may be served with summons and other processes of this Court through Chato & Vinzons-Chato Law Offices, located at 8th Floor, Strata 2000 Bldg., F. Ortigas, Jr. Road, Ortigas Center, Pasig City.[5]

Respondent is vested with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code, as amended ("NIRC")*** or other laws or portions thereof administered by the Bureau of Internal Revenue ("BIR"). He may be served with summons, pleadings and other processes of this Court at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

ANTECEDENT FACTS

On 12 April 2013, respondent issued ***Revenue Memorandum Circular No. 31-2013 ("RMC 31-13").***[7] ***RMC 31-13*** provides that only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.[8]

In compliance with ***RMC 31-13,*** petitioners presented proofs of payment of their respective income tax due for TYs 2012 and 2013, *viz:*

	Petitioner	TY 2012 Claim		TY 2013 Claim	
		Amount Claim	Exhibit	Amount Claim	Exhibit
1	Lennie De Sagun	353,975.92	P-6-1	360,712.00	P-4-1
2	Carmela Espina	573,993.97	P-6-3	575,287.00	P-6-5
3	Anna Frieda Lopez	222,916.38	P-9-3	253,921.00	P-51 & P-51-1***
4	Arlene Pantua	192,480.68	-	183,631.00	P-11-3; P-11-4

4 Alfie A. Zafra, See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 59.
5 See Petition, Records, Vol. 1, p. 12.
6 See Petition, Records, Vol. 1, p. 13.
7 Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Government/Embassies/Diplomatic Missions and International Organizations situated in the Philippines.
8 See Petition, Records, Vol. 1, pp. 16-17.

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5	Julie Ann Villanueva	220,699.61	P-9-15	243,188.00	P-62**
6	Catherine Viola	328,496.59	P-53**	358,811.00	P-9-21*
7	Maria Carmina Cajigal	450,655.15	P-3-1; P-5-4	447,629.00	P-5-1
8	Ma. Margarita Salvador	375,514.61	P-9-6*	210,976.00	P-54***
9	Kristine Marie San Juan	250,362.47	P-9-9*	142,549.00	P-55***
10	Calixto Seroje Jr.	478,882.84	P-63*	272,633.00	P-65**
11	Grace Agnes Sevilla	338,864.79	P-66**; P-67***	193,292.00	P-68***
12	Jesusa Tarun	453,862.15	P-69**; P-69-1***	265,705.00	P-70***
13	Charisse Tubianosa	236,847.76	-	-	-
14	Gemma Bade	344,801.82	P-8-1*	266,103.00	P-7-1
15	Louise Baldin	307,564.78	P-8-2	305,573.00	P-8-3
16	Ronald Butiong	923,863.62	P-7-2; P-7-3		-
17	Maria Minerva Carmona	273,894.24	P-5-5	290,922.90	P-5-2
18	Andrew Carlos Cervantes	255,712.47	P-5-6	275,114.00	P-5-3
19	Maria Victoria Dela Cruz	375,443.42	P-6-2*	377,663.00	P-6-4
20	Metis Ilagan	394,885.82	P-9-1; P-9-2	395,458.00	P-9-19
21	Ruby Razon Ledesma	313,968.10	P-71**		-
22	Angelina Licup	260,744.76	P-10-1	301,480.00	P-10-4
23	Rachel Macalincag	257,778.60	P-10-2	253,279.00	P-10-5; P-11-1
24	Josefina Miranda	323,656.30	P-10-3	339,233.00	P-56**
25	Ma. Luisa Paborada	141,056.70	P-10-6	83,404.00	P-11-2
26	Aurora Pulisan[9]	429,305.44	P-10-7	428,240.00	P-10-8
27	Malaya Rivera	211,591.18	P-9-5	207,680.00	P-57***
28	Maria Aloha Samoza	197,571.02	P-9-7		-
29	Dana Bianca Samson	171,174.41	P-9-8	190,858.00	P-58 & P-58-1***
30	Emilee Santos	212,711.12	P-9-10		-
31	Maria Victoria Siddayao	569,321.02	P-72**		-
32	Cordel Trinchera	774,556.36	P-73***; P-74**; P-75**	760,857.00	P-76**; P-77***
33	Francia Socorro Trinchera	547,432.71	P-9-11; P-9-12	545,326.00	P-9-20*
34	Rowena Villafuerte	231,216.10	P-9-13; P-9-14	213,689.56	P-59-1*
35	Marie Antoinette Virtucio	509,037.00	P-9-16; P-9-17	532,258.00	-
36	Alfie Zafra-Dulay[10]	283,769.88	P-9-18	286,546.00	P-9-22*
37	Socorro Regalado	428,225.70	P-9-4*	235,458.00	P-61***

*Amount is different from the RAD Certification/Payment Form/ROR
**Revenue Official Receipt
***Bank Validated Payment Slip

Believing that ***RMC 31-13*** is *ultra vires,* two (2) Filipino ADB employees, on their own, and on behalf of other Filipino ADB employees, questioned its legality with the RTC of Mandaluyong on February 2014 and sought its invalidation.

On 30 September 2014, the RTC of Mandaluyong issued a Decision,[11] declaring Section 2 (d) (1) of ***RMC 31-13*** as void for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary.

Petitioners then filed their administrative claims for refund[12] before respondent using the Decision of the RTC of Mandaluyong to prove that their payment of income tax for TYs 2012 and 2013 are erroneous.

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9 Aurora Pulusan, See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 49.
10 Alfie A. Zafra, See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 59.
11 See Petition, Records, Vol. 1, p.19.
12

Petition Annex	Date	Records, Vol. 1, pages:
A	25 March 2015	61-74
B	31 March 2015	75-83
C	29 May 2015	84-94
D	11 June 2015	95-105
E	22 June 2015	106-116
F	30 June 2015	117-127
G	7 July 2015	128-141
H	8 July 2015	142-151

Respondent filed his *Answer*[13] on 23 September 2015, raising the following arguments, *viz:*

1. Petitioners are Filipino citizens and residents of the Philippines, and are subject to the Philippine income tax, citing ***Sections 23 and 22 of the NIRC;***

2. The taxation of income in the Philippines is based on citizenship, residency and the source principles;

3. Petitioners are Filipino citizens and employees of the ADB, with business address at ADB Avenue, Ortigas Center, Mandaluyong City. There is no doubt that petitioners are liable for income tax on compensation income they earned on account of such employment;

4. ***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" ("RP-ADB Agreement")*** expressly states that the Philippine government accorded tax exemption privileges to the ADB and its staff, but held on to the State's inherent power to tax, making a clear limitation in so far as its right to tax its nationals;

5. ***Resolution No. 06*** issued by the Philippine Congress, concurred in the ratification by the President of the Philippines of the ***Agreement Establishing the ADB ("ADB Charter"),*** but 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***;

6. Explicit from the foregoing is that the Philippines, by making a "reservation", simply intimated that in entering upon an agreement with ADB the only effect is that the income of ADB is exempt from tax by virtue of the agreement but not the income derived by the Filipinos from ADB;

7. BIR ITAD Rulings further state that there is no need for an executing law to implement the "Reservation" because Philippine tax law already provides that Filipinos are liable for tax from income derived from within and without the Philippines;

I	9 July 2015	152-159

13 Records, Vol. 1, pp. 212 to 222.

8. The ***ADB Charter*** was never amended by subsequent Philippine tax laws, because Philippine tax laws before and after the creation of ADB imposed taxes on income of Filipinos from within and without the Philippines;

9. ***RMC 31-13*** is only a clarification of existing policies etched in Philippine law, and ***Revenue Memorandum Circular No. 13-2012*** is valid because it is a mere clarification of existing policies etched in Philippine law;

10. As stated in the ***BIR ITAD Ruling No. 018-14,*** the "Reservation" made by the Philippines regarding its right to tax its citizens who earn income as employees of ADB is not a mere reservation but an affirmation of the inherent power of the State to tax its own citizens;

11. Petitioners must prove that they were able to comply with the documentary and legal requirements as provided under ***Section 229 of the NIRC;***

12. Petitioners must prove that their incomes are not taxable or exempt from income tax;

13. Petitioners must provide the basis for the alleged tax exemptions; and

14. Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. A tax refund is in the nature of a tax exemption which must be construed strictissimi juris against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund.

On 11 February 2016, petitioners filed their Pre-Trial Brief[14] while respondent filed his Pre-Trial Brief[15] on 30 September 2016.

Petitioners filed a Request for Admission[16] on 1 March 2016, without respondent's Comment, despite notice.[17] On 19 May 2016, petitioner's Request for Admission was partially granted.[18]

After the pre-trial conference on 6 October 2016,[19] the parties filed their Joint Stipulation of Facts and Issues on 17 October 2016[20] which was

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14 Records, Vol. 1, pp. 241-245.
15 Records, Vol. 1, pp. 364-368.
16 Records, Vol. 1, pp. 259-265.
17 Records, Vol. 1, p. 279.
18 Records, Vol. 1, pp. 356-358.
19 Records, Vol. 1, pp. 369-370.
20 Records, Vol. 1, pp. 374-381.

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approved by this Court in the Resolution[21] dated 26 October 2016. Thereafter, the Court issued a *Pre-Trial Order*[22] on 4 January 2017.

During trial, petitioners presented its sole witness, Atty. Maricris Connie B. Pua.

Thereafter, petitioners filed their *Formal Offer of Documentary Evidence*[23] on 16 November 2017, which was admitted in the Resolutions dated 26 March 2018[24] and 21 February 2019[25], except for Exhibit "P-50-1", for failure to present the original for comparison and Exhibit "P-52" for failure to submit the duly marked exhibit. For his part, respondent manifested that he will no longer be presenting any evidence.[26]

With the filing of the parties' Memoranda on 11 December 2017[27] and 7 May 2018,[28] respectively, the case was submitted for decision on 21 February 2019.[29]

Hence, this Decision.

THE ISSUES

The parties stipulated a sole issue[30] for this Court's resolution, *viz:*

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

ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioners argue that the income tax payments made by the petitioners were erroneously and/or illegally collected by the respondent by virtue of the latter's failure to recognize the tax-exempt status granted by treaty to ADB employees.

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21 Records, Vol. 1, p. 384.
22 Records, Vol. 1, pp. 402-313.
23 Records, Vol. 2, pp. 757-767.
24 Records, Vol. 2, pp. 915-918.
25 Records, Vol. 2, pp. 955-958.
26 Records, Vol. 2, pp. 753-754.
27 Records, Vol. 2, pp. 885-906.
28 Records, Vol. 2, pp. 926-937.
29 Records, Vol. 2, pp. 955-958.
30 Records, Vol. 1, p. 374.

Allegedly, payment by the petitioners of income tax is an aberration introduced by ***RMC 31-13;*** it is only proper that taxes paid by petitioners pursuant to this issuance should be returned to them.

Finally, petitioners claim that this Court may allow the claim for refund, notwithstanding the pending case in the Supreme Court by respondent involving ***RMC 31-13.***

Respondent's Counter-Arguments:

Respondent counter-argues that the petitioners are not entitled to the refund of their income tax payments for TYs 2012 and 2013 for failure on their part to substantiate their claim for refund.

Moreover, the RTC-Mandaluyong decision in ***Civil Case No. MC14-8775*** declaring ***Section 2 (d) (1) of RMC No. 31-13*** as void is allegedly not a binding precedent. Respondent emphasizes that resident citizens who are ADB officers and employees are subject to income tax on salaries and emoluments they receive from ADB.

Finally, respondent maintains that taxation of salaries and emoluments paid by ADB to its officers and employees who are resident citizens is not anchored on the retroactive application of ***RMC 31-13.***

THE COURT'S RULING

We deny the Petition.

Petitioner cannot rely on the decision of the RTC-Mandaluyong in Civil Case No. MC14-8775 to anchor their subject refund claim.

Petitioners contend that it is RTC-Manadaluyong which has jurisdiction over the issue on the validity of ***RMC 31-13.*** Consequently, since the RTC-Mandaluyong has already declared the subject issuance illegal in ***Civil Case No. MC14-8775,*** and respondent's appeal has already been dismissed by the Court of Appeals, this Court can no longer rule on the validity of ***RMC 31-13.***

We disagree.

In *Banco De Oro, et al. v. Republic of the Phils., et al.,*[31] the Supreme Court held:

> "The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> This Court, however, declares that **the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, <u>revenue memorandum circulars,</u> rulings).**
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
>
> In other words, **within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.
>
> **Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 <u>provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations.</u>** Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> Furthermore, **with respect to administrative issuances (revenue orders, <u>revenue memorandum circulars,</u> or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws.** Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, **the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by**

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

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the Secretary of Finance, as required under Republic Act No. 8424."

(Emphasis and Underscoring, Ours)

Based on this judicial pronouncement, the power to review the validity or constitutionality of revenue issuances by the BIR, such as ***RMC 31-13,*** is initially lodged with the Secretary of Finance. Thereafter, it is this Court that has exclusive appellate jurisdiction to determine the validity or constitutionality of the said administrative issuances.

Consequently, RTC-Mandaluyong has no jurisdiction to decide on the validity or constitutionality of ***RMC 31-13.*** Consequently, its Decision in ***Civil Case No. MC14-8775,*** cited by petitioners, is a nullity. It did not have any legal and binding effect, whatsoever. No rights can be obtained thereunder.

A judgment by a court without jurisdiction is null and void, and may be attacked anytime. It creates no rights and produces no effects. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[32] Simply put, a void judgment or order has no legal and binding effect. It does not divest rights and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless.[33]

Assuming *arguendo,* that RTC-Mandaluyong has jurisdiction over the issue on the validity of ***RMC 31-13,*** and its Decision is valid, the same is still not binding upon this Court. It must be stressed that only decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction[34] and these decisions become judicial precedents to be followed in subsequent cases by all courts of the land.[35] The subject decision of RTC-Mandaluyong, however, does not enjoy the same status as the decisions of the Supreme Court.

The imposition of income tax on compensation income earned by petitioners, as ADB employees and as resident

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32 Bilag, et al. v. Ay-Ay, et al., G.R. No. 189950, 24 April 2017.

33 Go v. Echavez, G.R. No. 174542, 3 August 2015.

34 The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al., v. The Insular Life Assurance Co., Ltd., et al., G.R. No. L-25291, 30 January 1971, *citing* Miranda, et al. v. Imperial, et al., 77 Phil. 1066.

35 De Mesa v. Pepsi Cola Products Phils., Inc., G.R. Nos. 153063-70, 19 August 2005.

Filipino citizens, is based on the NIRC and not RMC 31-13.

Petitioners assert that the payment of income tax is an aberration introduced by ***RMC 31-13,*** which has been voided by RTC-Mandaluyong, and it is only proper that the taxes paid pursuant to said issuance should be returned to them.

We are not swayed.

Contrary to petitioners' arguments, the imposition of income tax on resident Filipino citizens, who are ADB employees, is based on the pertinent provisions of the ***NIRC*** and not on ***RMC 31-13.***

As provided for in ***Section 23 (A) of the NIRC,*** the income of a resident Filipino citizen, whether derived from sources within or outside the Philippines, are subject to tax, *viz:*

> "**SEC. 23. General Principles of Income Taxation in the Philippines.** - Except when otherwise provided in this Code:
>
> **(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;"**
>
> (Emphasis, Ours)

In addition and in relation to the above provision, ***Section 24, 31 and 32 (A) (1) of the NIRC*** reads:

> **"SEC. 24. Income Tax Rates. -**
>
> **(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-**
>
> **(1) An income tax is hereby imposed:**
>
> **(a) On the taxable income defined in Section 31 of this Code,** other than income subject to tax under Subsections (B), (C) and (D) of this Section, **derived for each taxable year from all sources within and without the Philippines <u>by every individual citizen of the Philippines residing therein;</u>**
>
> xxx xxx xxx
>
> **(2) Rates of Tax on Taxable Income of Individuals.-** The tax shall be computed in accordance with and at the rates established in the following schedule:

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Not over P10,000	5%
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,00	P22,500+25% of the excess over P140,000
Over P250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P500,000	P125,000+32% of the excess over P500,000

xxx xxx xxx"

(Emphasis and Underscoring, Ours)

Moreover, ***Sections 31 and 32 of the NIRC*** defines taxable income and gross income, respectively, *to wit:*

> "**SEC. 31. Taxable Income Defined.** -The term '***taxable income***' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws."
>
> "**SEC. 32. Gross Income.** -
>
> **(A) General Definition.** - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;"

Based on these provisions, it is clear that the compensation income of a resident Philippine national or citizen from all sources within and without the Philippines is subject to income tax.

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As such, it is erroneous to assume that ***RMC 31-13*** is the legal basis for collecting the subject income tax. On the contrary, this issuance merely implemented or reiterated what the law states.

For easy reference, the pertinent portions of ***RMC 31-13*** is reproduced hereunder, *to wit:*

> "SECTION 1. Background. —
>
> xxx xxx xxx
>
> Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:
>
> > '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
> >
> > (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; . . .'
>
> 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**

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National Internal Revenue Code of 1997, as amended ("Tax Code").

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

"SECTION 2. Tax Treatment of Compensation Income. —

The tax treatment of Philippine nationals and alien individuals on compensation income **received by them from** foreign governments/embassies and missions and **international organizations shall be as follows:**

xxx xxx xxx

(d) Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law —

1. Asian Development Bank (ADB)

Section 45 (b), Article XII of the **Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank provides:**

'ARTICLE XII

xxx xxx xxx

Section 45.

<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:

xxx xxx xxx

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

Underscoring supplied

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

(Emphasis, Ours)

A perusal of ***RMC 31-13*** would reveal that respondent merely exercised his power to interpret the pertinent provisions of the ***NIRC*** in

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relation to the ***RP-ADB Agreement.*** To be specific, respondent concluded, based on the cited provisions, that while the RP-ADB Agreement grants exemption from income tax to the salaries and emoluments of officers and staff of ADB, as well as to the experts and consultants performing missions therefor, such income taxation does not extend to ADB's officers and staff, who are Philippine nationals.

As already discussed, the foregoing interpretation by respondent is in accordance with ***Sections 23 (A), 24 (A) (1), 31, and 32 (A) (1) of the NIRC.*** In view of the said provisions, even without the said ***Section 2 (d) (1) of RMC 31-13,*** the taxability of the salaries and emoluments of ADB officers and employees, who are Philippine citizens or nationals, remains.

ADB employees, who are nationals or citizens of the Philippines, are not exempt from income tax.

Petitioners cite ***Article 56 of the ADB Charter*** on "Exemption from Taxation," to argue that the exempt status of the employees of the ADB has always been observed and practiced. Thus, the passage of a specific law is required to apply the exception (*i.e.,* taxability), instead of the general rule (*i.e.,* non-taxability).

We partly agree.

Article 56 of the ADB Charter, to which the Philippines is a signatory, reads, in part, as follows:

> "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."
>
> (Emphasis, Ours)

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Using this provision as sole basis, it can be said that the salaries and emoluments paid by the ADB to its directors, alternates, officers or employees, including experts performing missions for ADB, are exempt from income tax. However, the abovestated ADB Charter is not the only Agreement that the Philippine Government has entered into, insofar as the taxation of the said salaries and emoluments paid by the ADB is concerned.

On 22 December 1966, the Philippine government subsequently entered into the ***RP-ADB Agreement*** with the ADB. The ***RP-ADB Agreement*** is equally binding, and should be given force and effect, as that of the ***ADB Charter.***

Section 45 (b) of the RP-ADB Agreement reads as follows:

> "Section 45
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> xxx xxx xxx
>
> (b) **Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank <u>subject to the power of the Government to tax its nationals;"</u>**
>
> (Emphasis and Underscoring, Ours)

While it may be true that officers and staff of the ADB are granted exemption from taxation with respect to salaries and emoluments paid by the said Bank under the ***RP-ADB Agreement,*** the same is subject to the qualification that the Philippine government may exercise its power to tax over ADB officers and employees, who are citizens or nationals of the Philippines.

It must be emphasized that through the earlier quoted ***Section 23 (A), 24 (A) (1), 31, and 32 (A) (1) of the NIRC,*** as amended, the Philippine government had clearly exercised its power to tax its national or citizens. To be clear, while in general, the salaries and emoluments of officers and employees of the ADB are exempt from income tax, such exemption does **<u>not</u>** extend to ADB officers and employees who are Philippine citizens or nationals. Such being the case, as Philippine citizens or nationals, petitioners' salaries and emoluments are subject to income tax, pursuant to ***Section 23 (A), 24 (A) (1), 31, and 32 (A) (1) of the NIRC.***

<u>The salaries and emoluments of ADB officers and employees</u>

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who are Philippine nationals or citizens should only be subjected to income tax prospectively from the date RMC 31-13 was issued.

However, all is not lost to petitioners. ***Section 246 of the NIRC*** protects 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, *viz:*

> "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."
>
> (Emphasis, Ours)

The High Court applied the principle of non-retroactivity of revenue issuances in ***ABS-CBN Broadcasting Corporation v. Court of Tax Appeals,***[36] *viz:*

> "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

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

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> enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them.
>
> xxx xxx xxx
>
> without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

Moreover, in the case of ***Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.,***[37] the Supreme Court applied the non-retroactivity of revenue issuances, *to wit:*

> "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."

While it is clear under ***Section 23 (A) and 24 (A) (1) (a) of the NIRC*** that all income derived by resident citizens from all sources within or without the Philippines is taxable using the graduated rates, respondent previously issued several contradictory rulings on the taxability of the salaries and emoluments 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:* [38]

1. On **March 11, 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%**;[39]

2. On **January 29, 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;**[40] and

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37 G.R. No. 117982, 6 February 1997.

38 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.

39 BIR Ruling No. 029-99, 11 March 1999.

40 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.

qv

3. On **<u>February 6, 2013,</u>** the Chief, Legal Division of Revenue Region No.7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are **<u>subject to the preferential tax rate of 15%</u>** on their compensation income.[41]

When the Filipino ADB officers and employees received their 2012 salaries and emoluments, 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 TY 2012 salaries and emoluments. They cannot be faulted for believing that they were exempt from paying income tax for such belief was brought about by an opinion 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 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. Consequently, the retroactive application of ***RMC 31-13*** will violate ***Section 246 of the NIRC.***

Although it can be argued that ***RMC 31-13*** is a mere interpretation of existing law (*i.e.*, ***Section 23 (A) and 24 (A) (1) (a) of the NIRC***) and should thus be applied even to the compensation of petitioners for TY 2012, this Court finds that it should only be applied prospectively in the interest of justice and equity. When petitioners received their compensation for TY 2012, they were of the honest belief – and neither did Respondent enforce rules to the contrary – that the same is exempt from tax.[42]

Commissioner of Internal Revenue v. Licel Calderon, et al.,[43] is instructive, *viz:*

> "The insertion of Sec. 338-A[44] 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,**

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41 *Id.*

42 Leah Empesando, et al. v. Commissioner of Internal Revenue, CTA Case No. 9093, 17 September 2018.

43 CTA EB Nos. 1876 and 1878, CTA Case No. 9090, 2 July 2019.

44 Now Section 246 of the NIRC.

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> **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.
>
> 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 and emoluments of ADB officers and employees who are Philippine nationals or citizens should only be subjected to income tax beginning TY 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 NIRC*** to effect the retroactive application of ***RMC 31-13.***

Based on the evidence presented, petitioners are not entitled to a refund of the income tax actually paid for TY 2012.

All told, income tax payments by the Filipino ADB officers and employees for TY 2012 after ***RMC 31-13*** took effect on 12 April 2013 have been erroneously or illegally collected. Thus, the income tax payments made by petitioners for TY 2012 should be refunded **provided they complied with *Section 229 of the NIRC,*** *to wit:*

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

Before a refund claim under ***Section 229 of the NIRC*** can be granted, a taxpayer/claimant must first prove that he or she has filed an administrative claim with respondent prior to filing suit with this Court. ***Metropolitan Bank & Trust Company v. CIR,***[45] is instructive, *viz:*

> "As may be gleaned from the foregoing provisions, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription."

In the case at bar, petitioners paid their respective TY 2012 income tax and filed their respective claims for refund in the following manner:

Name of Petitioner	Date of Full Payment of Tax	Amount Paid	Last Day to File Refund Claim[46]	Date of Filing of Administrative Claim based on the **photocopies of the BIR received claims for refund attached to the Petition**	Date of Filing of Judicial Claim
Lennie De Sagun	07-15-13[47]	353,975.92	07-15-15	06-11-15[48]	07-09-15

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[45] G.R. No. 182582, 17 April 2017.
[46] Two (2) years after the payment of the taxes.
[47] Exhibit "P-6-1", Records, Vol. 2, p. 804.
[48] Annex "D", Petition, Records, Vol. 1, pp. 95-105.

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Carmela Espina	07-10-13[49]	573,993.97	07-10-15	06-22-15[50]	07-09-15
Anna Frieda Lopez	07-10-13[51]	222,916.38	07-10-15	06-30-15[52]	07-09-15
Arlene Pantua				07-07-15[53]	07-09-15
Julie Ann Villanueva	07-10-13[54]	220,699.61	07-10-15	07-08-15[55]	07-09-15
Catherine Viola	07-12-13[56]	328,496.59	07-12-15	07-08-15[57]	07-09-15
Maria Carmina Cajigal	04-15-13[58] 07-11-13[59]	155,920.31 294,734.81	04-15-15 07-11-15	03-25-15[60]	07-09-15
Ma. Margarita Salvador	07-11-13[61]	273,014.61	07-11-15	03-25-15[62]	07-09-15
Kristine Marie San Juan	07-11-13[63]	176,816.27	07-11-15	03-25-15[64]	07-09-15
Calixto Seroje Jr.	07-11-13[65]	223,000.26	07-11-15	03-25-15[66]	07-09-15
Grace Agnes Sevilla	07-15-13[67] 07-15-13[68]	247,490.24 91,374.55	07-15-15 07-15-15	03-31-15[69]	07-09-15
Jesusa Tarun	07-11-13[70] 04-15-13[71]	335,535.02 118,327.13	07-11-15 04-15-15	03-25-15[72]	07-09-15
Charisse Tubianosa				03-25-15[73]	07-09-15
Gemma Bade	07-11-13[74]	148,669.69	07-11-15	04-29-15[75]	07-09-15
Louise Baldin	07-11-13[76]	307,564.78	07-11-15	04-29-15[77]	07-09-15
Ronald Butiong	07-11-13[78] 04-15-13[79]	461,931.81 461,931.81	07-11-15 04-15-15	04-29-15[80]	07-09-15
Maria Minerva Carmona	07-11-13[81]	273,894.24	07-11-15	06-11-15[82]	07-09-15
Andrew Carlos Cervantes	07-11-13[83]	255,712.47	07-11-15	06-11-15[84]	07-09-15
Maria Victoria	07-15-13[85]	281,641.09	07-15-15	03-25-15[86]	07-09-15

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49 Exhibit "P-6-3", Records, Vol. 2, p. 805.
50 Annex "E", Petition, Records, Vol. 1, pp. 106-116.
51 Exhibit "P-9-3", Records, Vol. 2, p. 813.
52 Annex "F", Petition, Records, Vol. 1, pp. 117-127.
53 Annex "G", Petition, Records, Vol. 1, pp. 128-141.
54 Exhibit "P-9-15", Records, Vol. 2, p. 815.
55 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
56 Exhibit "P-53", Records, Vol. 2, p. 873.
57 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
58 Exhibit "P-3-1", Records, Vol. 2, p. 787.
59 Exhibit "P-5-4", Records, Vol. 2, p. 801.
60 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
61 Exhibit "P-9-6", Records, Vol. 2, p. 814.
62 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
63 Exhibit "P-9-9", Records, Vol. 2, p. 814.
64 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
65 Exhibit "P-63" and "P-64", Records, Vol. 2, pp. 717-722.
66 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
67 Exhibit "P-66" and "P-66-1", Records, Vol. 2, pp. 724-725.
68 Exhibit "P-67" and "P-67-1", Records, Vol. 2, pp. 725-729.
69 Annex "B", Petition, Records, Vol. 1, pp. 75-83.
70 Exhibit "P-69", Records, Vol. 2, pp. 735.
71 Exhibit "P-69-1", Records, Vol. 2, p. 736.
72 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
73 Annex "A", Petition, Records, Vol. 1, pp. 61-74.
74 Exhibit "P-8-1", Records, Vol. 2, p. 811.
75 Annex "C", Petition, Records, Vol. 1, pp. 84-94.
76 Exhibit "P-8-2", Records, Vol. 2, p. 811.
77 Annex "C", Petition, Records, Vol. 1, pp. 84-94.
78 Exhibit "P-7-2", Records, Vol. 2, p. 809.
79 Exhibit "P-7-3", Records, Vol. 2, p. 809.
80 Annex "C", Petition, Records, Vol. 1, pp. 84-94.
81 Exhibit "P-5-5", Records, Vol. 2, p. 801.
82 Annex "D", Petition, Records, Vol. 1, pp. 95-105.
83 Exhibit "P-5-6", Records, Vol. 2, p. 801.
84 Annex "D", Petition, Records, Vol. 1, pp. 95-105.
85 Exhibit "P-6-2", Records, Vol. 2, p. 804.
86 Annex "A", Petition, Records, Vol. 1, pp. 61-74.

Dela Cruz					
Metis Ilagan	07-11-13[87] 07-15-13[88]	213,508.84 181,376.68	07-11-15 07-15-15	06-22-15[89]	07-09-15
Ruby Razon Ledesma	07-11-13[90]	313,968.10	07-11-15	06-30-15[91]	07-09-15
Angelina Licup	07-11-13[92]	260,744.76	07-11-15	06-30-15[93]	07-09-15
Rachel Macalincag	07-11-13[94]	257,778.60	07-11-15	06-30-15[95]	07-09-15
Josefina Miranda	07-11-13[96]	323,656.30	07-11-15	06-30-15[97]	07-09-15
Ma. Luisa Paborada	07-11-13[98]	141,056.70	07-11-15	07-07-15[99]	07-09-15
Aurora Pulisan[100]	07-12-13[101]	429,305.44	07-12-15	07-07-15[102]	07-09-15
Malaya Rivera	07-12-13[103]	211,591.18	07-12-15	07-07-15[104]	07-09-15
Maria Aloha Samoza	07-11-13[105]	197,571.02	07-11-15	07-08-15[106]	07-09-15
Dana Bianca Samson	07-12-13[107]	171,174.41	07-12-15	07-08-15[108]	07-09-15
Emilee Santos	07-11-13[109]	212,711.12	07-11-15		07-09-15
Maria Victoria Siddayao	07-11-13[110]	569,321.02	07-11-15	07-08-15[111]	07-09-15
Cordel Trinchera	07-15-13[112] 07-11-13[113] 07-15-13[114]	35,097.00 360,132.54 379,326.82	07-15-15 07-11-15 07-15-15	07-08-15[115]	07-09-15
Francia Socorro Trinchera	07-12-13[116] 07-11-13[117]	262,417.38 285,015.33	07-12-15 07-11-15	07-08-15[118]	07-09-15
Rowena Villafuerte	07-12-13[119] 07-11-13[120]	46,947.06 184,269.08	07-12-15 07-11-15	07-08-15[121]	07-09-15

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87 Exhibit "P-9-1", Records, Vol. 2, p. 813.
88 Exhibit "P-9-2", Records, Vol. 2, p. 813.
89 Annex "E", Petition, Records, Vol. 1, pp. 106-116.
90 Exhibit "P-71", Records, Vol. 2, p. 738.
91 Annex "F", Petition, Records, Vol. 1, pp. 117-127.
92 Exhibit "P-10-1", Records, Vol. 2, p. 818.
93 Annex "F", Petition, Records, Vol. 1, pp. 117-127.
94 Exhibit "P-10-2", Records, Vol. 2, p. 818.
95 Annex "F", Petition, Records, Vol. 1, pp. 117-127.
96 Exhibit "P-10-3", Records, Vol. 2, p. 818.
97 Annex "F", Petition, Records, Vol. 1, pp. 117-127.
98 Exhibit "P-10-6", Records, Vol. 2, p. 820.
99 Annex "G", Petition, Records, Vol. 1, pp. 128-141.
100 Aurora Pulusan, See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 49.
101 Exhibit "P-10-7", Records, Vol. 2, p. 820.
102 Annex "G", Petition, Records, Vol. 1, pp. 128-141.
103 Exhibit "P-9-5", Records, Vol. 2, p. 814.
104 Annex "G", Petition, Records, Vol. 1, pp. 128-141.
105 Exhibit "P-9-7", Records, Vol. 2, p. 814.
106 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
107 Exhibit "P-9-8", Records, Vol. 2, p. 814.
108 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
109 Exhibit "P-9-10", Records, Vol. 2, p. 814.
110 Exhibit "P-72", Records, Vol. 2, p. 739.
111 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
112 Exhibit "P-73", Records, Vol. 2, p. 740.
113 Exhibit "P-74", Records, Vol. 2, p. 741.
114 Exhibit "P-75", Records, Vol. 2, p. 742.
115 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
116 Exhibit "P-9-11", Records, Vol. 2, p. 815.
117 Exhibit "P-9-12", Records, Vol. 2, p. 815.
118 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
119 Exhibit "P-9-13", Records, Vol. 2, p. 815.
120 Exhibit "P-9-14", Records, Vol. 2, p. 815.
121 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.

Marie Antoinette Virtucio	07-11-13[122] 07-15-13[123]	270,544.40 238,493.58	07-11-15 07-15-15	07-08-15[124]	07-09-15
Alfie Zafra-Dulay[125]	07-12-13[126]	283,769.88	07-12-15	07-08-15[127]	07-09-15
Socorro Regalado	07-11-13[128]	315,907.17	07-11-15	03-31-15[129]	07-09-15

Proofs of the following facts: a) petitioners' filing of an administrative refund claim before the judicial claim for refund; and b) the content of petitioners' administrative refund claim, are mere photocopies which were attached in the Petition as Annexes "A" to "H".[130] The original or certified true copies of these documents were not filed or submitted to this Court.

Section 3 of Rule 130 of the Rules of Court provides that no documentary evidence is admissible as proof of its contents without presenting its original, *viz:*

> "RULE 130
>
> Rules of Admissibility
>
> xxx xxx xxx
>
> Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following
>
> (a)When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b)When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c)When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d)When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)"

122 Exhibit "P-9-16" and "P-60", Records, Vol. 2, pp. 815 and 882, respectively.
123 Exhibit "P-9-17" and "P-60-1", Records, Vol. 2, pp. 816 and 884, respectively.
124 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
125 Alfie A. <u>Zafra,</u> See Verification/Certification of Non-Forum Shopping, Records, Vol. 1, p. 59.
126 Exhibit "P-9-18", Records, Vol. 2, p. 816.
127 Annex "H", Petition, Records, Vol. 1, pp. 142-151; Amount stated in the Administrative Claim is different from the amount paid, as shown by documentary evidence.
128 Exhibit "P-9-4", Records, Vol. 2, p. 814.
129 Annex "B", Petition, Records, Vol. 1, pp. 75-83.
130 Records, Vol. 1, pp. 61-151.

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As an exception to the *Best Evidence Rule*, ***Section 2 of Rule 130 of the Rules of Court*** provides:

> "2. SECONDARY EVIDENCE
>
> Sec. 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)"

Consequently, before a copy may be admitted as proof of the contents of a document, its execution or existence, and the cause of its unavailability (which should be without bad faith on the part of the offeror) must first be established. In this case, only copies of the administrative claims for refund were submitted and filed to this Court, which were made as mere attachments to the Petition. Petitioners' witness, Atty. Maricris Connie B. Pua,[131] did not testify on matters proving: a) the execution or existence of the original administrative claims for refund; and b) the cause of the unavailability of these documents, which is not due to the bad faith of petitioners. In fact, she did not adduce any testimony at all identifying these documents. Worse, these documents have not been marked considering that these were neither included in petitioners' Pre-Trial Brief[132] nor in the Pre-Trial Order.[133] It was only during the hearing dated 24 October 2017 that petitioners' counsel tried to surreptitiously identify and mark the said documents which this Court did not permit.[134] Hence, these documents are inadmissible as evidence.

It may be pointed out by petitioners that the presentation of the originals of the administrative claims for refund is unnecessary since the truth of its contents is not in issue but only the fact of (the prior execution of the administrative claim before the filing of the present Petition) is needed to be proved; hence, *parol evidence* is allowed. Nonetheless, petitioners' counsel still failed to offer as evidence the copies of the administrative claims for refund in petitioners' Formal Offer of Evidence.[135] Hence, the same cannot be considered by this Court in ruling the Petition.

The taxpayer has the burden to prove its entitlement to a tax refund. "Tax refunds partake of the nature of tax exemptions, which are

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131 Judicial Affidavit, Records, Vol. 1, pp. 436-443; Supplemental Judicial Affidavit, Vol. 2, pp. 551-555; Second Supplemental Judicial Affidavit, Vol. 2, pp. 746-751.
132 Records, Vol. 1, pp. 241-245.
133 Records, Vol. 1, pp. 402-414.
134 TSN, Hearing dated 24 October 2017.
135 Records, Vol. 2, pp. 757-767.

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construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven."[136]

Without adequate proof that a prior administrative claim for refund was lodged before respondent before the present Petition was instituted, petitioners claim for tax refund for TY 2012 cannot prosper.

WHEREFORE, the instant Petition for Review filed by the petitioners, **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 , 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 , SOCORRO REGALADO,** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

I CONCUR IN THE RESULT
ERLINDA P. UY
Associate Justice

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136 Commissioner of Internal Revenue v. Far East Bank & Trust Company (Now Bank of the Philippine Islands), G.R. No. 173854. 15 March 2010.

MA. BELEN M. 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.

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice