REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IRISH FE N. AGUILAR, MAJELLA R. CANZON, ARLENE B. CHAVEZ, HELEN B. CRUDA MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VERGEL K. LATAY, PRINCESS O. LUBAG, RUTH C. MANGROBANG, SHEILA MARIE F. MARIANO, AND ARLENE P. PORRAS, Petitioners,	**CTA CASE NO. 9073**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 01 2017 4:28 p.m.

x - x

DECISION

CASANOVA, *J.*:

This is a Petition for Review[1], filed on June 19, 2015, by several Filipino employees of the Asian Development Bank (ADB), with respect to claims for income tax refund for the taxable year 2012, pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3(a)(2) of the Revised Rules of the Court of Tax Appeals.

Petitioners, Irish Fe N. Aguilar, Majella R. Canzon, Arlene B. Chavez, Helen B. Cruda, Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Princess O. Lubag, Ruth C. Mangrobang, Sheila Marie F.

[1]Docket (Vol. I), pp. 10-29.

Mariano and Arlene P. Porras are all of legal age, Filipinos and employees of ADB, an international organization with principal office at No. 6 ADB Ave., Mandaluyong City.[2]

Respondent Commissioner of Internal Revenue 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.

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 Internal Organizations Situated in the Philippines".[3]

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
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> xxxxxx
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> (d) Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law-
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> 30. 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:
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> Section 45
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> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for

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[2]Docket (Vol. I), p. 11.
[3]Par. 3, Stipulated Facts, Statement of the Facts and Issues, Pre-Trial Order, Docket (Vol. I), p. 412.

> the Bank, shall enjoy the following privileges and immunities:
>
> xxxxxx
>
> (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 xxx
>
> **From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.** xxx"

Pursuant to the above RMC, petitioners paid their income taxes for the taxable year 2012 with the following details[4]:

TAXABLE YEAR 2012		
Name of Employee	**Payment Date**	**Amount of Payment**
Irish Fe N. Aguilar	21 June, 2013	₱395,383.84
Majella R. Canzon	12 July, 2013	289,966.00
Arlene B. Chavez	15 July, 2013	434,002.98
Helen B. Cruda	15 July, 2013	1,565,838.85
Maria Amparo M. Dato	21 June, 2013	544,687.22
Marian L. Lagmay	15 July, 2013	127,359.17
Vergel K. Latay	11 July, 2013	479,113.76
Princess O. Lubag	27 August, 2013	261,305.76
Ruth C. Mangrobang	12 July, 2013	133,865.28
Sheila Marie F. Mariano	15 July, 2013	20,055.89
Arlene P. Porras	30 July, 2013	491,752.05
TOTAL		**₱4,743,330.80**

In the meantime, Erwin Salavera and Portia Gonzales, by themselves and as attorneys-in-fact of concerned Filipino employees of ADB, filed before the Branch 213, Regional Trial Court of Mandaluyong City (RTC Mandaluyong City), a petition to nullify Section 2(d)(1) of RMC 31-2013.[5]

[4]Petition for Review, Docket (Vol. I), pp. 12-13.
[5]Par. 7, Petition for Review, Docket (Vol. I), p. 14.

On September 30, 2014, RTC of Mandaluyong City rendered a Decision[6] declaring Section 2(d)(1) of RMC 31-2013 void.

On April 15, 2015, petitioners filed their respective claims for refund of the income tax payment[7] before the Revenue District No. 41, Mandaluyong City, but the same was not allegedly acted upon by respondent. Thus, this judicial claim for refund filed on June 19, 2015.

On July 1, 2015, this Court issued Summons[8] requiring BIR and the Office of the Solicitor General (OSG) to file their Answer.

On July 16, 2015, the OSG filed, thru registered mail, his Manifestation and Motion[9] stating that pursuant to Memorandum of Agreement between BIR and OSG dated March 17, 2010, the parties agreed that the BIR handling lawyer shall prepare all pleadings and motions in connection with cases appealed before this Court, thus, OSG requested to be excused from filing the required Answer.

On September 21, 2015, respondent filed his Answer[10] after several Motions for Extension of Time granted by the Court. Respondent mainly argues that the Court has no jurisdiction on the grounds that petitioners failed (i) to file the instant claim for refund within the two-year prescriptive period; and, (ii) to prove that the tax was erroneously or illegally collected, hence, not refundable.

On October 2, 2015, petitioners filed a Motion for Leave to file and Admit Attached Reply[11] which was admitted by the Court in an Order[12] dated October 6, 2015.

On October 9, 2015, petitioners filed their Pre-Trial Brief[13], while respondent filed his Pre-Trial Brief[14] on October 12, 2015.

The Pre-Trial was set on November 12, 2015 and the parties were given a period of fifteen (15) days to file their Joint Stipulation of Facts and Issues (JSFI). However, per Records Verification Report dated January 26, 2016, the parties failed to file the same, hence, they were

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[6]Par. 8, Petition for Review, Docket (Vol. I), pp. 14-15
[7]Exhibit P-4.
[8] Docket (Vol. I), p. 110.
[9] Docket (Vol. I), pp. 117-119.
[10] Docket (Vol. I), pp. 130-140.
[11]Docket (Vol. I), pp. 143-156.
[12]Docket (Vol. I), p. 156-A.
[13]Docket (Vol. I), pp. 157-170.
[14]Docket (Vol. I), pp. 363-366.

ordered to show cause by the Court in a Resolution[15] dated January 29, 2016.

Subsequently, on February 2, 2016, petitioners filed their Compliance with Motion to Admit Attached Stipulation of Facts and Issues[16].

On February 3, 2016, a Pre-Trial Order[17] was issued by this Court thereby terminating the Pre-Trial.

On April 19, 2016 petitioners filed their Formal Offer of Documentary Exhibits[18], which was partially admitted by the Court in a Resolution[19] dated June 23, 2016. On October 11, 2016[20]. All evidence offered by the petitioners were admitted by the Court after a Motion for Partial Reconsideration (of the Resolution dated 23 June 2016) was filed by the petitioners.

During the scheduled initial presentation of evidence for the respondent[21] on July 4, 2016, his counsel manifested that he has no witness to present. Thus, upon motion of the counsels for both parties, they were granted thirty (30) days to file their respective memorandum.

On November 15, 2016, petitioners filed their Manifestation (with Attached Memorandum for the Petitioners' dated 14 November 2016)[22], sans respondent's memorandum as per Report of the Records Division[23] dated November 29, 2016.

In view of the above, on December 2, 2016, the Court issued a Resolution[24] submitting the case for Decision.

The following are the stipulated issues[25]:

[15]Docket (Vol. I), pp. 388
[16]Docket (Vol. I), pp. 391-409.
[17]Docket (Vol. I), pp. 411-421.
[18] Docket (Vol. IV), pp. 1733-1756.
[19]Docket (Vol. IV), pp. 1888-1889.
[20]Docket (Vol. IV), pp. 1925-1927
[21] Docket (Vol. IV), p. 1891.
[22]Docket (Vol. IV), pp. 1928-1964
[23] Docket (Vol. IV), p. 1998.
[24]Docket (Vol. IV), pp. 1999.
[25] Stipulated Issues, Pre-Trial Order, Docket (Vol. I), pp. 412-413.

1. Whether Article 56 of the ADB Charter specifically exempts its employees from taxes that may be levied on the salaries and emoluments paid by the ADB.

2. Whether RMC No. 31-2013, which declared that the employees of ADB liable for income taxes, is void.

3. Whether petitioners paid their corresponding income tax liabilities for taxable year 2012.

4. Whether in its Decision dated 30 September 2014, Branch 213 of the Regional Trial Court (RTC) of Mandaluyong City declared Section 2(d)(1) of RMC No. 31-2013 void.

5. Whether the BIR appealed the Decision of the RTC to the Court of Appeals but such appeal was dismissed.

6. Whether petitioners filed their written claims of refund with BIR RDO No. 41 in Mandaluyong City on 15 April 2015.

7. Whether BIR RDO No. 41 did not act on petitioners' claim for refund.

8. Whether petitioners filed their judicial claim for refund on 19 June 2015.

9. Whether both the written claim for refund with the BIR and the judicial claim for refund with this Court were filed within the two-year prescriptive period as provided under the NIRC.

10. Whether petitioners are entitled to the refund of income taxes paid for the taxable year 2012.

The abovementioned issues can be summarized into three (3) major issues.

1. Whether or not both the administrative and judicial claims were timely filed within the two-year prescriptive period;

2. Whether or not the petitioners are entitled to refund pursuant to Article 56 of the ADB Charter which allegedly exempts its employees from taxes on salaries and emoluments paid by the ADB; and

3. Whether petitioners are entitled to the refund of income taxes paid for the taxable year 2012 pursuant to the Decision of RTC Mandaluyong City Branch 213 dated 30 September 2014 declaring Section 2(d)(1) of RMC No. 31-2013 void.

First of all, the Court deems it appropriate to determine the timeliness of the filing of petitioners' administrative and judicial claims for refund in order to ascertain whether the Court of Tax Appeals properly acquired jurisdiction on this case.

Section 229 of the 1997 NIRC, as amended, provides the proper procedure in filing a claim for refund of erroneously or illegally collected tax, to wit:

> *"Section 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 underprotest 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 therefore, 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."

Based on the foregoing, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA. 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 judicial claim even without waiting for the resolution of the administrative claim in order to prevent the forfeiture of the taxpayer's claim through prescription.[26]

Here, the following dates are relevant to determine the timeliness of the petitioners' claim for refund, thus:

Name of Employee	2012 Income Tax Payment Date	Amount of Payment	Total Payments (Amount Claimed for Refund)	2-Year Prescriptive Period	Date of Filing of Admin. Claim	Date of Filing of Judicial Claim
Irish Fe N. Aguilar	6/21/2013[27]	₱395,383.84	₱395,383.84	6/21/2015	4/15/2015	6/19/2015
Majella R. Canzon	7/12/2013[28]	289,966.00	289,966.00	7/12/2015		
Arlene B. Chavez	7/15/2013[29]	434,002.98	434,002.98	7/15/2015		
Helen B. Cruda	7/15/2013[30]	1,565,838.85	1,565,838.85	7/15/2015		
Maria Amparo M. Dato	6/21/2013[31]	272,343.61	544,687.22	6/21/2015		
	5/24/2013[32]	272,343.61				
Marian L. Lagmay	7/15/2013[33]	127,359.17	127,359.17	7/15/2015		
Vergel K. Latay	7/11/2013[34]	362,118.14[35]	362,118.14	7/11/2015		
Princess O. Lubag	8/27/2013[36]	261,305.76	261,305.76	8/27/2015		
Ruth C. Mangrobang	7/12/2013[37]	133,865.28	133,865.28	7/12/2015		
Sheila Marie F. Mariano	7/15/2013[38]	20,055.89	20,055.89	7/15/2015		
Arlene P. Porras	7/12/2013[39]	209,744.78	491,752.05	8/30/2015		
	8/30/2013[40]	282,007.27				

We note that Ms. Dato and Ms. Porras paid their income taxes in installment. In such case, "the prescriptive period of two (2) years should be counted from the date of the final payment" following the ruling in the cases of *Collector of Internal Revenue v. Antonio Prieto*[41], *et.*

[26] Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue, G.R. No. 182582, April 17, 2017.
[27] Exhibit "P-2".
[28] Exhibit "P-9".
[29] Exhibit "P-13".
[30] Exhibit "P-7".
[31] Exhibit "P-25".
[32] Exhibit "P-24".
[33] Exhibit "P-29".
[34] Exhibit "P-34".
[35] For the refund claim of Vergel K. Latay, only P362,118.14 out of P479,113.76 is duly supported by proof of payment.
[36] Exhibit "P-40".
[37] Exhibit "P-44".
[38] Exhibit "P-49".
[39] Exhibit "P-53".
[40] Exhibits "P-54" to "55".
[41] G.R. No. L-11976, August 29, 1961.

al., Commission of Internal Revenue vs. Carlos Palanca[42] and *Commission of Internal Revenue vs. TMX Sales, Inc.*[43]. Thus, the prescriptive period for those employees should be reckoned on their second payment.

By such reason, this Court agrees with petitioners' contention that all of them were able to timely file their administrative and judicial claims for refund on April 15, 2015[44] and June 19, 2015[45], respectively, or within the two-year prescriptive period. Consequently, this Court acquires jurisdiction over the instant case.

We shall now ascertain whether petitioners are entitled to the refund of income taxes paid for the taxable year 2012 pursuant to the Decision of RTC Mandaluyong City, Branch 213, dated September 30, 2014, declaring Section 2(d)(1) of RMC No. 31-2013 void.

We hold that the RTC Mandaluyong City's Decision in Civil Case No. MC14-8775 is irrelevant in the resolution of the present controversy since only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[46]

Further, the validity of the subject RMC is still in question before the Highest Court of the land. Thus, the said case cannot be relied upon in resolving the case at bench.

We shall now determine if the compensation received by petitioners for their services rendered to ADB for taxable year 2012 is exempt from income tax.

To begin with, under Sections 23(A) and 24(A)(1)(a)1997 NIRC, as amended, resident citizens are generally subject to tax on income derived from all sources within and without the Philippines, to wit:

> "SEC. 23. General Principles of Income Taxation in the Philippines.- Except when otherwise provided in this Code:

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[42] G.R. No. L-16626, October 29, 1966.
[43] G.R. No. 83736, January 15, 1992.
[44] Exhibit "P-4".
[45] See Footnote No. 1.
[46] Article 8, Civil Code of the Philippines. *De Mesa v. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685 (2005); *The Philippine Veterans Affairs Office v. Segundo*, 247 Phil. 330 (1988); *Ang Ping v. RTC, Manila, Branch 40*, 238 Phil. 77 (1987); *Floresca v. Philex Mining Corporation*, 220 Phil. 533 (1985).

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;

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;"

On the other hand, Section 32 of the 1997 NIRC, as amended, enumerates certain items which are excluded from gross income and thus, exempted from taxation, viz.:

"SEC. 32. Gross Income. –

(A) General Definition. - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx xxx.

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx.

(5) **Income Exempt under Treaty. - Income of any kind to the extent required by a treaty obligation binding upon the Government of the Philippines.**

xxx xxx xxx."

Based thereon, in the absence of any specific grant of income tax exemption, like treaty or international agreements, citizens or nationals of Philippines are generally taxable on all income derived from all sources within and without the Philippines.

We shall now determine whether the Philippine government accorded tax exemption privileges to all officers and employees of ADB.

A short historical backdrop is necessary for a clearer insight of this issue.

To recall, petitioners' claim for refund is anchored on paragraph 2, Article 56 of "The Agreement Establishing the Asian Development Bank"[47] (ADB Charter) which provides:

> "EXEMPTION FROM TAXATION
>
> 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."**

The foregoing was ratified and confirmed by then President Ferdinand E. Marcos in this wise:

> "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

[47] Executed on December 4, 1965.

> Philippines, ratify and confirm the said Agreement and every article and clause thereof, subject to the reservation that the Philippine **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."**

The Senate of the Philippines, through its Senate Resolution dated March 16, 1966[48], concurred in the ratification of the ADB Charter by then President Ferdinand E. Marcos.

In relation thereto, Article XII, Section 45 (b) 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[49] (ADB Headquarters Agreement) specifically provides that officers and staff of the ADB, subject to the power of the Philippine Government to tax its nationals, is exempt from taxation on salaries and emoluments paid by the ADB, to wit:

> "ARTICLE XII
>
> Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others
>
> x x x x
>
> 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) x x x x
>
> (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**;
>
> x x x x" (Boldfacing and underscoring supplied)

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[48] See Par. 1 of page 13 of RTC Decision in Civil Case No. MC14-8775, Docket, p. 192.
[49] Entered into and signed on December 22, 1966.

It is evident from the foregoing that the tax exemption granted to ADB personnel is not absolute based on the following phrases stated in the afore-quoted Agreements: "except where a member x x x 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" and "subject to the power of the Government to tax its nationals". We find the said the phrases to be an express reservation on the part of the Philippine government to tax the salaries and emoluments paid by the ADB to Philippine citizens or nationals.

The word "reservation" is defined as follows:

> "The establishment of a limiting condition or qualification; esp., a nation's formal declaration, upon signing or ratifying a treaty, that its willingness to become a party to the treaty is conditioned on the modification or amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty."[50]

Had it been the intention of the Philippine Government to exempt from income tax the salaries or emoluments that its citizens or nationals would derive from ADB, then it could have stated it in a language clearly pointing towards that intent, without any declaration as to the retention or reservation of its right to tax the Filipino employees of ADB.

Thus, the Court shall now discuss the propriety of the retroactive application of RMC No. 31-2013 to the income of Filipino employees of ADB for taxable year 2012.

This particular issue is far from being novel as this Court had the opportunity in the recent case of *Cristeta May Galang, Caridad Ortega, Mildred Villareal, Roan Marie Yngson, Tanglaw Lupe Gutierrez, and Trinidada Jacob vs. Commissioner of Internal Revenue*[51] to explain the necessity for the prospective application of RMC No. 31-2013 on account of justice and equity in this wise:

> "This court is well aware of the hornbook doctrine in statutory construction that laws operate prospectively only and never retrospectively, unless the legislative intent to the contrary is made manifest either

[50] Black's Law Dictionary, Eight Edition, p. 1334.
[51] CTA Case No. 9081, June 8, 2017.

by the express terms of the statute or by necessary implication. Article 4 of the New Civil Code provides that 'Laws shall have no retroactive effect, unless the contrary is provided.'

In the instant case, the assailed **RMC 31-2013 stated under its Section 7. EFFECTIVITY, that "This Circular shall take effect immediately.** xxx." However, in reality, the respondent proceeded to collect from the petitioners income tax payments starting 2012 despite the fact that the RMC took effect only on May 2, 2013.

Section 246 of the 1997 Tax Code provides:

> 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 supplied)

As shown in the preceding recital of facts, petitioners neither committed fraud nor acted in bad faith when they failed to pay their income taxes to the government. To believe that they are exempt from income tax obligation based on their limited layman's understanding of the ADB Charter and its declared tax exempt status, is not to be taken against them. The contradictory official statements of the BIR sowed confusion to the ADB employer as well as to its employees with regard to their taxability under the international agreements.

True, the inaction on the part of the previous BIR commissioners to enforce the collection of income taxes from petitioners does not estop the respondent from collecting said taxes. This court is mindful of the well-entrenched principle that the government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. However, this rule admits of exceptions in the interest of justice and fair play.

In the instant case, the acts of the respondent to set up kiosks in the lobby of ADB to collect taxes from and eventually the filing of criminal case for tax evasion against some ADB Filipino employees in order to collect past due income taxes for taxable year 2012 had prejudiced the status of the petitioners.

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*, the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now the Section 246 of 1997 Tax Code as to respondent's rulings or circulars, viz:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. Non-retroactivity of rulings. - Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the relocation, modification, or reversal will be prejudicial to the taxpayers, except in the following cases: (a) where the taxpayer deliberately mis-states 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 for emphasis)
>
> **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.** <u>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.</u> 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 exceptions are concerned, admittedly, petitioner does not fall under any of them. (Emphasis and underscoring ours)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.,* it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.*
>
> The applicable law is Sec. 246 of the Tax Code which provides-
>
> Sec. 246. *Non-retroactivity of rulings.*- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the

> Commissioner of Internal Revenue 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 in 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.
>
> Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax. (Emphasis ours)"

As pointed out earlier, the instant case involves a claim for refund in the amount of ₱4,743,330.80. However, upon review of the records, the Court notes that, out of the ₱479,113.76 refund claim of Vergel K. Latay, only the amount of ₱362,118.14 was duly supported by proof of payment. Thus, the remaining claim of Vergel K. Latay in the amount of ₱116,995.62 shall be denied for being unsupported.

As for the rest of the claims totaling ₱4,381,212.66, the Court finds the same meritorious for refund for having complied with the provisions of Sections 204(C) and 229 of the NIRC of 1997, as amended, and for having been properly substantiated with proofs of payment of income taxes for the taxable year 2012.

In light of the foregoing, We **PARTIALLY GRANT** petitioners' Petition for Review in the aggregate sum of ₱4,626,335.18:

Name of Employee	Amount of Tax Refund
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	362,118.14
Princess O. Lubag	261,305.76

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Ruth C. Mangrobang	133,865.28
Sheila Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	₱4,626,335.18

Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the reduced amount of **₱4,626,335.18** to be individually allocated based on the aforementioned tabular summary, representing the illegally collected income taxes for taxable year 2012.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

CATHERINE T. MANAHAN
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, Second Division

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IRISH N. AGUILAR ET AL., Petitioners,	**CTA CASE NO. 9073**
	Present:
-versus-	Castañeda, Jr., *Chairperson*, Casanova, and, Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 0 1 2017 4:28 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

With due respect, I register my dissent to the grant of refund of ₱4,626,335.18 representing income taxes paid by the petitioners in 2013.

I am of 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 Concurring and Dissenting Opinion in *Cristeta May Galang et al. v. Commissioner of Internal Revenue.*[1]

As in *Galang*, all the petitioners in this case, who are claiming for refund of allegedly erroneously and/or illegally collected income tax under Section 229, are Filipino employees of the Asian Development Bank (ADB).

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[1] CTA Case No. 9081, June 8, 2017.

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:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity; *gr*

(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,[2] 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.[3] ℘

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[2] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130.

[3] "**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

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
>
> <u>However, it has been observed that the foregoing provisions have been a source of confusion on the correct tax treatment of the compensation income earned by Philippine nationals and alien individuals employed by foreign governments/embassies/diplomatic missions and international organizations.</u> <u>**To clarify, the exemption from withholding taxes on the compensation of**</u>

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

> **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 v. Court of Tax Appeals*,[4] an *assessment* case cited in the *ponencia*, wherein the revocatory administrative issuances were not given retroactive application. In said case, the Supreme Court held 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. Je

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

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 has been *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.*[5] 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.[6] 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.[7] 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[8] 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 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."[9] Based on this definition, RMC 31-2013 is an

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[5] *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.

[6] *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.

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

[8] "**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."

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

interpretative rule issued by the administrative agency headed by the respondent.

In *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.,*[10] 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 person or party in particular but concern all those belonging to the same class which may be covered by the said rules</u>. 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.

"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."

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

> 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.*,[11] 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*:[12]

> "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

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

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

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.[13] 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.[14]

Therefore, I vote to deny the petition entirely.

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

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

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