REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PRINCESS O. LUBAG, Petitioner,	**CTA CASE NO. 9306**
- versus -	Members: **DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
HONORABLE KIM S. JACINTO-HENARES, in her capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 18 2019 - 10:09 am

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is petitioner's **Motion for Reconsideration (of the Decision dated 4 March 2019)**, filed on March 28, 2019, without respondent's comment despite notice as per Records Verification dated May 24, 2019, pursuant to the Court's Resolution dated May 31, 2019.

Petitioner seeks reconsideration of the Court's Decision dated March 4, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
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> **SO ORDERED**."

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In the assailed Decision, the Court denied petitioner's claim for refund of her alleged erroneous payment of income tax for taxable year 2013 amounting to ₱135,206.00. The Court ruled that, while it is true that the Asian Development Bank (ADB) Headquarters Agreement provides tax exemption to the salaries and emoluments of its officers and employees, it recognizes the right of the Philippines to tax the salaries and emoluments paid by ADB to its citizens or nationals. By making such recognition, it is evident that the Philippine Government reserves its right to impose tax on its nationals. And relative thereto, Sections 23(A) and 24(A)(1)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that resident citizens are subject to tax on income derived from all sources within and without the Philippines. Hence, in the absence of a specific grant of tax-exemption, the salaries and emoluments received by Filipino employees of the ADB are generally taxable.

Also, the Court held that the Decision of the Regional Trial Court (RTC) Branch 213 of Mandaluyong City, declaring Section 2(d)(1) of Revenue Memorandum Circular (RMC) No. 31-2013 as void, is not a binding precedent that forms part of the Philippine legal system. Moreover, as found by the Court, RMC No. 31-2013 is merely clarificatory and seeks to correctly implement what should have been implemented before.

In her motion for reconsideration, petitioner raises the following grounds:

(A) This Court erred in holding that the NIRC of 1997, as amended, is the operative act which imposed taxability on the income of Philippine nationals working in ADB, considering that:

1. The NIRC of 1997, as amended, is in itself insufficient to modify, amend or repeal the ADB Charter as it is merely a general law which deals only with the general taxability of Filipino citizens, without particular mention of the taxability of Filipino citizens in ADB;

2. The tax exemption provision in the ADB Charter must stand, in the absence of a special law specifically granting the government the authority to exercise its right to tax, as well as, specifically addressing the taxability of Philippine Nationals working in ADB;

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(B) This Court decided the instant case in a way not in accord with law and settled decisions of the Supreme Court that sovereignty is limited by international law and treaties, hence, the Philippines, pursuant to the doctrine of *pacta sunt servanda*, is bound to comply with its obligations under the ADB Charter;

(C) This Court erred when it ruled that it cannot take judicial notice of the Decision of RTC Branch 213 of Mandaluyong City; and

(D) The Court has no jurisdiction to rule on the validity of the RMC, thus, it erred in declaring that ADB employees are taxable merely on the basis of RMC No. 31-2013.

After a careful perusal of petitioner's arguments raised in her motion for reconsideration, the Court finds that the same have already been passed upon extensively in the assailed Decision.

Contrary to petitioner's allegations, the NIRC of 1997, as amended, did not repeal, amend, or modify the provisions of the ADB Charter. Instead, it was read in relation to the reservations made under the ADB Charter and ADB Headquarters Agreement, considering that the NIRC is our national tax law. The imposition of tax to citizens, including the Filipino employees of ADB, under the NIRC of 1997, as amended, is in consonance with the reservation to tax employees who are Philippine citizens under the ADB Charter and ADB Headquarters Agreement. As already held by the Court in the assailed Decision, if it was really the intention of the Philippine Government to exempt from taxation the salaries or emoluments that its citizens or nationals would derive from ADB, a full ratification of the ADB Charter could have been made, without retaining or reserving its right to tax its citizens or nationals. As such, the concept of the *pacta sunt servanda* was not violated as the Philippines still adheres to the principles of international law.

As regards petitioner's argument that the Court should have taken judicial notice of the Decision of the RTC Branch 213 of Mandaluyong City, declaring Section 2(d)(1) of RMC No. 31-2013 as void, as well as the Resolution of the Court of Appeals allegedly affirming the RTC's Decision, the Court has already ruled that said decision is not a binding precedent that forms part of the Philippine legal system.

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Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.[1] Judicial cognizance is based on considerations of expediency and convenience. It displaces evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve.[2] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence.[3]

In general, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. But in the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.[4]

Nevertheless, petitioner offered in evidence the certified xerox/true copies of the subject Decision[5] of the RTC and Resolution[6] of the Court of Appeals, and these documents were admitted in evidence by the Court[7]. In view of the foregoing, the Court already considered the same in arriving at the assailed Decision. However, the Court is not obliged to blindly follow such Decision/Resolution.

Even if we were to take judicial notice of the subject Decision and Resolution, at best, the Court can only take judicial notice of the fact that a Decision was rendered by the RTC Branch 213 of Mandaluyong City declaring Section 2(d)(1) of RMC No. 31-2013 as

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1 *People of the Philippines vs. Tundag*, G.R. Nos. 135695-96, October 12, 2000.
2 *Sps. Lee and Huang vs. Land Bank of the Philippines*, G.R. No. 170422, March 7, 2008.
3 *Republic of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152375, December 13, 2011.
4 *The United States vs. Claveria*, G.R. No. L-9282, February 13, 1915.
5 Exhibit "P-4", docket, pp. 343-375.
6 Exhibit "P-7", docket, pp. 383-390.
7 Resolution dated October 30, 2017, docket, pp. 400-401.

void and that the Court of Appeals issued a Resolution dismissing the appeal of the said Decision. Further, even if the Court take judicial notice of the said Decision and Resolution, still, taking judicial notice does not mean that the Court would accord full probative value to the said Decision and Resolution.

It is well-settled that only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[8] The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down. In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other.[9] Thus, the subject Decision of the RTC and Resolution of the Court of Appeals cannot bind this Court.

Finally, in arguing that this Court has no jurisdiction to rule on the validity of the subject RMC, thus, erred in declaring that ADB employees are taxable pursuant to RMC No. 31-2013, petitioner cites the case of *British American Tobacco vs. Camacho and Parayno, Jr.*,[10] which held that the jurisdiction of the Court of Tax Appeals (CTA) does not include cases where the constitutionality of a law or rule is challenged, rather the regular courts have jurisdiction to pass upon the same.

However, in the case of *Banco De Oro, et al. vs. Republic of the Philippines, et al.*,[11] the Supreme Court held that:

> **"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.**

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[8] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

[9] *De Castro vs. Judicial and Bar Council (JBC), et al.*, G.R. Nos. 191002, 191032, 191057, A.M. No. 10-2-5-SC, G.R. Nos. 191149, 191342 & 191420, April 20, 2010.

[10] G.R. No. 163583, August 20, 2008.

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

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This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

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

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

Republic Act No. 9282, a special and later law than *Batas Pambansa Blg.* 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. 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, revenue memorandum circulars, 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." (Emphasis ours)

In the case of *The City of Manila, et al. vs. Grecia-Cuerdo, et al.* (*City of Manila* case),[12] the Supreme Court has explicitly ruled that this Court is vested with jurisdiction to issue writs of *certiorari, to wit*:

> "A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.
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> Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.
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> In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.
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> Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due

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[12] G.R. No. 175723, February 4, 2014.

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administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that '**while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates**.' Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction." (*Emphasis supplied*)

Relative to the above ruling, the Supreme Court held in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and The Commissioner of Internal Revenue,*[13] that the *City of Manila* case "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

[13] G.R. No. 210987, November 24, 2014.

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."

Accordingly, this Court has jurisdiction to rule on the validity of the RMC. Nevertheless, petitioner claims that she never raised as an issue the decision of the RTC, but only asks for this Court to exercise its appellate jurisdiction on the inaction of the Bureau of Internal Revenue on their claim for refund.

It must be emphasized that this Court exercised its appellate jurisdiction to review by appeal the inaction of the respondent on petitioner's claim for refund and accordingly, denied the same pursuant to the provisions of the NIRC of 1997, as amended, in relation to the reservations under the ADB Charter and ADB Headquarters Agreement. The Court did not exercise appellate jurisdiction over the Decision of the RTC as this is not the subject of the appeal. However, it was petitioner who insists that this appellate court take judicial notice and recognize the Decision of the RTC declaring Section 2(d)(1) of RMC No. 31-2013 as void, which, as mentioned earlier, is not a binding precedent.

Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 4 March 2019)** is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I reiterate my Separate Concurring Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice