REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CRISTETA MAY GALANG CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB,	**CTA Case No. 9081**
	Members:
Petitioners,	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and*
-versus-	**MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated: FEB 21 2018 3:20 pm
Respondent.	

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RESOLUTION

MANAHAN, *J.*:

On January 9, 2018, petitioners filed a **Motion for Clarificatory Order and/or Separate Judgment**[1] without respondent's comment[2] despite due notice.[3] Such motion seeks clarification on the Court's ruling as to their refund for 2013 income tax payments.

The June 8, 2017 *Decision* as well as the August 30, 2017 *Resolution* ruled on the taxability of the income earned by the Filipino employees employed in the Asian Development Bank. It only allowed the refund of 2012 income tax payments but not those paid in 2013 on the ground that there was lack of clarity on the applicable income tax rate prior to the issuance of Revenue Memorandum Circular (RMC) No. 31-2013 from the Bureau of Internal Revenue (BIR).

[1] Docket, CTA Case No. 9081, pp. 543-545
[2] *Id.*, Records Verification dated February 12, 2018, p. 548.
[3] *Id.*, Notice of Resolution dated January 15, 2018, p. 546; Resolution dated January 15, 2018, p. 547.

The implementation of this RMC on petitioners' 2012 income tax payments violated also Sec. 246 of the National Internal Revenue Code (NIRC) of 1997, as amended, regarding the non-retroactivity of any rules and regulation issued by the BIR. This issuance became effective only on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the University of the Philippines (UP) Law Center in observance of the requirement under Section 3, Chapter 2, Book VII of EO 292.

The *rationale* of said ruling was capsulized in the abovementioned resolution, to wit:

> The assailed decision raises three main points: *first*, that while the Government of the Philippines (GRP) granted tax exemption to the Asian Development Bank (ADB) under the two international agreements, namely, the ADB Charter Agreement and the ADB Headquarters Agreement, it clearly and categorically reserved its power to tax its citizens and nationals, under its legal instruments of ratification; *second*, the implementation of this reserved power was not done immediately with clarity and precision, given the contradictory written statements/guidelines that emanated from the respondent which is supposed to initiate, enforce and supervise the collection of the income taxes that are due from the Filipino employees, officers and directors of the ADB; and *third*, the principle of non-retroactivity of rulings under Sec. 246 of the NIRC must be applied in observance of the principles of equity and due process.
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> The ponencia has no qualms against the position taken by the respondent as well as the dissenting opinion of the esteemed and learned colleague with regards to the taxable status of the Filipino ADB employees. The reservation by the GRP of its power to tax its nationals is clear in the wordings of the two international agreements.
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> The question, however, is whether the ADB Filipino employees should be faulted for their failure to comply with their income tax obligations under the NIRC given the absence of accurate, clear, consistent, and timely guidelines from the respondent. The enabling law is the NIRC itself, but, given its various provisions under Title II on Income Tax, compounded by the conflicting pronouncements by BIR officials *sans* the respondent regarding the applicable tax rate on the

subject, the concerned taxpayers' hands are in kaput. The importance of clarity of laws is emphasized by no less than the Supreme Court in the case of *People v. Nazario* wherein it ruled, *viz:*

> As a rule, a statute or act may be said to be vague when it **lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.'** It is repugnant to the Constitution in two respects: **(1) It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid**; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (*Emphasis supplied*)

Given the lack of clarity of the applicable income tax rate to the petitioners, RMC No. 31-2013 filled up the lacuna and enabled the Filipino ADB employees, represented by the petitioners in this case, to meet their income tax obligations to the state. This issuance is not just an interpretative rule but an administrative regulation that requires prior notice, hearing and publication pursuant to the Administrative Code of 1987 or Executive Order (EO) No. 292. Thus, the RMC took effect only on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the University of the Philippines (UP) Law Center in observance of the requirement under Section 3, Chapter 2, Book VII of EO 292. Thus, the period to be covered by this regulation should be taxable year 2013 and onwards. By collecting income taxes from the petitioner and her Filipino co-employees in ADB in 2012, respondent violated Section 246 of the NIRC which provides:

> SEC. 246. ***Non- Retroactivity of Rulings***. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
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> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
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> (c) Where the taxpayer acted in bad faith.

WHEREFORE, premises considered, petitioners' **Motion for Clarificatory Order and/or Separate Judgment** is hereby **NOTED**. Accordingly, this Court reiterates its ruling granting the 2012 income tax refund claim of the petitioners but denying the 2013 income tax refund claim for lack of legal basis.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice