REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ERWIN CASACLANG,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE (RDO 041 Mandaluyong City)

Respondent.

CTA CASE NO. 9091

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO,
RINGPIS-LIBAN, ***JJ.***

Promulgated:

AUG 0 6 2018
4:05 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The case involves a Petition for Review filed by Erwin Casaclang, praying for the refund of his alleged erroneously paid and illegally collected income tax in the amount of Two Hundred Twenty-Eight Thousand Nine Hundred Sixteen Pesos and 81/100 (Php228,916.81) for calendar year 2012.

The Facts

Petitioner Erwin Casaclang is a Filipino, of legal age, married, and with address at 28 Franc Street, CBE Townhomes, Pasong Tamo, Quezon City. He is an employee of the Asian Development Bank ("ADB").[1]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed

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1 Petition for Review, Pars. 1 and 4, Docket, pp. 10-11.

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 ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham 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 International Organizations Situated in the Philippines. It provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. The pertinent provisions are quoted as follows:

> "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.
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants

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performing missions for the Bank, shall enjoy the following privileges and immunities:

xxx xxx xxx

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

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

xxx xxx xxx

SECTION 3. *Filing of Income Tax Returns and Declaration of Compensation Income.* – **Philippine nationals and alien individuals who were not granted tax exemption or immunities under duly recognized international agreements or local laws shall file their annual income tax returns on or before the 15th day of April each year using BIR Form No. 1700 or 1701, as may be applicable, declaring therein the amount of their respective compensation income for the preceding taxable year for the services rendered or performed for such foreign government embassy/diplomatic mission, agency or international organization.**

The annual income tax return shall be filed with the Revenue District Office, Authorized Agent bank, or other proper office which has jurisdiction over the employee's legal residence or principal place of business. It may also be filed with the Revenue District Office or Authorized Agent bank where the principal office of his/her employer is situated." *(Emphasis supplied)*

In compliance with RMC No. 31-2013, which was given retroactive effect, Petitioner paid the amount of Php228,916.81 on July 12, 2013, representing income tax due for his compensation income during the period January to December 2012.[2]

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2 Exhibits P-2, P-3 and P-5, Income Tax Return for the period January to December 2012, Official Receipt and Certification of Payment, Docket, pp. 167-169, 170 and 204.

On February 14, 2014, Mr. Erwin Salaveria and Ms. Portia Gonzales, Filipino employees of the ADB, filed a Petition to Nullify Section 2(d)(1) of RMC No. 31-2013, with the Regional Trial Court ("RTC") Branch 213 of Mandaluyong City, docketed as Civil Case No. MC14-8775.

On September 30, 2014, the RTC promulgated its decision in Civil Case No. MC14-8775 declaring Section 2(d)(1) of RMC No. 31-2013 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. A Motion for Reconsideration was filed by Respondent, but it was denied on January 9, 2015.

Respondent appealed the lower court decision to the Court of Appeals, docketed as CA-G.R. CV No. 104374, which dismissed it *via* Resolution dated July 3, 2015. Respondent filed a Motion for Reconsideration, but it was also denied by the Court of Appeals.

Respondent then elevated the case before the Supreme Court by filing a Petition for Review on Certiorari. The case is still awaiting resolution by the High Tribunal.

As an effect of the favorable ruling of the lower court, Petitioner filed an administrative claim for refund with the Revenue District Office ("RDO") No. 41 and a judicial claim with the Court of Tax Appeals ("CTA") both on July 13, 2015, claiming that the income tax paid was erroneous.[3]

Respondent filed his Answer on August 24, 2015, raising the following denials and defenses:

> "7. She specifically denies the material allegations contained in paragraph 8 of the Petition for Review.
>
> The truth being, Regional Trial Court, Branch 213, Mandaluyong City (RTC Branch 213), has no jurisdiction in taking cognizance of the case filed by the employees of the Asian Development Bank pertaining to the validity of Revenue Memorandum No. 31-2013 (RMC 31-2013).
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> In the case of the Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue, the Supreme Court held that:

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3 Exhibits "P-1" and "P-1-a", Docket, pp. 165-166.

> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**

Granting without admitting that RTC Branch 213 has jurisdiction over the validity of RMC 31-2013, its decision has yet to become final as it was appealed to the Court of Appeals;

8. She specifically denies the material allegations contained in paragraph 9 of the Petition for Review.

The instant case was filed beyond the two year prescriptive period counted from the alleged payment of tax by the Petitioner on July 12, 2013. The period to file cannot be extended up to the next working day even if the last day falls on a Sunday.

9. She specifically denies the material allegations contained in paragraph 10 of the Petition for Review.

The administrative action was action *[sic]* was filed on July 13, 2015. The same day the judicial action was filed by the Petitioner. Thus, the administrative claim was filed beyond the two year prescriptive period.

10. She specifically denies the material allegations contained in paragraphs 11, 12 and 13 of the Petition for Review.

As discussed in paragraph 7 hereof, RTC Branch 213 has no jurisdiction in taking cognizance of the case filed by the employees of the Asian Development Bank pertaining to the validity of RMC 31-2013;

Further, Respondent contends that the Petitioner being a Filipino citizen and a resident of the Republic of the Philippines is subject to the Philippine Income Tax;

Sections 23 and 22 (E) of the 1997 National Internal Revenue Code, as amended, specifically states:

> *'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'*
>
> *'Section 22. Definitions. – When used in this Title:*
>
> *xxx*
>
> *(E) The term 'nonresident citizen means:*
>
> *(1) A citizen of the Philippines who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad with a definite intention to reside therein.*
> *(2) A citizen of the Philippines who leave the Philippines during the taxable year to reside abroad, either as immigrant or for employment on a permanent basis.*
> *(3) A citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.*
> *(4) A citizen who has been previously considered as nonresident citizen and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippine shall likewise be treated as nonresident citizen for the taxable year in which he arrives in the Philippines with respect to his income derived from sources abroad until the date of his arrival in the Philippines.*

> (5) *The taxpayer shall submit proof of the Commissioner to show his intention of leaving the Philippines to reside permanently abroad or to return to and reside in the Philippines as the case may be for purposes of this Section.'*

Taxation of income in the Philippines is based on Citizenship, Residency, and the Source Principle.

Under the *Citizenship principle*, the basis of the imposition of income tax is the taxpayer's citizenship. All citizens of the Philippines, whether resident or non-resident, are subject to our income tax law. In the case of resident citizens, they are subject to income tax derived from within and without the Philippines, while non-resident citizens are only subject to the income tax on the income derived from within the Philippines.

Under the *Residence principle*, the basis of the imposition of all income tax in this case is the residence of the taxpayer. All income derived by persons residing in the Philippines, whether citizens or aliens, whether domestic corporations or foreign corporations, shall be subject to income tax on the income derived from sources within the Philippines.

Under the *Source Principle*, the basis of the imposition of income tax is the source of the income. All income derived from sources within the Philippines shall be subject to income tax. Thus, even nonresident citizens or aliens and foreign corporation who derive income from within the country are subject to income tax. This also follows the territoriality principle.

Petitioner is a Filipino citizen and he is an employee of the Asian Development Bank, with business address at ADB Avenue, Ortigas Center, Pasig City. There is no doubt that Petitioner is liable for income tax on the compensation income he has earned on account of such employment.

When the ADB Charter was created in 1965, it was expressly stated in Article 54 on Exemption from Taxation that:

> *'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, except where a member deposits with*

its instruments 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.'

In signing the ADB Headquarters Agreements in 1956, the Philippine government accorded tax exemption privileges to the ADB and its staff but held on to the State's inherent power to tax, and thus made a clear limitation in so far as its right to tax its nationals. Hence, Section 45(b), Article XII of the ADB Headquarters Agreement provides that:

'Article XII
PRIVILEGES AND IMMUNITIES OF GOVERNORS AND OTHER REPRESENTATIVES OF MEMBERS, DIRECTORS, PRESIDENT, VICE-PRESIDENT AND OTHERS

Section 45
Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for Bank, shall enjoy the following privileges and immunities:

xxx

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

In the same year, the Philippine Congress issued Resolution No. 06 to the effect that 'the Senate of the Philippines concurs, as it hereby concurs, in the ratification by the President of the Philippines of the aforesaid Agreement Establishing the Asian Development Bank, subject to the ***reservation*** that the Philippines declares that it retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals of the Philippines pursuant to Article 56, paragraph 2, of the Agreement'. (emphasis supplied)

Explicit from the foregoing is that the Philippines, by making a 'reservation', the Republic of the Philippines 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.

Petitioner may claim that the coverage of the Article XII of 'Headquarters Agreement' only concerns the privileges and immunities of the higher officials of the ADB. Such contention is utterly misplaced since the title of the Article itself did not restrict the application of the said article of ADB's higher officials only, to wit: PRIVILEGES AND IMMUNITIES OF GOVERNOR'S AND OTHER REPRESENTATIVES OF MEMBERS, DIRECTORS, PRESIDENT, VICE-PRESIDENT AND OTHERS.

Moreover, the above-quoted Section 45 of the said Article referred to Officers and Staff of the bank as well.

BIR ITAD Ruling further states 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.

The construction of the word 'Reservation' can only be accorded its plain meaning if, before the Philippines entered into the Agreement with ADB, Filipinos earning income from without the Philippines have no obligation to pay taxes in the Philippines. Since 1939, Filipinos earning income derived from outside the Philippines are liable for tax from such income. This is true when one considers Section 37 in relation to Section 45 of the Internal Revenue Code of 1939, Section 21 in relation to Section 27 of the National Internal Revenue Code of 1997, and Section 24 in relation to Section 51 of the National Internal Revenue Code of 1997.

To accord the word 'reservation' with an ordinary meaning will undermine the force of existing tax laws. Thus, a contrary interpretation would mean subverting Philippine sovereignty by virtue of a mere Agreement just for the purpose of exempting some Filipinos from income tax. While international comity is laudable and a Constitutional requirement, the power to tax is an inherent power of the State that cannot be bargained away so easily.

Same BIR ITAD Ruling added that the ADB Charter is not a law, but an agreement among Contracting States. That being the case, it is a derogatory interpretation that exempting from tax includes exemption from tax of Filipino citizens without express mention of Filipino exemption.

Pacta sunt servanda and international comity dictates that the Philippines should honor its international agreements in good faith. The Philippines has arguably complied with these principles of international law by according the proper concessions and tax breaks to ADB activities. This duty ends where the concern is a domestic matter involving the taxability of the income of its citizens. 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.

Petitioner may contend that subsequent practice, as regards the ADB charter, is non-taxability of the income of its employees, arguing that ADB employees have never been subjected by the taxing authority ever since the Philippines' ratification of the ADB Charter. It insists that an operative act is required to change the norm followed after the ratification of the ADB Charter.

It is as if Petitioner would like this Honorable Court to treat such subsequent practice into a custom which is recognized source law. It is a standard rule that customs which are contrary to law shall not be countenanced.

In the case of Malang vs. Moson, the Supreme Court significantly held that:

> *'The Court is duty-bound to resolve that the instant case applying such laws and rights as are in existence at the time the pertinent civil acts took place, and is unable to supplant governing law with customs, albeit how widely observed.'*

RMC 31-2013 is only a clarification of existing policies etched in Philippine law. Thus, this alleged subsequent practice, which is contrary to existing law, cannot in any way displace what the law had provided from the start.

RMC 13-2012 *[sic]* is valid because it is only a mere clarification of existing policies etched in Philippine law.

As stated in BIR ITAD Ruling No. 018-14, the 'Reservation' made by the Philippines regarding its right to tax its citizen 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.

Petitioner anchors his claim that he is exempted from income tax on the provisions of Revenue Memorandum Order *[sic]* No. 31-2013 which provides:

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(d) Those Employed by Organizations Covered by Separate International Agreements or Specific Provision of Law –

1. Asian Development Bank (ADB)

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

'Article XII

xxx

Section 45

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

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>

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

The claim of the Petitioner that he is exempt from the payment of income tax has no legal basis. Under the above-cited revenue issuance, it is clear that the exemption is still subject to the power of the Government to tax its nationals, including the herein Petitioner. Thus, reverting to the earlier discussion, Section 23, in relation to Section 24 of the National Internal Revenue Code of 1997, as amended, are the laws on the matter. As previously submitted, Petitioner, being a Filipino citizen and national is taxable from his income within and outside the Philippines;

Petitioner must prove that he was able to comply with the following documentary and legal requirements as provided under Section 229 of the 1997 National Internal Revenue Code, as amended, to wit:

1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;

2. That if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from the receipt of the denial AND within said two (2) year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed.

3. The claim for refund must be a categorical demand for reimbursement;

4. There must be a proof or payment of the erroneously or illegally collected taxes; and

5. No refund shall be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

Petitioner must provide that his income is not taxable or exempt from income tax;

Petitioner must provide the basis for the alleged tax exemptions;

Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical. The surrender of the power to tax, when claimed must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State. (*Smart Communications, Inc. vs. The City of Davao, et al G.R. No. 155491*)

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. (*FEBTC vs. CIR, G.R. No. 149589, September 16, 2006*)

In the case of CIR vs. Rosemarie Acosta, G.R. No. 154068 dated August 3, 2007, the Honorable Supreme Court ruled, to wit:

> '*As tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which her right arises, it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.*'"

Respondent likewise alleged, as special and affirmative defenses, that this Court has no jurisdiction on the petition as the Petitioner failed to file the claim for refund within the two-year prescriptive period; and that the lower court has no jurisdiction to rule on the validity of the questioned revenue memorandum.

The Pre-Trial Conference was held on February 2, 2016.[4] Thereafter, Petitioner and Respondent jointly filed their Joint Stipulation of Facts and Issues[5] on February 17, 2016.

On March 1, 2016, a Pre-Trial Order[6] was issued by this Court.

Petitioner himself testified before the Court on July 4, 2016 and identified his Judicial Affidavit.[7] During the said hearing, Petitioner manifested his intention to file a motion to suspend the proceedings. The Court granted Petitioner fifteen (15) days to file his motion and Respondent ten (10) days from receipt thereof to file his comment.

On July 19, 2016, Petitioner filed his Motion to Suspend Proceedings on the ground that the decision of the RTC is pending appeal and the instant petition is in danger of being dismissed for lack of basis. Petitioner also argued that in order to safeguard his remedy to refund the tax erroneously paid within the required period, Petitioner is constrained to request for a suspension of proceedings pending final resolution of the decision regarding the validity of RMC No. 31-2013. Respondent failed to comment on said motion.

The Court denied Petitioner's motion *via* Resolution dated August 12, 2016, stating that an action may be suspended only when there is a possibility of a compromise and that the pendeny of the appeal before the Court of Appeals[8] cannot be a ground for suspending the proceedings in a civil case.

Petitioner then filed his Formal Offer of Evidence[9] on September 2, 2016, consisting of Exhibits "P-1" to "P-7a", inclusive of submarkings. The Court admitted all of the formally offered exhibits as Petitioner's evidence, except for Exhibit "P-3a".

Prior to the scheduled hearing for Respondent's presentation of evidence, Respondent filed a Motion to Dismiss on January 23, 2017. In his Motion, Respondent prayed that the petition be dismissed for violating Section 5 of Rule 7 of the Revised Rules of Court, which requires a certification against forum shopping. Respondent asserted that Petitioner is well aware of the appeal pending before the Supreme Court assailing the decision of the RTC, as confirmed by the CA and such was not alleged by Petitioner in this case. The

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[4] Minutes of the Hearing, Docket, p. 100.
[5] *Id.*, pp. 119-120.
[6] *Id.*, pp. 123-126.
[7] Minutes of the Hearing, *Id.*, p. 139.
[8] The decision was pending before the Court of Appeals at the time the Resolution was promulgated. Currently, it is pending before the Supreme Court.
[9] *Id.*, pp. 162-164.

present case was filed before the CTA with a false statement in the Verification and Certification. Moreover, there is now an imminent possibility of conflicting resolutions of the CTA and the Supreme Court.

In addition, Respondent argued that the instant case should be dismissed due to lack of jurisdiction over the subject matter as provided under Section 1(b) of Rule 16 of the Revised Rules of Court. As the issue on the validity of RMC No. 31-2013 had been brought before the Supreme Court, the decision of RTC Branch 213 declaring RMC No. 31-2013 as void, has not yet attained finality. Hence, RMC No. 31-2013 remains valid and the tax collected from Petitioner is not erroneous or illegal. The Petition for Review is therefore bereft of merit, in fact and in law.

The Court denied Respondent's Motion to Dismiss, declaring that there is no forum-shopping and that this Court has jurisdiction due to the timely filing of the refund claim within the required two-year period.[10]

During the hearing held on July 3, 2017, Respondent, through counsel, manifested that he has no evidence to present there being no report of investigation forwarded to him by the assigned Revenue Officer.

Respondent and Petitioner filed their Memoranda on July 4, 2017 and on August 23, 2017, respectively. The Court then declared the case submitted for decision on August 30, 2017.[11]

The Issues

The lone issue to be resolved is whether Petitioner is entitled to the claim for refund of income tax paid.[12]

Discussion/Ruling

The claim for refund was timely filed.

The Court has already ruled on the existence of jurisdiction over this case in its Resolution on the Motion to Dismiss filed by Respondent, citing

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[10] Docket, pp. 226-231.
[11] *Id.*, p. 255.
[12] Joint Stipulation of Facts and Issues, Issue, *Id.*, p. 119.

Petitioner's compliance with Sections 229[13] of the NIRC of 1997, as amended, and Section 3(a)(2)[14] of the Revised Rules of the Court of Tax Appeals.

Thus, the Court will now determine Petitioner's entitlement to refund.

Resident citizens are subject to the graduated scale of income tax in accordance with Section 24(A) of the NIRC of 1997, as amended, unless specifically exempted therefrom under treaty.

Petitioner asserts that its claim for refund of the alleged erroneously paid and/or illegally collected income tax should be granted by this Court in view of the RTC Decision in Civil Case No. MC14-8775 declaring Section 2(d)(1) of RMC No. 31-2013 void.

This Court has held in its previous decisions that the RTC decision in Civil Case No. MC14-8775 is immaterial in the resolution of similar cases filed before this Court. Aside from the fact that Petitioner was not a party to Civil Case No. MC14-8775, the RTC decision is not a binding precedent that forms part of the Philippine legal system. The Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*[15] already explained what constitutes a binding precedent, to wit:

> "Let it be admonished that decisions of the Supreme Court 'applying or interpreting the laws or the Constitution…form part

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[13] 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 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: xxx.

[14] SEC. 3. *Cases within the jurisdiction of the Court in Division.* –

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(2) xxx that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

[15] G.R. Nos. 187485, 196113, and 197156, February 12, 2013 *citing* The Philippine Veterans Affairs Office v. Segundo, G.R. No. L-51570, August 15, 1988.

> of the legal system of the Philippines,' and, as it were, 'laws' by their own right because they interpret what the laws say or mean. Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character. Let it be warned that to defy our decisions is to court contempt."

The Court shall now proceed to review the relevant treaty and legal provisions addressing the tax treatment of the income of ADB employees, such as herein Petitioner.

On December 4, 1965, the Agreement Establishing the Asian Development Bank ("ADB Charter") was executed, Article 56 of which provides:

> "Article 56
> EXEMPTION FROM TAXATION
>
> 1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
>
> 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 supplied)*

On March 16, 1966, in Senate Resolution No. 6, the Philippine Government ratified and confirmed the ADB Charter **<u>but categorically included a reservation of the Philippine's right to tax the Filipino employees of the ADB</u>**, to wit:

> "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, **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.**" *(Emphasis supplied)*

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") dated December 22, 1966 included a similar provision recognizing the right of the Philippine Government to tax Filipino ADB employees, thus:

> "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;
>
> (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." *(Emphasis supplied)*

The afore-quoted provisions of the ADB-related treaties evidently provide for tax exemption of the salaries and emoluments paid by the ADB to its officers and employees, but the same also contains a proviso wherein a member-country, such as the Philippines, may choose to retain its right to tax the salaries and emoluments paid by the ADB to its citizens or nationals. If the Philippine Government intended to exempt the salaries or emoluments that its citizens or nationals would derive from the ADB from income tax, a full ratification of the ADB Charter could have been made, without retaining its right to tax its citizens or nationals.

The NIRC of 1997, as amended, a subsequent legislation which took effect on January 1, 1998, is the law that enables the enforcement of the reservation clauses found in Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Sections 23(A) and 24(A)(1)(a) of the NIRC of 1997, as amended, leave no room for doubt that resident citizens are 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:
>
> (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**;" *(Emphasis supplied)*

Apparently, the above-quoted Tax Code provisions impose tax on the income of resident individual citizens from all sources within and without the Philippines. And in the absence of a specific grant of tax-exemption, the salaries and emoluments received by Filipino employees of the ADB are subject to income tax.

Having settled the basis for the imposition of income tax on Petitioner's compensation from the ADB, the Court will now discuss the propriety of enforcing RMC No. 31-13 to Petitioner's income from the ADB for calendar year 2012.

While RMC No. 31-13 is a mere interpretation of an existing law, justice and equity dictate that it should be applied prospectively. Income of resident citizens employed by foreign governments and for international organizations should be subjected to income tax beginning calendar year 2013.

RMC No. 31-13 was issued by Respondent in calendar year 2013. Nevertheless, Respondent sought to subject Petitioner's income for the previous year (*i.e.*, calendar year 2012) to income tax. In the past, however, compensation income of resident citizens employed by foreign governments and/or international organizations were not subjected to income tax.

While it can be argued that RMC No. 31-13 is a mere interpretation of existing law and should thus be applied even to the compensation income of petitioners for calendar year 2012, the Court holds that it should be applied prospectively in the interest of justice and equity. Consequently, the income of resident citizens employed by foreign governments and/or international organizations should only be subjected to income tax beginning calendar year 2013, the year RMC No. 31-13 took effect.

In the present case, Petitioner received the compensation income being subject to income tax in calendar year 2012. During this period, Petitioner was of the honest belief - and neither did Respondent enforce rules to the contrary - that his compensation income was exempt from tax. When Respondent issued RMC No. 31-13 and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, Petitioner was constrained to file his Income Tax Return for calendar year 2012 and pay the aggregate amount of Php228,916.81 in one payment. Whereas previously, Petitioner's income was not subjected to tax, he now had to come up a substantial amount for an individual in order to settle his income tax liability. Hence, it would be in keeping with justice and equity for the implementation of RMC No. 31-13 to begin prospectively and to apply to compensation income earned by Petitioner beginning calendar year 2013.

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In sum, compensation income of resident citizens is subject to the graduated income tax rates unless expressly exempted under treaty. With the Philippines' reservation in the ADB Charter to the effect that it maintains the right to subject to income tax the compensation of resident citizens employed by the ADB, the rule then is that resident citizens employed by foreign governments and/or international organizations, such as ADB, are subject to the graduated income tax rates under Section 24(A) of the NIRC of 1997, as amended. However, considering RMC No 31-13 was issued in calendar year 2013, the same should be made to apply prospectively in the interest of justice and equity. Hence, compensation income of resident citizens employed by foreign governments and/or international organizations shall only be subject to income tax beginning calendar year 2013.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of Petitioner Erwin Casaclang the amount of Two Hundred Twenty-Eight Thousand Nine Hundred Sixteen Pesos and 81/100 (Php228,916.81), representing his erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
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