REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MARIA LORENA DINO, ET AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9083

Members:

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

Promulgated:

NOV 20 2018 9:10 Am

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution are the following:

1. Petitioners' *Motion for Partial Reconsideration* filed on October 11, 2018 without respondent's Comment; and,
2. Respondent's *Motion for Partial Reconsideration (Re: Decision dated September 25, 2018)* filed on October 11 2018 with petitioners' Comment/Opposition filed on November 5, 2018.

Both parties move for the reconsideration of the Court's Decision dated September 25, 2018, the dispositive portion of which reads:

> **"WHEREFORE,** in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED.**
>
> Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of Php9,566,626.40 to be

individually allocated based on the tabular summary provided below, representing the illegally collected income taxes for taxable year 2012:

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

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

SO ORDERED."

Petitioners' Arguments

Petitioners oppose the stand of this Court when it ruled that the statements contained in the charter of the Asian Development Bank (ADB Charter) and the subsequent presidential ratification, is subject to the Philippine government's right to tax the salaries and emoluments paid by ADB to Philippine citizens. *an*

Petitioner maintains that the "reservation" of the right to tax the salaries of Philippine nationals is not the same as an outright retention of the right to tax and definitely not an intention to tax, hence the controverted "reservation" clause in the ADB charter is not "self-executing" and as such necessitates a law to put it into effect. It follows then that absent any implementing legislation, the Filipino employees of ADB should enjoy the tax-exempt privileges accorded by the ADB charter.

Petitioners put forth the theory that the 1997 National Internal Revenue Code (NIRC) cannot override the provisions of the ADB Charter as the former is a law of general application while the latter is a specific law. Even assuming that the 1997 NIRC is the prevailing law, petitioners submit that it is still not clear what rates should apply to the Filipino employees of ADB – will it be the 15% preferential tax rates or the graduated rates?

Petitioners also question the authority of this Court in ruling on the legality of the income tax imposition on the compensation of the Filipino employees of ADB because a case with identical issues is already pending before the Supreme Court. Petitioners call on this Court to observe judicial courtesy and limit itself to disposing of the issue on whether or not they complied with the requisites for a tax refund while the issue of the legality of the tax imposition is pending with the Supreme Court.

Petitioners now pray that this Court's decision dated September 25, 2018 be partially reconsidered and likewise grant the refund of income tax payments for their 2013 income, in addition to the refund already granted for the year 2012.

Respondent failed to file any comment and/or opposition to petitioners' *Motion for Partial Reconsideration.*

<u>Respondent's Arguments</u>

In his *Motion for Partial Reconsideration,* respondent objects to the non-retroactive application of the provisions of Revenue Memorandum Circular (RMC) No. 13-2013 as regards the claim for refund of 2012 income taxes of petitioners which resulted in the refund of Php9,566,626.40. Respondent cites the decision of this Court in the recent case of *Majella R. Canzon and Helen B. Cruda vs. Honorable Caesar R. Dulay*[1] which explicitly ruled that the petitioners are not exempt from paying income tax on their salaries and emoluments. In addition, respondent also cites the Court's decision in the case entitled *Edzen Jogie B. Garcia vs. CIR*[2] which ruled that as Filipino citizens and residents of the Philippines, petitioners are subject to income tax from sources derived within and without the Philippines pursuant to Section 23 of the 1997 National Internal Revenue Code, as amended.

Respondent reiterates the arguments set forth in his Answer to the Petition for Review and maintains that the taxation of income is based on Citizenship, Residency and Source Principles. Under the Citizenship Principle, all citizens of the Philippines, whether resident or non-resident, are subject to the country's income tax law. Under the Residency Principle, the basis of the imposition of all income tax in this case is the residence of the taxpayer. Under the Source Principle, the basis of the imposition of income tax is the source of the income, meaning, all income derived from sources within the Philippines shall be subject to income tax. Under this principle, even non-resident citizens or aliens and foreign corporations who derive income from within the country are subject to income tax.

In answer to petitioners' averments that there is a need of an enabling or executing law to implement the "Reservation" clause in the ADB Charter, respondent points to the 1997 NIRC as the law which

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[1] CTA Case No. 9384, September 28, 2018.
[2] CTA Case 9075, February 9, 2017. *un*

provides that Filipinos are liable to tax from income derived from within and without the Philippines.

Respondent militates against the non-retroactive application of RMC 31-2013 because the taxation of salaries and emoluments of the Filipino employees of ADB is not anchored solely on its provisions hence is not dependent on whether the said RMC is valid or invalid. The taxability of the compensation of the Filipino employees of ADB is based on the existing provisions of the 1997 NIRC, as amended, hence irrespective of the existence of RMC 31-2013, the obligation of resident citizens or nationals to pay income tax on salaries paid to them by ADB, commenced on the taxable year that they were employed by ADB.

Respondent prays that the decision dated September 25, 2018 be reconsidered and set aside and that the Petition for Review be dismissed for lack of merit.

RULING OF THE COURT

The Court finds that both parties' motions lack merit.

As to petitioners' *Motion for Partial Reconsideration*, we maintain our resolve not to reverse our ruling that the compensation income of the Filipino employees of the ADB is subject to tax and that an enabling law to put into effect the provisions of the ADB Charter as to the taxability of such income is no longer necessary as the Philippines has its own Tax Code imposing the types and rates of tax of citizens of the Philippines. We quote the relevant portions of the assailed Decision disposing of this issue, thus:

> "In our analysis of the taxability of the compensation received by Filipino employees of the ADB, we go no further than the statements contained in the ADB Charter and the presidential ratification which followed where then President Ferdinand Marcos declared that the Philippine

> government "retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals of the Philippines." This Court finds that this particular statement overrules and clarifies any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB **and upholds the applicability of national laws on taxation insofar as their compensations are concerned."**
>
> **Under our national tax laws, Philippine citizens are taxable on their income derived from both inside and outside the country."** (emphasis supplied).

Petitioners additionally contend that this Court should not have ruled on the issue of the legality of the imposition of income taxes on the compensation received by the Filipino employees of ADB because there is a pending case with the Supreme Court involving the same factual circumstances and issue. Petitioners aver that the Court should have observed judicial courtesy and limited itself to the disposition of the issue of whether they complied with the requisites for a tax refund.

The Court finds no merit in this contention.

We have disposed of the issue on judicial courtesy in our Resolution in the case of *Cristeta May Galang, et.al., vs. CIR*[3] when we ruled, thus:

> "xxx judicial courtesy applies only when there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court. As admitted in the instant motion, the pendency of the case in the Supreme Court was due to the dismissal of respondent's appeal by the Court of Appeals on a procedural matter wherein the respondent filed a Notice of Appeal instead of a Petition for Review.
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> On the other hand, the decision rendered by this Court dwells on the reservation made by the

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[3] Court's Resolution in CTA Case No. 9081 dated May 17, 2018. *[initials]*

> Republic of the Philippines on the taxability of the income earned by Filipino employees working in the Asian Development Bank (ADB). Thus, judicial courtesy will not apply because the issue before the highest court will not be rendered moot and moribund by the continuation of the proceedings in this Court *a quo.*"

We now proceed to resolve respondent's *Motion for Partial Reconsideration.*

Respondent's argument against non-retroactivity of the provisions of RMC 31-2013 is bereft of merit and ignores the basic tenets of good faith, equity and fair play. As clearly enunciated in this Court's Decision dated September 25, 2018, the petitioners relied heavily on the various pronouncements made by revenue officials with regard to the taxability of the income tax payments of ADB personnel hence they should not be faulted for not paying the taxes on their compensation income prior to the issuance of said RMC 31-2013.

A judicious ruling on the matter would dictate that we consider the taxpayer's reliance on the positions taken by the tax authorities on the issue of whether or not the income of Filipino ADB personnel are subject to income tax. Verily, the provisions in question present a "difficult question of law".

In a slew of refund cases, the Supreme Court has placed a premium on taxpayer's reliance on an erroneous interpretation of the law particularly on a difficult question of law[4] hence applying the prospectivity rule in order to avoid injustice. Even respondent, in his Motion for Partial Reconsideration, admitted that RMC 31-2013 was for the purpose of shedding light on the "confusion" relative to the correct tax treatment of the compensation income earned by Philippine nationals employed by ADB.

Overall, we find the arguments presented by both parties to be a mere rehash of the same facts and

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[4]CIR vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Taganito Mining Corporation vs. CIR, G.R. No. 19613, February 12, 2013.

issues which have already been passed upon extensively in the assailed Decision.

WHEREFORE, in light of the foregoing premises, Petitioners' *Motion for Partial Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision dated September 25, 2018)* are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice