REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

MARIA DONA ALIBOSO, JOY ARCINUE, MARY ABIGAIL BACUD, BERNADETTE BIGASIN, MA. PATRICIA LIM, KRISTINE LEA MERCADO, KATHLEEN OSIAS, RAQUEL BERNADETTE VELASQUEZ, JAMILA YASMINA ACHANZAR, SARAH SENAS, THELMA ABIVA, ARNOLD AGUILA, FRANCOISE MARIE ALONZO-CALALAY, KAREN ANDES, LEAH ARBOLEDA, ROSALYN ARIATE, DONATILA BALAGTAS, GLENDA BALATBAT, FATIMA BAUTISTA, MELCHOR BUREROS, PATRICIA CALCETAS, CATHERINE CLARIN, KATHERINE MITZI CO, MA. CRISTINA CONCEPCION, MILETT CONCEPCION, MARTIN ERICSSON CRUEL, CAROLINE VALENTINA CRUZ, LESLIE CRUZ MA. CELINA CRUZ, MARIA SIMONETTE DAQUIS, EDWIN DAVID, CELEDONIA DE FELIPE, FATIMA CHRISTINE DE RAMOS, MELANIE DELA CRUZ, ALELI DELA ROSA, AGNES DIAMANTE, SHIELA DIMAL, MARIE KRISTINE ESTRELLA, SHERYL EVANGELISTA, JANE FANTILANAN, ANGELICA LUZ FERNANDO, ERICKA JOY GAJETE, KRISTINE GALANG, JEMINETTE GATCHALIAN, DOROTHY GERONIMO, PAUL ANTHONY GOKIOCO, LANI GOMEZ, GLEN GONZAGA, GEMMALINE GONZALES, MELANI GONZALES, JHONA GUILLEM, PAMELA GUTIERREZ, DIANA MARIE HERNANDEZ, MA. KRISTINA HIDALGO, IRIS EVADIE	**CTA Case No. 9087** ***Members:*** **DEL ROSARIO**, P.J., Chairperson, **UY**, and **MINDARO-GRULLA**, JJ. ***Promulgated:*** APR 03 2019 ; 11:05 am

MJ

JIMENEZ, LORETA JOVELLANOS, ELIZABETH JUAN, ANGELICA KARUNUNGAN, NORLYN LAGSIT, DARLY JAMES LAPING, NORMAN LU, JOAN REINA LUNA, MANNY MABALOT, AUGUSTUS MAGNO, ELVIRA MARTINEZ, ILUMINADA MENDOZA, DAISY MENDOZA, MARIE MINA, MARIE CHRISTINE MONTOYA, THERESA MORA, JANET MUTYANGPILI, JOCELYN NARCISO, JULIET NECIA, CLAIRE ANN ODSINADA, EMMANUEL ONG, WEMA PACANO, MA. VICTORIA PANTALEON, NAJA PENAS, CHRISTY PLANCO, FARAHTONI PLANCO, MA. THERESA PRADO, KAREN QUIETA, ELAINE QUINTO, ANGELITO RABE, MARY GRACE RAMOS, ARNEL REYES, MA. ELENA ROCES, CHRISTIAN ROMAGOS, MA. LUALHATI RUEDA, CLARK SALAS, MARIA CLARISSA SAMSON, MARCELLA ANN SANTOS, JOAQUIN SARDONA JR., ROWENA SARMIENTO, MA. CORAZON SISON, MA. RITA STA. CRUZ, LEA BENETA SUMULONG, PRECIOUSA SUNGA, SHERYL TAMAYO, JENNIFER TANTAMCO, ALDOUS MOSES TIRONA, MA. ELOISA TUASON, MARIA CECILIA VILLANUEVA, EDNA VILLAREAL, CHARINA VILLARINO, ROWENA VINAN, BRYAN VISAYA, DULCINEA JOY YRAITA, JULIE YU, FLORDELIZA ZACARIAS,

Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

x - x

DECISION

UY, *J.*:

This *Petition for Review* filed by petitioners on July 10, 2015 involves claims for the refund of their alleged income tax payments in the aggregate amount of ₱58,892,068.16 for taxable years 2012 and 2013, the details of which are as follows:

Petitioners	Alleged income tax paid for 2012	Alleged income tax paid for 2013	Total claims
Maria Dona D. Aliboso	₱ 213,653.61	₱ 235,979.00	₱ 449,632.61
Joy I. Arcinue	327,567.68	327,567.68	655,135.36
Mary Abigail C. Bacud	267,927.16	270,169.00	538,096.16
Bernadette B. Bigasin	571,574.00	567,231.00	1,138,805.00
Ma. Patricia A. Lim	419,186.00	414,921.00	834,107.00
Kristine Leah A. Mercado	553,952.42	313,356.00	867,308.42
Kathleen C. Aton-Osias	361,292.89	447,643.00	808,935.89
Raquel Bernadette P. Velasquez	328,545.55	340,709.00	669,254.55
Jamila Yasmina R. Achanzar	130,749.88	147,394.00	278,143.88
Sarah C. Senas	195,138.07	202,098.00	397,236.07
Thelma Gail G. Abiva	294,136.54	294,028.00	588,164.54
Arnold L. Aguila	187,634.47		187,634.47
Franchoise Marie B. Alonzo-Calalay	115,090.98	144,870.00	259,960.98
Karen K. Andes	397,893.35	401,108.00	799,001.35
Leah P. Arboleda	233,601.00	237,029.00	470,630.00
Rosaly P. Ariate-Jimenez	295,938.22		295,938.22
Donatila T. Balagtas	792,952.34		792,952.34
Glenda C. Balatbat	252,231.63	256,810.00	509,041.63
Fatima Mabor Bautista	223,103.94	227,764.00	450,867.94
Melchor R. Bureros	246,833.32	258,092.00	504,925.32
Patricia P. Calcetas	786,591.93	779,718.00	1,566,309.93
Catherine E. Clarin	187,970.47	194,590.00	382,560.47
Katherine Mitzi H. Co	136,487.94		136,487.94
Ma. Cristina N. Concepcion	298,199.64		298,199.64
Milett G. Concepcion	384,323.16	293,383.00	677,706.16
Martin Ericson S. Cruel	397,977.88	381,711.00	779,688.88
Caroline Valentina G. Patacsil-Cruz	365,695.87	380,514.00	746,209.87
Leslie A. Cruz	260,014.11		260,014.11
Ma. Celina S. Cruz	363,248.50	363,781.00	727,029.50
Maria Simonette R. Daquis	186,157.08	197,715.00	383,872.08
Edwin E. David	286,330.33	323,180.00	609,510.33
Celedonia G. De Felipe	646,931.75	479,626.00	1,126,557.75
Fatima Christine N. De Ramos-Blanco	232,256.00	243,268.00	475,524.00
Melanie M. Dela Cruz	452,909.30	458,848.00	911,757.30
Aleli D. Dela Rosa	105,128.65	64,681.00	169,809.65

Agnes V. Diamante	207,075.18		207,075.18
Shiela S. Dimal	451,418.90	444,266.00	895,684.90
Marie Kristine S. Estrella	129,038.47		129,038.47
Sheryl A. Evangelista	138,962.55	148,517.00	287,479.55
Jane I. Fantilanan	136,410.82		136,410.82
Angelica Luz B. Fernando	169,938.50		169,938.50
Ericka Joy Mangalile-Gajete	173,527.81	178,244.00	351,771.81
Kristine L. Galang	230,718.09	253,648.00	484,366.09
Marie Jeminette F. Gatchalian	229,452.23	200,284.00	429,736.23
Dorothy C. Geronimo	433,174.50	432,538.00	865,712.50
Paul Anthony F. Gokioco	246,760.31	259,047.00	505,807.31
Lani R. Gomez	414,667.40	392,099.00	806,766.40
Glen De Leon Gonzaga	275,524.31	293,986.00	569,510.31
Gemmaline D. Gonzalez	331,384.81	329,785.00	661,169.81
Melani A. Gonzales	290,486.34	283,443.00	573,929.34
Jhona G. Guillen	89,348.31		89,348.31
Pamela P. Gutierrez	301,460.12		301,460.12
Diana Marie T. Hernandez	244,251.66	265,788.00	510,039.66
Ma. Kristina C. Hidalgo	398,457.28		398,457.28
Iris Evadie C. Jimenez	199,224.00		199,224.00
Loretta C. Jovellanos	663,678.73	693,843.00	1,357,521.73
Elizabeth C. Juan	157,620.23	336,256.48	493,876.71
Angelica C. Karunungan	152,093.17	160,094.00	312,187.17
Norlyn G. Lagsit	203,181.24	206,380.00	409,561.24
Daryl James A. Laping	176,140.68		176,140.68
Norman T. Lu	508,377.48	514,158.00	1,022,535.48
Joan Reina M. Luna	86,870.50	168,449.00	255,319.50
Manny C. Mabalot	427,620.91	215,029.00	642,649.91
Augustus A. Magno	331,572.43	339,547.00	671,119.43
Elvira S. Martinez	698,395.60	707,789.00	1,406,184.60
Maria Iluminada R. Mendoza	490,590.31		490,590.31
Daisy B. Isidro-Mendoza	228,864.32	240,875.33	469,739.65
Marie Vic E. Mina	337,668.13	348,516.00	686,184.13
Marie Christine G. Montoya	342,742.75	371,150.00	713,892.75
Theresa R. Mora	389,934.94		389,934.94
Janet R. Mutyangpili	213,190.19	216,459.00	429,649.19
Jocelyn M. Narciso	221,493.00	227,103.00	448,596.00
Juliet L. Necia	165,529.02	165,819.00	331,348.02
Claire Ann F. Odsinada	187,354.36	192,150.00	379,504.36
Emmanuel I. Ong	234,734.41	282,207.00	516,941.41
Wema G. Pacano	181,755.00		181,755.00
Ma. Victoria Isabel G. Pantaleon	278,583.58	264,287.00	542,870.58
Naja P. Penas	141,613.78	156,836.00	298,449.78
Christy C. Planco	175,690.76		175,690.76
Farahtoni G. Planco	240,248.95		240,248.95
Ma. Theresa D. Prado	367,745.38		367,745.38
Karen I. Quieta	142,368.01	148,326.00	290,694.01
Elaine Estolano Quinto	144,972.48		144,972.48
Angelito R. Rabe	199,800.87	201,943.00	401,743.87
Mary Grace M. Ramos	160,203.93	275,963.00	436,166.93
Arnel F. Reyes	177,003.49	180,638.00	357,641.49
Ma. Elena S. Roces	250,043.48	261,259.00	511,302.48
Christian Paolo E. Ramagos	190,893.97		190,893.97
Maria Lualhati A. Rueda	292,252.16		292,252.16

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Clark P. Salas	215,105.59	197,939.00	413,044.59
Maria Clarissa T. Samson	342,959.72	342,220.00	685,179.72
Marcella Anne L. Santos	168,455.74	170,031.00	338,486.74
Joaquin S. Sardona, Jr.	261,145.55		261,145.55
Rowena P. Sarmiento	531,203.51	516,288.00	1,047,491.51
Ma. Corazon Cecilia M. Sison	349,511.18	320,740.00	670,251.18
Ma. Rita S. Sta. Cruz	386,801.05	393,794.00	780,595.05
Lea Benita R. Sumulong	759,841.45	770,115.00	1,529,956.45
Preciosa L. Sunga	399,217.57	396,908.00	796,125.57
Sheryl G. Tamayo	309,278.03	330,054.00	639,332.03
Jennifer Barrientos Tantamco	233,202.72		233,202.72
Aldous Moses B. Tirona	326,864.83	327,766.00	654,630.83
Ma. Eloisa L. Tuason	366,158.04	366,250.00	732,408.04
Maria Cecilia Ylagan-Villanueva	268,174.50		268,174.50
Edna M. Villareal	400,820.01	342,361.00	743,181.01
Charina J. Villarino	77,073.50	132,408.00	209,481.50
Rowena S. Vinan	752,901.95	730,451.00	1,483,352.95
Bryan H. Visaya	126,565.09	143,885.00	270,450.09
Dulcinea Joy R. Yraita	275,401.32	274,977.00	550,378.32
Julie G. Yu	272,256.69	261,651.00	533,907.69
Flordeliza A. Zacarias	399,602.14	295,849.00	695,451.14
		Total claims of petitioners	**₱ 58,892,068.16**

THE FACTS

The following petitioners are employees of the Asian Development Bank (ADB) for the whole year of 2012, to wit: Arnold L. Aguila; Rosaly P. Ariate-Jimenez; Donatila T. Balagtas; Katherine Mitzi H. Co; Ma. Cristina N. Concepcion; Leslie A. Cruz; Agnes V. Diamante; Marie Kristine S. Estrella; Jane I. Fantilanan; Angelica Luz B. Fernando; Jhona G. Guillen; Pamela P. Gutierrez; Ma. Kristina C. Hidalgo; Iris Evadie C. Jimenez; Daryl James A. Laping; Maria Iluminada R. Mendoza; Theresa R. Mora; Wema G. Pacano; Christy C. Planco; Farahtoni G. Planco; Ma. Theresa D. Prado; Elaine Estolano Quinto; Christian Paolo E. Ramagos; Maria Lualhati A. Rueda; Joaquin S. Sardona, Jr.; Jennifer Barrientos Tantamco; and Maria Cecilia Ylagan-Villanueva.[1]

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[1] Exhibits "P-61-2", "P-61-48", "P-61-9", "P-61-16", "P-61-17", "P-61-20", "P-61-28", "P-61-30", "P-61-35", "P-61-36", "P-61-42", "P-61-43", "P-61-45", "P-61-47", "P-61-53", "P-61-61", "P-61-65", "P-61-72", "P-61-76", "P-61-77", "P-61-78", "P-61-80", "P-61-85", "P-61-86", "P-61-90", "P-61-98", "P-61-102", Docket – Vol. IV, pp. 1866, 1912, 1873, 1880, 1881, 1884, 1892, 1894, 1899, 1900, 1906, 1907, 1909, 1911, 1917, 1925, 1929, 1936, 1940 to 1942, 1944, 1949, 1950, 1954, 1962, and 1966, respectively.

The rest of the petitioners, however, are employees of the ADB for the period January 1, 2012 to December 31, 2013.[2]

The ADB was established pursuant to the *Agreement Establishing The Asian Development Bank*, signed on December 4, 1965 by member-countries, one of which is the Philippines.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to administer all laws pertaining to internal revenue taxes, with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013.[4] This BIR issuance provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.[5]

Believing RMC No. 31-2013 to be issued *ultra vires*, two Filipino ADB employees, on their own, and on behalf of the other Filipino employees of the ADB, questioned its legality in the Regional Trial Court (RTC) of Mandaluyong City in February 2014 and sought that it be invalidated.[6]

In *Erwin Salaveria and Portia Gonzales vs. Commissioner of Internal Revenue* (Civil Case No. MC14-8775, RTC – Mandaluyong,

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[2] Exhibits "P-61", "P-61-1", "P-61-3" to "P-61-8", "P-61-10" to "P-61-15", "P-61-18" to "P-61-19", "P-61-21" to "P-61-27", "P-61-29", "P-61-31" to "P-61-34", "P-61-37" to "P-61-41", "P-61-44", "P-61-46", "P-61-49" to "P-61-52", "P-61-54" to "P-61-60", "P-61-62" to "P-61-64", "P-61-66" to "P-61-71", "P-61-73" to "P-61-75", "P-61-79", "P-61-81" to "P-61-84", "P-61-87" to "P-61-89", "P-61-91" to "P-61-97", "P-61-99" to "P-61-101", "P-61-103" to "P-61-109, "Docket – Vol. IV, pp. 1864 to 1865, 1867 to 1872, 1874 to 1879, 1882 to 1883, 1885 to 1891, 1893, 1895 to 1898, 1901 to 1905, 1908, 1910, 1913 to 1916, 1918 to 1924, 1926 to 1928, 1930 to 1935, 1937 to 1939, 1943, 1945 to 1948, 1951 to 1953, 1955 to 1961, 1963 to 1965, and 1967 to 1973, respectively.

[3] Pars. 1 and 2, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. I, p. 643.

[4] SUBJECT: 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

[5] Par. 11, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 23 to 24, and 296; and Par. 4, JSFI, Docket – Vol. I, p. 643

[6] Par. 16, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Docket – Vol. I, pp. 27, and 297.

Branch 213), or the action to nullify the RMC, the RTC on September 30, 2014, disposed as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> a) declaring Section 2 (d) (1) of Revenue Memorandum Circular (RMC) 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law; and
>
> b) declaring Section 2 (d) (1) of RMC No. 31-2013 as void in the absence of legislation and/or regulation to the contrary".[7]

Respondent moved to reconsider the above Decision, but the RTC denied the motion in its Order dated January 9, 2015.[8]

Thereafter, respondent appealed the RTC Decision to the Court of Appeals docketed as CA-G.R. CV No. 104374. On July 3, 2015, the Court of Appeals promulgated a Resolution dismissing the appeal because respondent improperly elevated the RTC case by ordinary appeal instead of a petition for review on certiorari before the Supreme Court.[9] Respondent then filed a petition for review on certiorari before the Supreme Court, questioning the dismissal of the Court of Appeals. The case is still pending resolution by the High Court.[10]

Prior to the filing of the instant *Petition for Review*, petitioners filed a claim for refund of the subject income taxes with respondent, and the latter failed to act thereon.[11]

On July 10, 2015, petitioners filed the instant *Petition for Review*.

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[7] Par. 17, *Petition for Review*, vis-à-vis Par. 7, *Answer*, Docket – Vol. I, pp. 28, and 297; and Exhibit "P-55", Docket – Vol. IV, pp. 1820 to 1851.
[8] Par. 18, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 28, and 297.
[9] Par. 19, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 28, and 297; and Exhibits "P-56" and "P-56-1", Docket – Vol. IV, pp. 1852 to 1863.
[10] Petitioner's *Memorandum with Manifestation*, Docket – Vol. IV, p. 2083.
[11] Par. 5, Pre-Trial Order dated July 1, 2016, Docket – Vol. I, pp. 652 to 664.

Respondent filed his *Answer* on September 30, 2015,[12] interposing the following special and affirmative defenses, to wit: (1) this Court has no jurisdiction to entertain the instant *Petition for Review*; (2) herein petitioners failed to file the instant claim for refund and *Petition for Review* within the two-year prescriptive period provided under Section 229 of the National Internal Revenue Code (NIRC); (3) granting, without admitting, that this Court has jurisdiction, the alleged decision of the RTC – Branch 213 from which petitioner based his claim for refund is void; (4) the same was issued by a regular court that has no jurisdiction to take cognizance of the case relating to the validity of RMC No. 31-2013; and (5) the power to rule on the validity of revenue issuances administered by the BIR are within the jurisdiction of this Court, and not the regular courts.

After the pre-trial conference held on May 5, 2016, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on June 6, 2016.[13] In the Resolution dated June 10, 2016,[14] the Court approved the parties' JSFI and terminated the pre-trial. The Court then issued a Pre-Trial Order on July 1, 2016.[15]

During trial, petitioners presented their documentary evidence, and the testimony of their witnesses, namely, Attys. Esther R. Ibanez,[16] and Peter Paul S. Romero.[17]

On March 27, 2017, petitioners filed their *Formal Offer of Evidence*[18] offering Exhibits "P-1" to "P-58", "P-60" to "P-61", inclusive of submarkings. Respondent filed his *Comment/Objections on Petitioner's Formal Offer of Evidence* on April 20, 2017.[19]

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[12] Docket – Vol. I, pp. 296 to 306.
[13] Docket – Vol. I, pp. 643 to 646.
[14] Docket – Vol. I, p. 649.
[15] Docket – Vol. I, pp. 652 to 664.
[16] Exhibit "P-1" (*Judicial Affidavit of Atty. Esther R. Ibanez*), Docket – Vol. I, pp. 395 to 405, and 514 to ; Minutes of the hearing held on, and Order dated, August 23, 2016, Docket – Vol. II, pp. 943 to 946; Exhibit "P-16" (*Supplemental Judicial Affidavit of Atty. Esther R. Ibanez*), Docket – Vol. II, pp. 672 to 682; and Minutes of the hearing held on, and Order dated, August 23, 2016, Docket – Vol. II, pp. 943 to 946.
[17] Exhibit "P-57" (*Judicial Affidavit of Peter Paul S. Romero*), Docket – Vol. III, pp. 1229 to 1233; Minutes of the hearing held on, and Order dated, October 11, 2016, Docket – Vol. III, pp. 1424 to 1430; Exhibit "P-60" (*Supplemental Judicial Affidavit of Peter Paul S. Romero*), Docket – Vol. III, pp. 1483 to 1486; and Minutes of the hearing held on, and Order dated, January 24, 2017, Docket – Vol. III, pp. 1597 to 1602.
[18] Docket – Vol. IV, pp. 1638 to 1693.
[19] Docket – Vol. IV. Pp. 1979 to 2036.

nb

In the Resolution dated September 13, 2017,[20] the Court admitted all of the said Exhibits, except for the following:

1. Exhibits "P-19-1", "P-19-2", "P-19-3", "P-23-7", "P-34", "P-34-1", "P-36", "P-42-2", "P-48-3", "P-54", "P-54-1", "P-54-2", "P-54-3", "P-54-4", "P-54-5", "P-55" and "P-58", for failure to present their originals for comparison;

2. Exhibits "P-54-6" and "P-54-7", for failure to present their originals for comparison and for failure to identify the exhibits; and

3. Exhibits "P-61-79" and "P-61-80", for failure of the exhibits formally offered to correspond with the documents actually marked.

On September 20, 2017, respondent filed a *Motion to Dismiss*,[21] praying for the dismissal of the instant *Petition for Review* for this Court's lack of jurisdiction over the subject matter.

On the other hand, petitioners filed a *Motion for Partial Reconsideration* on October 3, 2017,[22] praying for the reconsideration of this Court's Resolution dated September 13, 2017, and for the issuance of a Resolution admitting in evidence Exhibits "P-23-7", "P-34", "P-34-1", "P-55", "P-58", "P-61-79" and "P-61-80".

In the Resolution dated December 27, 2017,[23] the Court denied respondent's *Motion to Dismiss* for lack of merit; while partially granting petitioners' *Motion for Partial Reconsideration*, and thereby admitting Exhibits P-55", "P-58", "P-61-79" and "P-61-80".

During the supposed initial presentation of respondent's evidence on March 20, 2018[24], respondent's counsel manifested that he will no longer present evidence for the respondent because there is no Revenue Officer's Report as regards the refund claim of petitioners in this case. Upon his motion, he was granted ten (10) days from the said date to file respondent's *Memorandum*. On the

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[20] Docket – Vol. IV, pp. 2042 to 2046.
[21] Docket – Vol. IV, pp. 2047 to 2057.
[22] Docket – Vol. IV, pp. 2058 to 2063.
[23] Docket – Vol. IV, pp. 2071 to 2075.
[24] Order dated March 20, 2018, Docket – Vol. IV, pp. 2090 to 2091.

other hand, the Court noted the filing of petitioner's *Memorandum with Manifestation*[25] on January 15, 2018.

Upon the filing of respondent's *Memorandum* on March 26, 2018,[26] the instant case was submitted for decision on April 4, 2018.[27]

Hence, this Decision.

THE ISSUES

The parties submitted the following issue for this Court's resolution, to wit:

> "WHETHER OR NOT PETITIONERS ARE ENTITLED TO CLAIM REFUND FOR INCOME TAXES PAID IN TAXABLE YEARS 2012 AND 2013 ALLEGED TO BE ERRONEOUSLY AND/OR ILLEGALLY PAID".[28]

Petitioners' arguments:

Petitioners argue that their income tax payments were made erroneously and/or illegally collected by respondent by virtue of the latter's failure to recognize the tax-exempt status granted by treaty to ADB employees. They emphasize that this Court is not being asked to rule on the legality of BIR RMC No. 31-2013 as the court of law that has jurisdiction over such question is the RTC. According to petitioners, since the legal basis for collecting the income tax has been voided by a court of law, it follows that the actual collection of the tax is illegal and/or erroneous and necessarily, the taxes paid must be returned to the petitioners.

Moreover, petitioners contend that payment by them of income tax is an aberration introduced by BIR RMC No. 31-2013; and that it is only proper that taxes paid by petitioners pursuant to the RMC should be returned to them.

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[25] Docket, - Vol. . IV, pp. 2076 to 2085.
[26] Docket – Vol. IV, pp. 2093 to 2102.
[27] Docket – Vol. IV, p. 2104.
[28] Issue, JSFI, Docket – Vol. I, p. 644.

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Lastly, petitioners aver that this Court may allow the claim for refund, notwithstanding the petition in the Supreme Court filed by respondent involving the validity of BIR RMC No. 31-2013.

Respondent's counter-arguments:

Respondent contends that petitioners are not entitled to the refund of their income tax payments in the aggregate amount of ₱58,892,068.16 for taxable years 2012 and 2013 for failure to substantiate their claim.

Allegedly, petitioners are Filipino citizens and under the employ of the ADB; that there is no doubt that petitioners are liable for income tax on the compensation income they have earned on account of such employment; and that petitioners cannot claim that the coverage of Article XII of *"Headquarters Agreement"* only concern the privileges and immunities of the higher officials of the ADB because such contention is utterly misplaced.

In addition, respondent points out that RMC No. 31-2013 is only a clarification of existing policies etched in Philippine law; and that the alleged subsequent practice of non-taxability of ADB employees, which is contrary to existing law, cannot in any way displace what the law had provided from the start.

Finally, respondent asserts that the claims for refund of petitioners do not have a factual and legal basis; and that the amount of ₱58,892,068.16, representing income tax payment for taxable years 2012 and 2013 were paid in accordance with existing law, hence, the same cannot be considered as having been erroneously paid.

THE COURT'S RULING

The instant *Petition for Review* is bereft of merit.

Section 229 of the NIRC of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally

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

The foregoing provisions allow recovery of taxes erroneously or illegally collected. An *"erroneous or illegal tax"* is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[29]

Furthermore, in *Commissioner of Internal Revenue vs. Acosta*,[30] the Supreme Court stated the requirements of the above-quoted Section 229, to wit:

> "Noteworthy, the requirements under Section 230[31] for refund claims are as follows:
>
> 1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;
> 2. The claim for refund must be a **categorical demand** for reimbursement;
> 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty**

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[29] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[30] G.R. No. 154068, August 3, 2007.
[31] Now Section 229 of the NIRC of 1997.

> **regardless of any supervening cause.** (Emphasis ours.)
>
> In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court. This obviously is intended, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure."

Based on the foregoing jurisprudential pronouncements, the refund claimant must show that: (1) a written claim for refund or tax credit has been filed with respondent; (2) such claim must be a categorical demand for reimbursement; and (3) the same claim was filed, or the suit or proceeding therefor must have commenced in court, within two (2) years from date of payment of the tax or penalty, regardless of any supervening cause.

Before determining whether the alleged income tax payments are erroneous or illegal, We shall primarily ascertain whether petitioners have shown compliance with the requirements of Section 229 of the NIRC of 1997.

Petitioner failed to show compliance with the requirements of Section 229 of the NIRC of 1997.

During the proceedings in this case, petitioners attempted to offer in evidence the supposed administrative claims they filed with respondent, marked as Exhibits "P-54", and "P-54-1" to "P-54-7".[32] In the Resolution dated September 13, 2017,[33] however, the Court denied, *inter alia*, the admission thereof, for failure to present their originals for comparison.

While petitioners filed a *Motion for Partial Reconsideration* of the said Resolution regarding the denial of admission of certain

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[32] Petitioners' *Formal Offer of Evidence*, Docket – Vol. IV, pp. 1638 to 1693.
[33] Docket – Vol. IV, pp. 2042 to 2046.

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Exhibits,[34] they did not pray for the reconsideration on the denial of admission of said Exhibits "P-54", and "P-54-1" to "P-54-7. In fact, petitioners aver in the said *Motion* the following statements, to wit:

> "10. Likewise, petitioners will no longer ask for the reconsideration of the denial of Exhibits P-54 to P-54-7 considering that the respondents admitted to the filing of an administrative claim for refund with the Commissioner of Internal Revenue prior to the filing of the petition with this Honorable Court. This was stated in page 2 of the Pre-Trial Order dated July 1, 2016, citing Par. 1, Respondent's 'Comment/Reply (to the Request for Admission)' filed on March 10, 2016, p. 367, CTA Docket, to wit:
>
> 'xxx
>
> 5. The petitioners, prior to filing the instant petition, filed a claim for refund of the subject income taxes with respondent Commissioner of Internal Revenue and, as of this date, respondent has not approved the refund.'"

It was error on the part of petitioners to merely rely on the said admission of respondent as to the filing of their administrative claims. This is so because while the said admission may fulfill the *first* requirement of Section 229 of the NIRC of 1997, it does not necessarily satisfy the *second* and *third* requirements of the said provision.

To repeat, the said *second* requirement is that the refund claim **must be a categorical demand for reimbursement**. Without the subject administrative claims being admitted in evidence, this Court cannot ascertain whether the claims for refund were indeed categorical demands for reimbursement. Thus, We rule that petitioners failed to prove compliance with the *second* requirement.

In the same vein, respondent's admission of the fact of filing of the administrative claims does not by itself prove as to *when* the same were filed. Hence, this Court cannot likewise determine for certain whether the said administrative claims were filed within the two(2)-year period from the alleged date of payment of the subject

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[34] Docket – Vol. IV, pp. 2058 to 2063.

taxes. Such being the case, there is likewise no showing that petitioners complied with the *third* requirement of Section 229 of the NIRC of 1997.

With the foregoing findings alone, this Court is justified in denying the instant *Petition for Review*. Nevertheless, even granting that all of the requirements of Section 229 of the NIRC of 1997 have been complied with in this case, We find that the subject income tax payments are not erroneous or illegal, and thus, are not refundable.

The Decision of the RTC of Mandaluyong, Branch 213 in Civil Case No. MC14-8775 is invalid and therefore, not a binding precedent in this case

Petitioners stresses that since the legal basis for collecting the income tax, *i.e.*, RMC No. 31-2013, has been voided by a court of law, it follows that the actual collection of the tax is illegal and/or erroneous and necessarily, the taxes paid must be returned to the petitioners.

The reasoning of petitioners is specious.

In *Banco De Oro, et al. vs. Republic of the Phils., et.al.,*[35] the Supreme Court held:

> "The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> This Court, however, declares that **the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance**

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

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(revenue orders, <u>revenue memorandum circulars</u>, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, **within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeal.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 <u>provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations</u>. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, **with respect to administrative issuances (revenue orders, <u>revenue memorandum circulars</u>, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws.** Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, **the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under**

> **Republic Act No. 8424.**" *(Emphases and underscoring supplied)*

Based on the foregoing, the determination of the validity of administrative issuances issued by the BIR, such as the RMC No. 31-2013, falls within the *exclusive appellate jurisdiction* of this Court, not the RTC. Thus, the RTC of Mandaluyong, Branch 213, is not vested with jurisdiction to declare the invalidity of RMC No. 31-2013.

A judgement rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[36] Simply put, a void judgment or order has no legal and binding effect. It does not divest rights and no rights can obtained under it; all proceedings founded upon a void judgment are equally worthless.[37]

Correspondingly, the Decision dated September 30, 2014 of RTC of Mandaluyong, Branch 213, is a nullity. It did not have any legal and binding effect. Thus, it did not divest rights, and no rights can be obtained thereunder.

RMC No. 31-2013 is not the legal basis for collecting the subject income tax but the National Internal Revenue Code of 1997

To reiterate, an *"erroneous or illegal tax"* is defined as one levied without statutory authority,[38] or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[39] **In this case, the subject income tax payments were levied <u>with</u> statutory authority.**

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[36] *Bilag, et al. vs. Ay-ay, et al.*, G.R. No. 189950, April 24, 2017.
[37] *Go vs. Echavez*, G.R. No. 174542, August 3, 2015.
[38] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005.
[39] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

At the outset, it must be stressed that without doubt, the State's inherent power to tax is vested exclusively in the Legislature.[40] As a corollary, the Supreme Court has since ruled that the power to tax includes the power to grant tax exemptions.[41] Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.[42]

Pursuant to Section 23(A) of the NIRC of 1997, all of a resident citizen's income is subject to tax, 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 or without the Philippines**;" *(Emphasis supplied)*

In addition and in relation to the above provision, Sections 24, 31 and 32(A)(1) of the NIRC of 1997, as amended by R.A. 9504 read:

> "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**;
>
> xxx xxx xxx

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[40] *Film Development Council of the Philippines vs. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

[41] Refer to *Quezon City vs ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

[42] *Secretary of Finance Cesar B. Purisima, et al. vs. Representative Carmelo F. Lazatin, et al.*, G.R. No. 210588, November 29, 2016.

> **The tax shall be computed in accordance with and at the rates established in the following schedule:**
>
> | | |
> |---|---|
> | Not over ₱10,000............................. | 5% |
> | Over ₱10,000 but not over ₱30,000...... | ₱500+10% of the excess over ₱10,000 |
> | Over ₱30,000 but not over ₱70,000...... | ₱2,500+15% of the excess over ₱30,000 |
> | Over ₱70,000 but not over ₱140,000..... | ₱8,500+20% of the excess over ₱70,000 |
> | Over ₱140,000 but not over ₱250,000... | ₱22,500+25% of the excess over ₱140,000 |
> | Over ₱250,000 but not over ₱500,000... | ₱50,000+30% of the excess over ₱250,000 |
> | Over ₱500,000................................ | ₱125,000+32% of the excess over ₱500,000 |
>
> xxx xxx xxx." *(Emphases supplied)*

Moreover, Sec. 31 and 32 of the NIRC of 1997 define what are taxable income and gross income, respectively, to wit:

> "SEC. 31. *Taxable Income Defined.* — **The term 'taxable income' means the pertinent items of gross income specified in this Code**, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws." *(Emphasis supplied)*
>
> "SEC. 32. *Gross Income.* –
>
> (A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income**

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The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over ₱10,000............................	5%
Over ₱10,000 but not over ₱30,000......	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000......	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000.....	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000...	₱22,500+25% of the excess over ₱140,000
Over ₱250,000 but not over ₱500,000...	₱50,000+30% of the excess over ₱250,000
Over ₱500,000................................	₱125,000+32% of the excess over ₱500,000

xxx xxx xxx." *(Emphases supplied)*

Moreover, Sec. 31 and 32 of the NIRC of 1997 define what are taxable income and gross income, respectively, to wit:

"SEC. 31. *Taxable Income Defined.* — **The term 'taxable income' means the pertinent items of gross income specified in this Code**, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws." *(Emphasis supplied)*

"SEC. 32. *Gross Income.* –

(A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income**

derived from whatever source, including (but not limited to) the following items:

(1) **Compensation for services in whatever form paid, including, but not limited to** fees, **salaries, wages**, commissions, and similar items;" *(Emphases supplied)*

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

Correspondingly, it was error for petitioners to assume that RMC No. 31-2013 is the legal basis for collecting the subject income tax.

The imposition of income tax on the compensation of Philippine nationals or citizens of the Philippines, who are residing therein, has been in Our statute books, from the time the RP-ADB Agreement was entered into.

Petitioners likewise aver that the income tax-exempt status of ADB employees under the RP-ADB Agreement[43] enjoyed by them for close to five (5) decades already, was only "disturbed" with the issuance of respondent's RMC No. 31-2013.

We disagree.

At the time the RP-ADB Agreement was entered into by the Philippine Government, *i.e.*, on December 22, 1966, the law then in force was the NIRC of 1939.[44] This law had the following provisions to the effect of imposing tax on the income of Philippine nationals or citizens, to wit:

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[43] Formally known as the *"Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank".*
[44] Commonwealth Act No. 466.

"SECTION 21. ***Rates of Tax on Citizens*** *or Residents.* — **There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year of the Philippines, a tax equal to the sum of the following:**

xxx xxx xxx." *(Emphasis and underscoring supplied)*

"SECTION 28. *Meaning of Net Income.* — ***'Net income'* means the gross income computed under section 29** less the deductions allowed by section 30." *(Emphasis supplied)*

"SECTION 29. *Gross Income.* — (a) *General Definition.* — ***'Gross income'* includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis supplied)*

Even the NIRC of 1977,[45] the tax code after the NIRC of 1939, had the following taxing provisions on the income of Philippine nationals or citizens, to wit:

"SECTION 21. ***Rates of tax on citizens*** *or Residents.* — **A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein** or alien residing in the Philippines **determined in accordance with the following schedule**: xxx

xxx xxx xxx." *(Emphasis and underscoring supplied)*

"SECTION 28. *Meaning of net income.* — ***'Net income'* means the gross income computed under section twenty-nine,** less the deductions allowed by section thirty." *(Emphasis supplied)*

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[45] Presidential Decree No. 1158.

> "SECTION 29. *Gross Income.* — (a) *General Definition.* — ***'Gross income'* includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis supplied)*

In view of the foregoing, it cannot be denied that the Philippine Legislature has exercised, and have been exercising, its power to tax the income of Philippine nationals or citizens, at the time the RP-ADB Agreement, up to the present time. Thus, We find no basis in declaring that, at any one time, salaries and emoluments of ADB's officers and staff, who are Philippine nationals or citizens, were ever exempted from income tax.

Furthermore, in arguing that officers and staff of ADB, who are Philippine nationals or citizens, are exempt from income taxation, petitioners cannot find solace on Section 45(b) of the RP-ADB Agreement. In fact, it is very clear that while the said provision grants tax exemption on the salaries and emoluments paid by the ADB to its officers and staff, it qualifies that the Philippine government has the power to tax ADB's officers and staff, who are Philippine nationals or citizens. Section 45(b) of the RP-ADB Agreement provides as follows:

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

Considering the earlier quoted Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997—the law in force for taxable years 2012 and 2013—vis-à-vis the foregoing provision of the RP-ADB Agreement, it cannot be said that it is RMC No. 31-2013 which imposed income tax on the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens. To repeat, even without the issuance of RMC No. 31-2013, the taxability of the said salaries and emoluments remains, by virtue of the said provisions of the NIRC of 1997 and the RP-ADB Agreement.

Furthermore, it must be clarified that Section 2(d)(1) of RMC No. 31-2013 is not violative of Section 45(b) of the RP-ADB Agreement. On the contrary, the said Section 2(d)(1) of RMC No. 31-2013 upholds the said Section 45(b) of the RP-ADB Agreement, when the former declared that *"only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax."*

Relative thereto, it must be noted that Section 32(B) of the NIRC of 1997 recognizes the treaty obligations entered into by the Government which grants income tax exemptions, to wit:

> "SEC. 32. *Gross Income.* –
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income.* – **The following items shall not be included in gross income and <u>shall be exempt from taxation</u> under this Title**:
>
> xxx xxx xxx
>
> **(5) *Income Exempt under Treaty.* – Income of any kind, <u>to the extent required by any treaty obligation</u> binding upon the Government of the Philippines.**" *(Emphases and underscoring supplied)*

It is worthy of note that like the provisions imposing tax on the income of Philippine nationals or citizens, the foregoing provision has been in Our statute books since the enactment of the NIRC of 1939,[46] and thus, is already in existence when the RP-ADB Agreement has been entered into by the Philippine Government. The same provision was also re-enacted in the NIRC of 1977[47]—the precursor of the NIRC of 1997. Thus, there is no indication that the Philippine Government violated the RP-ADB Agreement, insofar as the

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[46] Section 29(b)(6), Commonwealth Act No. 466.
[47] Section 29(b), Presidential Decree No. 1158.

imposition of tax on the salaries and emoluments paid by the ADB to its officers and employees, who are Philippine nationals or citizens, is concerned.

Applying Section 32(B) of the NIRC of 1997 to the instant case, only those income which are clearly covered by the tax exemption granted Section 45(b) of the RP-ADB Agreement must be recognized by the Philippine Government. Any item of income, beyond the scope of the said granted tax exemption, must already be subject to income taxation, specifically, the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens.

Long settled is the rule that the power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed.[48] An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction.[49] Thus, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government.[50]

A tax exemption cannot arise from vague inference.[51] Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[52]

Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the taxpayer bears the burden of establishing the factual basis of his claim for a refund.[53]

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[48] *Luzon Stevedoring Corporation vs. Court of Tax Appeals, et al.*, G.R. No. L-30232, July 29, 1988.
[49] *Lung Center of the Philippines vs. Quezon City, et al.*, G.R. No. 144104, June 29, 2004.
[50] *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.
[51] *Digital Telecommunications Phils., Inc. vs. City Government of Batangas, et al.*, G.R. No, 156040, December 11, 2008
[52] *Supra.*
[53] *Philippine Long Distance Telephone Company vs. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008.

In this case, however, petitioners failed to establish the factual basis of their claims for a refund for taxable years 2012 and 2013. Specifically, petitioners failed to show that they are not Philippine nationals or citizens, so as to entitle them to the tax exemption granted under Section 45(b) of the RP-ADB Agreement. Thus, petitioners' claim for refund must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, Special 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MARIA DONA ALIBOSO, JOY ARCINUE, MARY ABIGAIL BACUD, MA. PATRICIA LIM, KRISTINE LEA MERCADO, KATHLEEN OSIAS, RAQUEL BERNADETTE VELASQUEZ, JAMILA YASMINA ACHANZAR, SARAH SENAS, THELMA ABIVA, ARNOLD AGUILA, FRANCOISE MARIE ALONZO-CALALAY, KAREN ANDES, LEAH ARBOLEDA, ROSALYN ARIATE, DONATILA BALAGTAS, GLENDA BALATBAT, FATIMA BAUTISTA, MELCHOR BUREROS, PATRICIA CALCETAS, CATHERINE CLARIN, KATHERINE MITZI CO, MA. CHRISTINA CONCEPCION, MILLET CONCEPCION, MARTIN ERICSSON CRUEL, CAROLINE VALENTINA CRUZ, LESLIE CRUZ, MA. CELINA CRUZ, MARIA SIMONETTE DAQUIS, EDWIN DAVID, CELEDONIA DE FELIPE, FATIMA CHRISTINE DE RAMOS, MELANIE DELA CRUZ, ALELI DELA ROSA, AGNES DIAMANTE, SHIELA DIMAL, MARIE KRISTINE ESTRELLA, SHERYL EVANGELISTA, JANE FANTILANAN, ANGELICA LUZ FERNANDO, ERICKA JOY GAJETE, KRISTINE

CTA CASE NO. 9087

Members:
DEL ROSARIO, *PJ., Chairperson,*
UY, and,
MINDARO-GRULLA, *JJ.*

GALANG, JEMINETTE GATCHALIAN, DOROTHY GERONIMO, PAUL ANTHONY GOKIOCO, LANI GOMEZ, GLEN GONZAGA, GEMMALINE GONZALEZ, MELANI GONZALEZ, JHONE GUILLEM, PAMELA GUTIERREZ, DIANA MARIE HERNANDEZ, MA. KRISTINA HIDALGO, IRIS EVADIE JIMENEZ, LORETA JOVELLANOS, ELIZABETH JUAN, ANGELICA KARUNUNGAN, NORLYN LAGSIT, DARYL JAMES LAPING, NORMAN LU, JOAN REINA LUNA, MANNY MANALOT, AUGUSTUS MAGNO, ELVIRA MARTINEZ, ILUMINADA MENDOZA, DAISY MENDOZA, MARIE MINA, MARIE CHRISTINE MONTOYA, THERESA MORA, JANET MUTYANGPILI, JOCELYN NARCISO, JULIET NECIA, CLAIRE ANNE ODSINADA, EMMANUEL ONG, WEMA PACANO, MA. VICTORIA PANTALEON, NAJA PENAS, CHRISTY PLANCO, FARAHTONI PLANCO, MA. THERESA PRADO, KAREN QUIETA, ELAINE QUINTO, ANGELITO RABE, MARY GRACE RAMOS, ARNEL REYES, MA. ELENA ROCES, CHRISTINA ROMAGOS, MA. LUALHATI RUEDA,CLARK SALAS, MARIA CLARISSA SAMSON, MARCELLA ANN SANTOS, JOAQUIN SARDONA JR., ROWENA SARMIENTO, MA.

CORAZON SISON, MA. RITA STA. CRUZ, LEA BENETA SUMULONG, PRECIOUSA SUNGA, SHERYL TAMAYO, JENNIFER TANTAMCO, ALDOUS MOSES TIRONA, MA. ELOISA TUASON, MARIA CECILIA VILLANUEVA, EDNA VILLAREAL, CHARINA VILLARINO, ROWENA VINAN, BRYAN VISAYA, DULCINEA JOY YRAITA, JULIE YU, FLORDELIZA ZACARIAS,

Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated:

APR 03 2019 ; 11:05 am

x- -x

SEPARATE CONCURRING OPINION

DEL ROSARIO, *PJ*.:

I concur with the *ponencia* in denying for lack of merit the Petition for Review filed on July 10, 2015.

I wish to stress, however, that contrary to the *ponencia's* conclusion, the parties' **admission**, as contained in paragraph II (A)(5) of the Pre-Trial Order, to the effect that petitioners filed claims for refund with the Commissioner of Internal Revenue (CIR) **prior to the filing of the Petition for Review** with the Court of Tax Appeals (CTA), indubitably confirms the timeliness and sufficiency as to form of the administrative claims. While judicial admission requires no further proof, they are binding upon the parties making the same. On this score, the pronouncement in *Oscar Constantino vs. Heirs of Pedro Constantino*[1] is enlightening, *viz.*:

> "**Judicial admissions are legally binding on the party making the admissions.** Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas, et. al. v. Sandiganbayan, et. al.,* this Court emphasized that:
>
>> Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. **They become judicial admissions of the fact or facts stipulated**. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage. (Highlighting ours)
>
>> Moreover, in *Alfelor v. Halasan*, this Court declared that:
>
>> A party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy.** Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded. (Citations omitted)
>
>> Xxx. (Additional boldfacing supplied; citations omitted)

In the present case, records disclose that petitioners paid their income taxes for 2012 on July 12, 2013 and for 2013 on various dates from February 5, 2014 to April 15, 2014.[2] Pursuant to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, they have two-years from their payment of income taxes to file an administrative claim for refund, to wit:

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[1] G.R. No. 181508, October 2, 2013.

[2] Paragraph 6, Petition for Review, CTA Docket Vol. I, pp. 19-21; Exhibits P-3 to P-53, inclusive of sub-markings.

	Petitioner/Taxpayer	Date of Payment of 2012 Income Tax	Last day to file administrative and judicial claims for refund for 2012 Income Tax	Date of Payment of 2013 Income Tax	Last day to file administrative and judicial claims for refund for 2013 Income Tax
1	Maria Dona Aliboso	July 12, 2013	**July 12, 2015**	April 14, 2014	**April 14, 2016**
2	Joy Arcinue	July 12, 2013	**July 12, 2015**	April 15, 2014	**April 15, 2016**
3	Mary Abigail Bacud	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
4	Bernadette Bigasin	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
5	Ma. Patricia Lim	July 12, 2013	**July 12, 2015**	March 24, 2014	**March 24, 2016**
6	Kristine Lea Mercado	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
7	Kathleen Osias	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
8	Raquel Bernadette Velasquez	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
9	Jamila Yasmina Achanzar	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
10	Sarah Senas	July 12, 2013	**July 12, 2015**	April 4, 2014	**April 4, 2016**
11	Thelma Abiva	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
12	Arnold Aguila	July 12, 2013	**July 12, 2015**		
13	Francoise Marie Alonzo-Calalay	July 12, 2013	**July 12, 2015**	March 20, 2014	**March 20, 2016**
14	Karen Andes	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
15	Leah Arboleda	July 12, 2013	**July 12, 2015**	April 4, 2014	**April 4, 2016**
16	Rosalyn Ariate	July 12, 2013	**July 12, 2015**		
17	Donatila Balagtas	July 12, 2013	**July 12, 2015**		
18	Glenda Balatbat	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
19	Fatima Bautista	July 12, 2013	**July 12, 2015**	April 4, 2014	**April 4, 2016**
20	Melchor Bureros	July 12, 2013	**July 12, 2015**	March 22, 2014	**March 22, 2016**
21	Patricia Calcetas	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
22	Catherine Clarin	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
23	Katherine Mitzi Co.	July 12, 2013	**July 12, 2015**		
24	Ma. Cristina Concepcion	July 12, 2013	**July 12, 2015**		
25	Millet Concepcion	July 12, 2013	**July 12, 2015**	March 27, 2014	**March 27, 2016**
26	Martin Ericsson Cruel	July 12, 2013	**July 12, 2015**	April 14, 2014	**April 14, 2016**
27	Caroline Valentina Cruz	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
28	Leslie Cruz	July 12, 2013	**July 12, 2015**		
29	Ma. Celina Cruz	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
30	Maria Simonette Daquis	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
31	Edwin David	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
32	Celedonia De Felipe	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
33	Fatima Christine De Ramos	July 12, 2013	**July 12, 2015**	April 1, 2014	**April 1, 2016**
34	Melanie Dela Cruz	July 12, 2013	**July 12, 2015**	March 5, 2014	**March 5, 2016**
35	Aleli Dela Rosa	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
36	Agnes Diamante	July 12, 2013	**July 12, 2015**		
37	Shiela Dimal	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
38	Marie Kristine Estrella	July 12, 2013	**July 12, 2015**		
39	Sheryl Evangelista	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
40	Jane Fantilanan	July 12, 2013	**July 12, 2015**		
41	Angelica Luz Fernando	July 12, 2013	**July 12, 2015**		
42	Ericka Joy Gajete	July 12, 2013	**July 12, 2015**	April 9, 2014	**April 9, 2016**
43	Kristine Galang	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
44	Jeminette Gatchalian	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
45	Dorothy Geronimo	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
46	Paul Anthony Gokioco	July 12, 2013	**July 12, 2015**	April 7, 2014	**April 7, 2016**
47	Lani Gomez	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
48	Glen Gonzaga	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
49	Gemmaline Gonzalez	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
50	Melani Gonzalez	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
51	Jhona Guillem	July 12, 2013	**July 12, 2015**		
52	Pamela Gutierrez	July 12, 2013	**July 12, 2015**		
53	Diana Marie Hernandez	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
54	Ma. Kristina Hidalgo	July 12, 2013	**July 12, 2015**		
55	Iris Evadie Jimenez	July 12, 2013	**July 12, 2015**		
56	Loreta Jovellanos	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**

57	Elizabeth Juan	July 12, 2013	**July 12, 2015**	February 5, 2014	**February 5, 2016**
58	Angelica Karunungan	July 12, 2013	**July 12, 2015**	March 31, 2014	**March 31, 2016**
59	Norlyn Lagsit	July 12, 2013	**July 12, 2015**	April 14, 2014	**April 14, 2016**
60	Daryl James Laping	July 12, 2013	**July 12, 2015**		
61	Norman Lu	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
62	Joan Reina Luna	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
63	Manny Mabalot	July 12, 2013	**July 12, 2015**	April 7, 2014	**April 7, 2016**
64	Augustus Magno	July 12, 2013	**July 12, 2015**	March 31, 2014	**March 31, 2016**
65	Elvira Martinez	July 12, 2013	**July 12, 2015**	March 20, 2014	**March 20, 2016**
66	Iluminada Mendoza	July 12, 2013	**July 12, 2015**		
67	Daisy Mendoza	July 12, 2013	**July 12, 2015**	March 14, 2014	**March 14, 2016**
68	Marie Mina	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
69	Marie Christine Montoya	July 12, 2013	**July 12, 2015**	April 4, 2014	**April 4, 2016**
70	Theresa Mora	July 12, 2013	**July 12, 2015**		
71	Janet Mutyangpili	July 12, 2013	**July 12, 2015**	April 14, 2014	**April 14, 2016**
72	Jocelyn Narciso	July 12, 2013	**July 12, 2015**		
73	Juliet Necia	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
74	Claire Anne Odsinada	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
75	Emmanuel Ong	July 12, 2013	**July 12, 2015**	April 14, 2014	**April 14, 2016**
76	Wema Pacano	July 12, 2013	**July 12, 2015**		
77	Ma. Victoria Pantaleon	July 12, 2013	**July 12, 2015**	March 20, 2014	**March 20, 2016**
78	Naja Penas	July 12, 2013	**July 12, 2015**	March 14, 2014	**March 14, 2016**
79	Christy Planco	July 12, 2013	**July 12, 2015**		
80	Farahtoni Planco	July 12, 2013	**July 12, 2015**		
81	Ma.Theresa Prado	July 12, 2013	**July 12, 2015**		
82	Karen Quieta	July 12, 2013	**July 12, 2015**	March 20, 2014	**March 20, 2016**
83	Elaine Quinto	July 12, 2013	**July 12, 2015**		
84	Angelito Rabe	July 12, 2013	**July 12, 2015**	April 7, 2014	**April 7, 2016**
85	Mary Grace Ramos	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
86	Arnel Reyes	July 12, 2013	**July 12, 2015**	April 2, 2014	**April 2, 2016**
87	Ma.Elena Roces	July 12, 2013	**July 12, 2015**	April 2, 2014	**April 2, 2016**
88	Christian Romagos	July 12, 2013	**July 12, 2015**		
89	Ma. Lualhati Rueda	July 12, 2013	**July 12, 2015**		
90	Clark Salas	July 12, 2013	**July 12, 2015**	April 10, 2014	**April 10, 2016**
91	Maria Clarissa Samson	July 12, 2013	**July 12, 2015**	April 1, 2014	**April 1, 2016**
92	Marcella Ann Santos	July 12, 2013	**July 12, 2015**	April 7, 2014	**April 7, 2016**
93	Joaquin Sardona, Jr.	July 12, 2013	**July 12, 2015**		
94	Rowena Sarmiento	July 12, 2013	**July 12, 2015**	March 20, 2014	**March 20, 2016**
95	Ma. Corazon Sison	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
96	Ma. Rita Cruz	July 12, 2013	**July 12, 2015**	April 3, 2014	**April 3, 2016**
97	Lea Beneta Sumulong	July 12, 2013	**July 12, 2015**	April 1, 2014	**April 1, 2016**
98	Preciousa Sunga	July 12, 2013	**July 12, 2015**	April 15, 2014	**April 15, 2016**
99	Sheryl Tamayo	July 12, 2013	**July 12, 2015**	April 7, 2014	**April 7, 2016**
100	Jennifer Tantamco	July 12, 2013	**July 12, 2015**		
101	Aldous Moses Tirona	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
102	Ma. Eloisa Tuason	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
103	Maria Cecilia Villanueva	July 12, 2013	**July 12, 2015**		
104	Edna Villareal	July 12, 2013	**July 12, 2015**	April 8, 2014	**April 8, 2016**
105	Charino Villarino	July 12, 2013	**July 12, 2015**	April 2, 2014	**April 2, 2016**
106	Rowena Vinan	July 12, 2013	**July 12, 2015**	April 20, 2014	**April 20, 2016**
107	Bryan Viaya	July 12, 2013	**July 12, 2015**	April 11, 2014	**April 11, 2016**
108	Dulcinea Joy Yraita	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
109	Julie Yu	July 12, 2013	**July 12, 2015**	March 21, 2014	**March 21, 2016**
110	Flordeliza Zacarias	July 12, 2013	**July 12, 2015**	March 31, 2014	**March 31, 2016**

Based on the foregoing tabulation, the claims for refund for income taxes paid in 2012 must be filed on or before **July 12, 2015** while the claims for refund for income taxes paid in 2013 must be filed on or before **February 5, 2016 to April 15, 2016**, depending on the date of the payment.

As aforementioned, respondent **admitted** that petitioners filed their administrative claims for refund **prior to the filing of the present**

Petition on July 10, 2015, meaning the administrative claims were filed at the latest on July 10, 2015 (right before the Petition was filed before the Court), which is within the two-year period reckoned from the payment of their income taxes. Moreover, the sufficiency of the administrative claims as to their form is likewise necessarily deemed admitted.

Notwithstanding the foregoing, I share the view that petitioners' payment of income taxes is not illegal or erroneous as extensively discussed in the *ponencia*, thus, their claim for refund must perforce be denied.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice