REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAJELLA R. CANZON AND HELEN B. CRUDA, *Petitioners,*	**CTA *EB* NO. 2040** (CTA Case No. 9384)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HONORABLE CAESAR R. DULAY, in his capacity as COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 16 2020 3:54 p.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] (PFR) filed by petitioners Majella R. Canzon and Helen B. Cruda on March 28, 2019 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the reversal and setting aside of the September 28, 2018 *Decision*[3] and March 6, 2019 *Resolution*[4] promulgated by the Special Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 9384 entitled "*Majella R. Canzon, Helen B. Cruda vs. Honorable Caesar R. Dulay, in his capacity as*

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[1] *Rollo*, CTA EB No. 2040, pp. 1-29.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo*, pp. 87-104; erroneously stated as October 2018 Decision.

[4] *Id.*, pp. 39-45.

Commissioner of Internal Revenue", and to order the respondent to refund the income tax payments made by petitioners for taxable year 2013.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated September 28, 2018:

> "**WHEREFORE**, the instant *Petition for Review* filed by petitioners Majella R. Canzon and Helen B. Cruda, is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Resolution[6] dated March 6, 2019:

> "**WHEREFORE**, petitioner's *Motion for Reconsideration (of the Decision dated 28 September 2018)* is **DENIED**, for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the records of this case, Petitioners Majella R. Canzon and Helen B. Cruda are employee and former employee, respectively, of Asian Development Bank (ADB). ADB is an international organization with Philippine headquarters located at No. 6 ADB Avenue, Mandaluyong City.[7]

Respondent Caesar R. Dulay, on the other hand, is the Commissioner of Internal Revenue (CIR) vested with the authority to decide disputed 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 or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated September 28, 2018, p. 87.
[8] *Id.* at p. 88.

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*", which provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.[9]

In order to comply with RMC No. 31-2013, petitioners filed their Income Tax Returns (ITRs) and paid their income taxes for TY 2013, detailed as follows:[10]

Name of Employee	Amount Paid	Date of Payment
Majella R. Canzon	₱ 579,932.00	1st Installment - April 10, 2014 2nd Installment - July 9, 2014
Helen B. Cruda	₱ 1,733,538.00	1st Installment - April 10, 2014 2nd Installment - July 15, 2014

On February 14, 2014, two Filipino ADB employees challenged the legality of RMC No. 31-2013 before the Regional Trial Court (RTC) Branch 213 of Mandaluyong City, in a case entitled as *Erwin Salaveria and Portia Gonzales, by themselves and as Attorneys-in-Fact of the concerned Filipino employees of the Asian Development Bank v. Commissioner of Internal Revenue*, and docketed as Civil Case No. MC14- 8775.[11]

In a Decision dated September 30, 2014, the RTC Branch 213 declared Section 2(d)(1) of RMC No. 31-2013 as void as it was issued *sans* legal basis, in excess of authority and/or without due process of law. The RTC also denied CIR's Motion for Reconsideration on January 9, 2015.[12]

Respondent appealed the adverse decision to the Court of Appeals (CA) which was docketed as CA-G.R. CV No. 104374. The appeal was dismissed in the Resolution dated July 3, 2015. The dismissal was effectively affirmed when the CA denied respondent's Motion for Reconsideration in its Resolution dated January 6, 2016. [13]

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[9] *Rollo*, Decision dated September 28, 2018, p. 88.
[10] *Id.* at p. 89.
[11] *Id.* at pp. 89-90.
[12] *Id.* at p. 90.
[13] *Id.*

Respondent elevated the case to the Supreme Court via a Petition for Review on *Certiorari* docketed as G.R. No. 222214.[14] However, based on the records of this case, there is no resolution yet of said petition as of date.

In view of the favorable RTC ruling, and to toll the running of the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, petitioners filed an administrative claim for refund on March 17, 2016, claiming that the income taxes they paid in 2013 were erroneously collected and paid.[15]

Due to alleged inaction on the part of respondent, petitioners elevated their claim before this Court on July 8, 2016.[16]

After the trial, the Court in Division denied petitioners' Petition for Review and the subsequent Motion for Reconsideration of its *Decision* dated September 28, 2018 and *Resolution* dated March 6, 2019, respectively.

Thus, the instant Petition for Review was filed on March 28, 2019 after receiving a copy of said *Decision* on March 13, 2019.[17]

On May 21, 2019, respondent was ordered[18] to file his comment but failed[19] to do so. Thus, on July 1, 2019, the parties were directed[20] to file their respective memoranda.

On August 5, 2019, petitioners submitted their Memorandum[21] through registered mail which was received by this Court on August 8, 2019. On the other hand, respondent failed[22] to submit one. Thus, with the filing of petitioners' Memorandum and the absence of one from respondent, the

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[14] *Rollo*, Decision dated September 28, 2018, p. 90.
[15] *Id.* at p. 90.
[16] *Id.*
[17] *Id.*, Petition for Review, p. 2.
[18] *Id.*, Resolution dated May 21, 2019, pp. 140-141.
[19] *Id.*, Records Verification dated June 18, 2019, p. 142.
[20] *Id.*, Resolution dated July 1, 2019, pp. 144-145.
[21] *Id.*, Memorandum for the Petitioners, pp. 191-231
[22] *Id.*, Records Verification dated September 16, 2019, p. 234.

instant case was deemed submitted for decision on October 2, 2019.[23]

The Issue[24]

Whether or not the petitioners are entitled to an Income Tax Refund.

Arguments of Petitioners[25]

Petitioners argue that the 1997 National Internal Revenue Code (NIRC), as amended, is insufficient to modify, amend or repeal the ADB Charter as the former is merely a general law which deals with general taxability on Filipino citizens, without particular mention of the taxability of Filipino citizens working in ADB, while the latter speaks of the taxability with tax exemption provision of Philippine Nationals working therein.

Petitioners also argue that the instant case was decided not in accord with law and settled jurisprudence 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.

Petitioners insist that the Court in Division erred when it ruled that it cannot take judicial notice of the decision of RTC Branch 213 of Mandaluyong and that the Court in Division has no jurisdiction to rule on the validity of the RMC No. 31-2013.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or

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[23] *Id.*, Resolution dated October 2, 2019, pp. 236-237.
[24] *Rollo*, Memorandum for the Petitioners, p. 155.
[25] *Supra.*, Note 21.

> resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated March 6, 2019. The latter was allegedly received by petitioners on March 13, 2019. In accordance with the abovementioned provisions of the RRCTA, petitioners had until March 28, 2019 within which to file their petition. Thus, the filing of the instant Petition for Review on March 28, 2019 was filed on time.

Now, on the substantive aspect of said petition.

In order to properly dispose the instant case, it is only proper that this Court reviews the history of the ADB Charter in relation to the taxability of the Philippine Nationals who are employees, officers, and staff of ADB.

On December 4, 1965, the Agreement Establishing the Asian Development Bank ("ADB Charter Agreement") was adopted with the Government of the Republic of the Philippines ("GRP") being one of its signatories. Among the provisions of its Charter is Article 56, with regard to its exemption from taxation as well as the income of its employees, *viz*:

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. (*Underscoring supplied*)
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> xxx xxx

The ADB Charter Agreement was ratified by then President Marcos in the following manner, viz:

> NOW THEREFORE, be it know (sic) 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 (sic) 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.[26] (*Emphasis and underscoring supplied*)

On March 16, 1966, Senate Resolution No. 6 was adopted whereby the Senate of the Philippines concurred in the ratification by then President Marcos of the ADB Charter Agreement with the declaration 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.[27]

On December 22, 1966, the GRP, represented by then Secretary of Foreign Affairs, Narciso C. Ramos, and the ADB, represented by its President, Takeshi Watanabe, entered into

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[26] *Rollo*, RTC-Branch 213 Decision dated September 30, 2014, p. 55.
[27] *Id.*, at p. 44.

an "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" on the establishment of the principal office of the ADB in Manila, its privileges, immunities, and facilities to be granted by the GRP ("ADB Headquarters Agreement").

The privileges and immunities of ADB from GRP are contained in the following provision:

> 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; (*Underscoring supplied*)
>
> xxx xxx

On May 18, 1967, the Senate of the Philippines, under P.S.R. No. 38[28] ratified said agreement.

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*". Included therein is a provision pertaining to the tax exemptions enjoyed by the employees of ADB. Section 2(d)(1) of said RMC provides the following:

> SECTION 2. TAX TREATMENT OF COMPENSATION INCOME

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[28] Resolution Concurring in the Ratification of the Headquarters Agreement Between the Government of the Philippines and the Asian Development Bank, Done at Manila on December 22, 1966, Philippine Law Journal, Vol.42, No. 3, July 1967.

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

(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

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

(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.

As a result, Filipino employees of the ADB, were ordered to declare their income for 2012 onwards and pay taxes thereon as the RMC was given retroactive effect. Prior to the issuance of RMC No. 31-2013, the Filipino employees of ADB did not pay income taxes since its establishment in 1966.[29]

Government of the Republic of the Philippines (GRP), as signatory to the ADB Charter Agreement and the ADB Headquarters Agreement, retained its right to tax the salaries and emoluments of Filipino ADB employees.

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[29] *Rollo*, Court of Appeals Resolution dated July 3, 2015, p. 74.

Under Section 2, Article II of the 1987 Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the laws of the land. As such, the Philippine Government, as a party to international agreements, binds itself to recognize its commitments thereunder, including tax treaties, and to fulfill its obligations under them in good faith[30]. This is the same principle enshrined in the 1935 Constitution, as amended, which is prevailing at the time when said agreement was entered into by the GRP and ADB, *viz*:

> **ARTICLE II**
> **Declaration of Principles**
>
> xxx xxx
>
> Section 3. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation.

As pronounced in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[31], *viz*:

> Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.

In the case of *Pharmaceutical and Healthcare Association of the Philippines vs. Health Secretary Francisco T. Duque III, et al.*[32], the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

> "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation**. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies

[30] Cabantac, International Tax Treaty Practice and Ruling (RP-US Tax Treaty), p. 4 (2009).
[31] G.R. No. 188550, August 19, 2013.
[32] G.R. No. 173034, October 9, 2007.

> when, by mere constitutional declaration, international law is deemed to have the force of domestic law.
>
> Treaties become part of the law of the land through **transformation** pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.

The grant of tax-exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments".[33] (*italics ours*) Thus, there is no further need for an enabling law to exercise the reserved power to tax by the GRP.

To recapitulate, the Philippines entered into and signed two international agreements relevant to the case at hand, namely: the ADB Charter Agreement and the ADB Headquarters Agreement. Both were ratified by the GRP and the Senate of the Philippines **with the clear and categorical reservation of its power to tax its citizens and nationals**. The accession, therefore, to said international agreements which grant tax exemption to ADB personnel is conditional and not absolute.

Now, how was this reserved power to tax implemented by the respondent?

Tax cannot be imposed without clear and express words for that purpose, thus the necessity for clear guidelines from the BIR

The power to interpret tax laws is vested upon the Commissioner of Internal Revenue (CIR) under Section 4[34] of

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[33] *Philip Morris Inc., et al. vs. Court of Appeals*, et al., G.R. No. 91332, July 16, 1993.
[34] **Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** – The power to interpret the provisions of this Code and other tax laws shall

the 1997 NIRC, as amended, as implemented by the Department of Finance (DOF) Order No. 07-2002 dated May 7, 2002 which provides for the implementing rules on the exercise of the power of the Secretary of Finance to review the rulings of the CIR.

From the effectivity dates of the twin agreements, there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the GRP on the Filipino ADB employees, except until the issuance of RMC No. 31-2013. The ADB Filipino employees, petitioners included, were never subjected to withholding tax on their compensation income. Likewise, they did not pay any annual income tax to the BIR. During this interregnum period (1966 to 2013), the BIR issued three varying guidelines on the taxable status of the ADB Filipino employees[35], to wit:

1. On March 11, 1999, former Commissioner Beethoven L. Rualo issued a ruling that ADB Filipino employees holding managerial and technical positions are subject to a preferential rate of 15%;

2. On January 29, 2001, the BIR, through its Regional Director (RD) which had the jurisdiction over the ADB, issued an opinion stating that salaries and emoluments received by ADB officers and staff are exempt from taxation; and

3. On February 6, 2013, the Chief, Legal Division of Revenue Region No. 7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are subject to the preferential tax rate of 15% on their compensation income.

Then, RMC No. 31-2013 was issued by the respondent requiring all Philippine nationals to file their annual income tax returns using BIR Form No. 1700 or 1701, without stating what income tax rate was applicable, unlike the earlier letter-rulings. This latest BIR issuance was not explicit enough in denoting the particular income tax rate that will be imposed on the petitioners, to wit:

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be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

[35] Docket, Vol. I, Regional Trial Court Decision, pp. 79-80.

> 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 or or before the 15th day of April each year using BIR Form no. 1700 or 1701**, as may be applicable, declaring therein the amounts of their respective compensation income for the preceding taxable year for services rendered or performed for such foreign government embassy, diplomatic mission, agency or international organization. (*Emphasis supplied*)

The aforesaid BIR tax guidelines for ADB Filipino employees sent contradictory signals to the petitioners. While one BIR ruling opined that the ADB Filipino employees are exempt from taxation, two rulings, i.e. National Office and Regional Office, prescribed a final 15% tax rate and the latest one, i.e. RMC No. 31-2013, imposed graduated income tax rates. Given said inconsistent legal interpretations, the petitioners are caught in a quagmire as to how to go about complying with their tax obligations since the principal implementing agency of the tax laws has yet to come up with a unified crystal-clear position on their taxable status. RMC No. 31-2013 was the first ever comprehensive guideline issued by respondent and it took effect on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the UP Law Center in observance of the requirement under the 1987 Administrative Code, Section 3, Chapter 2, Book VII, which provides:

> *Filing.* (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

Pursuant to the abovementioned provision, as held in *National Association of Electricity Consumers for Reforms, et al. v. Energy Regulatory Commission, et al.*[36], the Supreme Court emphasized that both the **requirements of publication and filing of administrative issuances are mandatory for their effectivity**.

Thus, under RMC No. 31-2013, with the express repealing clause that any revenue issuance which is

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[36] G.R. No. 163935, February 2, 2006.

inconsistent with the circular is deemed revoked, repealed or modified accordingly, the petitioners and the rest of the ADB Filipino employees are finally declared to be taxable under Section 24(A)(1)(a) and (2) of the Tax Code which provides that:

> **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
>
> (2) *Rates of tax on Taxable Income of Individuals.* – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over P10,000	5%
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,00	P22,500+25% of the excess over P140,000
Over P250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P500,000	P125,000+32% of the excess over P500,000.

This court is well aware of the hornbook doctrine in statutory construction that laws operate prospectively only and never retrospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.[37] Article 4 of the New Civil Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."

In the instant case, the tax payments being sought to be refunded by petitioners pertain to taxable year (TY) 2013 which were paid by them in the following year, 2014. As abovementioned, RMC No. 31-2013 became effective on May 2, 2013. Hence, the income earned from TY 2013 by the petitioners were already subject to income tax.

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[37] Diaz, Statutory Construction 249 (4th Edition, 2013).

As to their argument that the Court in Division erred when it ruled that it cannot take judicial notice of the decision of RTC-Branch 213 of Mandaluyong City, petitioners should be aware that, basically, this Court or any other courts cannot take judicial notice of a decision rendered by another court.

In *Elsa Degayo v. Cecilia Magbanua-Dinglasan, et al.*[38], the Supreme Court ruled that, in general, courts cannot take judicial notice of the contents of case records that are pending or already decided in another court unless the matter in controversy has close connection with the case in the former's court or is already moot, to wit:

> The taking of judicial notice is a matter of expediency and convenience for it fulfills the purpose that the evidence is intended to achieve, and in this sense, it is equivalent to proof. Generally, courts are not authorized to "take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge." While the principle invoked is considered to be the general rule, this rule is not absolute. There are exceptions to this rule. In the case of *Tiburcio v PHHC*, this Court, citing Justice Moran, stated:
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>> "In some instance, courts have taken judicial notice of proceedings in other causes, **because of their close connection with the matter in the controversy**. Thus, in a separate civil action against the administrator of an estate arising from an appeal against the report of the committee on claims appointed in the administration proceedings of the said estate, to determine whether or not the appeal was taken on time, the court took judicial notice of the record of the administration proceedings. Courts have also taken judicial notice of previous cases to **determine whether or not the case pending is a moot one** or whether or not a previous ruling is applicable in the case under consideration."

In the instant case the matter in controversy is the denial of claims for refund by the respondent while the one decided by the RTC-Branch 213, Mandaluyong City pertains to a nullification of a particular provision in RMC No. 31-2013. Although the instant case involves also said BIR issuance, the parties involved in the latter case were totally different. Further, the matter of controversy between said cases was also totally different.

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[38] G.R. No. 173148, April 6, 2015.

Hence, there is no close connection in the matter of controversy between the two cases in order for the exception to the rule of not taking judicial notice of the RTC decision to apply.

As to petitioners' argument that this Court has no jurisdiction to rule on the validity of RMC No. 31-2013, petitioners are totally mistaken.

In *Banco De Oro, et al. v. Republic of the Philippines, et al.*[39], the Supreme Court ruled that this Court can pass upon the issue as to the validity of any regulation promulgated by the respondent, to wit:

> "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 maters 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** (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[66] (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.
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> 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

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

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 supplied*)

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed September 28, 2018 *Decision* [40] and March 6, 2019 *Resolution*[41] are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

(I join Presiding Justice's Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[40] *Supra*, Note 3.
[41] *Supra*, Note 4.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MAJELLA R. CANZON AND HELEN B. CRUDA, *Petitioner,*	**CTA EB No. 2040** *(CTA Case No. 9384)*
	Present:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, *and* **MODESTO-SAN PEDRO**, *JJ.*
HONORABLE CAESAR R. DULAY, in his capacity as COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 16 2020 3:54 p.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the ponencia's finding that petitioners' claim for refund of income taxes paid for taxable year 2013 should be denied but on the ground that the income they received from Asian Development Bank (ADB) is taxable **pursuant to existing provisions of the National Internal Revenue Code of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB**.

To my mind, the taxability of the aforesaid income of petitioners is not dependent on the validity or invalidity of Revenue Memorandum Circular No. 31-2013.

On this point, I reiterate the view I expressed in *Commissioner of Internal Revenue vs. Cristeta May Galang, et al., and Cristeta May Galang, et al., vs. Commissioner of Internal Revenue*[1], *viz.*:

> "I wish to stress that resident citizens or nationals of the Philippines who are working with the Asian Development Bank (ADB) are taxable on their income from all sources, including those income derived from ADB. To emphasize, **the taxability of the income they receive from ADB is not dependent on the validity or invalidity of Revenue Memorandum Circular (RMC) No. 31-2013** as the same is based on existing provisions of the National Internal Revenue Code of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB.
>
> Parenthetically, while any revocation, modification or reversal of any previous CIR ruling may not generally be given retroactive application pursuant to Section 246 of the NIRC of 1997, as amended, **there is nothing on record which would show that the CIR had, in the past, issued any rules or regulations exempting from income tax the income derived by resident citizens or nationals of the Philippines who are employees of ADB.** On this point, I submit that Section 246, *supra,* does not find any application in resolving these cases.
>
> While it may be true that since the ratification of the ADB Charter in 1966, or for almost fifty (50) years, ADB employees have never been subjected by the BIR to income tax until the issuance of RMC 31-2013 on April12, 2013, suffice it to say that the failure of the BIR to collect income tax from ADB employees who are resident citizens or Philippine nationals does not *per se* justify the nonimplementation of existing legislations nor result in the absurd construction that pertinent tax laws are deemed repealed.
>
> While non-payment of taxes cannot be considered as custom, yet, even if so -- Article 11 of the Civil Code provides that "[c]ustoms which are contrary to law, public order or public policy shall not be countenanced."

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[1] CTA EB Nos. 1721 and 1868, February 5, 2020.

Thus, the alleged long-standing practice of the BIR of not subjecting to income tax the salaries and emoluments derived by resident citizens from their employment with ADB is not sufficient to exempt them from payment of said tax.

Moreover, it is my view that the Regional Trial Court (RTC) Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. The aforesaid RTC Decision in Civil Case No. MC14-8775 appears to be jurisdictionally infirm insofar as it declared that Section 2(d) (1) of Revenue Memorandum Circular 31-2013 is a nullity. In ***The Philippine American Life and General Insurance Company vs. Commissioner of Internal Revenue,*** the Supreme Court was categorical in saying that **the Court of Tax Appeals is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars.** Needless to say, this Court may not be deprived of its power to review the validity of a claim for tax refund - - falling as it is within its exclusive appellate jurisdiction - - simply on the basis of the existence of the RTC Decision in Civil Case No. MC14-8775." *(Additional boldfacing supplied)*

All told, I **VOTE** to **DENY** the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice