REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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ERWIN SALAVERIA and PORTIA GONZALES, by themselves and as Attorneys-in-Fact of the concerned Filipino employees of Asian Development Bank,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8681

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
OCT 01 2013
10:35 a.m.

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RESOLUTION

Submitted for consideration are:

1. petitioners' **"URGENT MOTION TO SUSPEND IMPLEMENTATION AND/OR ANY ACTION FOR COLLECTION UNDER REVENUE MEMORANDUM CIRCULAR 31-2013"** filed on August 13, 2013;

2. respondent's **"OPPOSITION to the Urgent Motion To Suspend Implementation and/or Any Action For Collection Under Revenue Memorandum Circular 31-2013 with MOTION TO DISMISS"** filed on August 23, 2013; and

3. petitioners' **"REPLY"** filed on September 9, 2013.

In petitioners' urgent Motion, they seek to suspend the implementation and/or any action for collection by respondent under

Revenue Memorandum Circular (RMC) No. 31-2013.[1] Petitioners claim that they, and the people they represent, shall suffer great and irreparable injury since the action sought to be enjoined would result to an unlawful deprivation of their property and would expose them to unnecessary harassment, anxiety and expense attendant to criminal actions.

On the other hand, respondent counter argues that this Court has no jurisdiction to grant the ancillary remedy prayed for by petitioners since it has no jurisdiction over the main action. She further claims that the filing of the instant petition violates the rule of exhaustion of administrative remedies, which consequently, should ultimately result in the petition's dismissal.

In their Reply, petitioners aver that RMC No. 31-2013 was issued by respondent in the performance of her quasi-judicial function; thus, this Court has jurisdiction, since the instant case falls under the category of "other matters" under Section 7 (a)(1) of Republic Act (RA) 1125,[2] as amended by R.A. No. 9282. Petitioners further argue that since the instant petition raises pure questions of law, it falls under the cases where the exhaustion of administrative remedies may be dispensed with and judicial action may be validly resorted to immediately.[3]

After carefully weighing the parties' contentions and arguments, this Court finds petitioners' urgent motion to suspend bereft of merit.

Before this Court will resolve the merits of petitioners' prayer for suspension of the implementation and/or any action for collection by respondent under RMC No. 31-2013, an initial determination of whether this Court has jurisdiction over the instant case is imperative.

Section 7 (a) (1) and (2) of Republic Act (RA) 1125, as amended by RA No. 9282, among others, enumerates the cases over which this Court has appellate jurisdiction:

"Sec. 7. *Jurisdiction.* - The CTA shall exercise:

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[1] "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" dated April 12, 2013.
[2] "An Act Creating the Court of Tax Appeals".
[3] *citing* Sunville Timber Products, Inc. vs. Hon. Alfonso Abad, et al., G.R. No. 85502, February 24, 1992.

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

In addition, Section 3 (a) (1) and (2) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals,[4] as amended, state:

"RULE 4
Jurisdiction of the Court

xxx xxx xxx

SEC.3. ***Cases within the jurisdiction of the Court in Division.*** — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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[4] AM. No. 05-11-07-CTA.

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;"

Pursuant to the above-cited provisions, the decisions, rulings or inaction of the Commissioner of Internal Revenue are necessary in order to vest the Court of Tax Appeals (CTA) with jurisdiction to entertain an appeal.[5] In the instant case, there has been no decision, ruling or inaction by respondent. The RMC 31-2013 was issued by respondent pursuant to her power to interpret tax laws under Section 4[6] of the National Internal Revenue Code (NIRC) of 1997, as amended. The circular was promulgated to provide guidelines for taxing compensation income of Philippine

[5] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

[6] **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 be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance. *xxx*

nationals and aliens employed by foreign governments and international organizations situated in the Philippines.

In addition, it is worth emphasizing that petitioners mainly pray, in its Petition for Review,[7] that this Court declare RMC 13-2013 as void for being issued without legal basis, *viz*:

> "WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed that the honorable Court render judgment:
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> xxx xxx xxx
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> 2. Declaring RMC 31-2013, insofar as it subjects the Filipino employees of the ADB to income tax, as void for being issued without legal basis, in excess of authority and/or without due process of law;"

In the case of *Smart Communications, Inc. and Pilipino Telephone Corporation, vs. National Telecommunications Commission,*[8] the Supreme Court had already ruled that the authority to declare an administrative issuance as void is part of the general power conferred by the Constitution on the court of general jurisdiction and not on the court of special jurisdiction, to wit:

> "*xxx* The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts."

In the same vein, the Supreme Court *En Banc* in the case of *British American Tobacco v. Jose Isidro N. Camacho, in his capacity as the Secretary of the Department of Finance and Guillermo L. Parayno, in his capacity as the Commissioner of the Bureau of Internal Revenue*,[9] held that while the CTA's jurisdiction to resolve tax disputes in general, does not include cases where the constitutionality of a law or rule is challenged, where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon

[7] Prayer, Petition for Review, Docket p.00027.
[8] G.R. No. 151908, August 12, 2003.
[9] G.R. No. 163583, August 20, 2008.

the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts.

From the foregoing, it is clear that this Court has no jurisdiction to rule on the validity of the said RMC. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction[10] specifically those enumerated under Republic Act 1125, as amended by R.A. No. 9282.[11] Outside of such enumeration, this Court has no jurisdiction. It is elementary that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. Since the Court of Tax Appeals is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred, should

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[10] Allied Banking Corporation vs. Commissioner of Internal Revenue , G.R. No. 175097, February 5, 2010; Rizal Commercial Banking Corp. (RCBC) vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

[11] "**Sec. 7. *Jurisdiction.*** - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties."

not be deemed to exist on mere implication and should not be exercise beyond the power that which the legislature has given.

Going further, since the RMC 31-2013 was issued by respondent pursuant to her power to interpret tax laws; Section 4 of the 1997 NIRC, as amended, mandates that any appeal thereon must be made with the Secretary of Finance. To wit:

> "**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 be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> *xxx* *xxx* *xxx" (Underscoring Ours)*

In the instant case, petitioners failed to appeal the Revenue Memorandum Circular to the Secretary of Finance. Instead, they went directly to this Court *via* the present petition for review. Let it be reiterated that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[12]

With the conclusion reached, this Court finds no reason to resolve petitioners' prayer for the Urgent Motion to Suspend Implementation and/or Any Action for Collection Under Revenue Memorandum Circular 31-2013, for being moot.

WHEREFORE, premises considered, petitioners' Urgent Motion To Suspend Implementation and/or Any Action For Collection Under Revenue Memorandum Circular 31-2013 is **DENIED**. However, respondent's Opposition to the Urgent Motion To Suspend Implementation and/or Any Action For Collection Under Revenue Memorandum Circular 31-2013 with Motion to Dismiss is **GRANTED.**

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12 Rosita Montanez vs. Provincial Agrarian Reform Adjudicator (PARAD), et al., G.R. No. 183142, September 17, 2009; Asia International Auctioneers, Inc. v. Parayno, G.R. No. 163445, December 18, 2007.

Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction and for having been filed prematurely.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice