

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

IRISH FE N. AGUILAR

CTA EB NO. 2652

Petitioner, (CTA Case No. 9867)

Present:

-versus-

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

OCT 02 2023

[Signature]
10: 25 AM

x

x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,¹ filed on 11 July 2022 by petitioner Irish Fe N. Aguilar seeking the reversal and setting aside of the Decision, dated 30 September 2021² (“Assailed Decision”), and Resolution, dated 3 June 2022³ (“Assailed Resolution”), both rendered by the Court in Division. Petitioner prays for this Court to render judgment reversing the Assailed Decision and Assailed Resolution and ordering respondent to refund the income tax payments made by petitioner for taxable years 2015 and 2016 in the total amount of ₱959,342.00.⁴

¹ EB Records, pp. 1-31.

² Division Records, pp. 553-570.

³ *Id.*, pp. 598-603.

⁴ EB Records, pp. 1-31.

The Parties

Petitioner Irish Fe N. Aguilar is an employee of the Asian Development Bank (“ADB”) at the time the income tax payments were made.⁵

Meanwhile, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (“BIR”), with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.⁶

The Facts

The relevant factual antecedents found by the Court in Division and culled from the records of the case follow.

On 12 April 2013, the former Commissioner of Internal Revenue, Honorable Kim S. Jacinto-Henares issued ***Revenue Memorandum Circular (“RMC”) No. 31-2013*** prescribing the Guidelines on the Taxation of Compensation Income of the Philippine Nationals and Alien Individuals Employed by the Foreign Governments/Embassies/Diplomatic Missions and International Organizations situated in the Philippines.⁷ ***Section 2(d)(1)*** of the same provides that only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.⁸

Some of the petitioner’s colleagues, namely, Erwin Salavera and Portia Gonzales, by themselves and as attorneys-in-fact of concerned Filipino employees of ADB filed before Branch 213 of the Regional Trial Court (“RTC”) of Mandaluyong City a petition to nullify ***Section 2(d)(1) of RMC No. 31-2013***.⁹

On 30 September 2013, the RTC of Mandaluyong City issued a Decision declaring ***Section 2(d)(1) of RMC No. 31-2013*** void for being issued without legal basis, in excess of authority and/or without due process of law and likewise void in the absence of legislation and/or regulation to the contrary.¹⁰

The BIR appealed the RTC Mandaluyong City’s Decision to the Court of Appeals, but said appeal was dismissed on 3 July 2015,¹¹ with the Court of Appeals ruling that the proper course of action would have been to file a 

⁵ Pre-Trial Order dated 19 November 2019, Division Records, pp. 419-426.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

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petition with the Supreme Court through Rule 45 of the Rules of Court. Respondent filed a Motion for Reconsideration which was also denied by the Court of Appeals. The BIR then elevated the case before the Supreme Court by filing a Petition for Review on Certiorari.

Despite said Decision of the RTC Mandaluyong City, petitioner still filed her Income Tax Returns and paid her income taxes for taxable years 2015 and 2016 in the amount of ₱464,824.00 and ₱494,518.00, respectively.¹²

On 12 April 2018, petitioner filed her written claims for refund for taxable years 2015 and 2016 before BIR Revenue District Office (“RDO”) No. 41 in Mandaluyong City.¹³

Petitioner’s claims for refund were not acted upon by the BIR.¹⁴ On the basis of said inaction, petitioner filed her judicial claim for refund with the Court of Tax Appeals (“CTA”) on 2 July 2018. The case was docketed as CTA Case No. 9867.

On 30 September 2021, the Court in Division rendered the Assailed Decision denying the Petition for Review.

On 12 November 2021, petitioner filed her Motion for Reconsideration (of the Decision dated 30 September 2021)¹⁵ which the Court in Division denied in the Assailed Resolution.¹⁶ Petitioner received the Assailed Resolution on 24 June 2022.¹⁷

On 11 July 2022, petitioner filed the instant Petition for Review before the Court *En Banc*¹⁸ without Comment from respondent.¹⁹

On 13 September 2022, the Court issued a Resolution submitting the instant case for decision.²⁰

Hence, this Decision ✓

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Division Records, pp. 571-588.

¹⁶ *Id.*, pp. 598-603.

¹⁷ *Id.*, pp. 596-597.

¹⁸ *Supra* note 1.

¹⁹ *Id.*, p. 159.

²⁰ *Id.*, pp. 161-162.

Issues²¹

The issues submitted for the Court *En Banc* 's resolution are:

- (1) Whether the Court in Division erred when it ruled that the tax-exempt privileges of ADB employees under the ***ADB Charter***²² must yield to municipal laws or to the prerogative of the Philippine Government to tax its nationals;
- (2) Whether the Court in Division decided in a manner not in accord with the law and applicable jurisprudence in holding that the ***National Internal Revenue Code of 1997 ("Tax Code")*** is the operative act which imposed taxability on the income of Philippine nationals working in the ADB considering that: (a) The ***Tax Code*** is 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; and (b) 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 the ADB; and
- (3) The Court in Division erred in exercising appellate jurisdiction over the decision of the RTC Mandaluyong City and holding that ***Section 2(d)(1) of RMC No. 31-2013*** is in accord with the ADB Charter and the provisions of the ***Tax Code, as amended***.

Arguments of Petitioner²³

Petitioner presents the following arguments in assailing the Court in Division's Decision and Resolution:

First, Article 56 of the ADB Charter expressly grants a tax-exempt privilege to its employees. Petitioner recognizes the reservation of former President Ferdinand E. Marcos to the ***ADB Charter*** but claims that such reservation connotes an element of futurity the exercise of which requires a positive act from the legislative body to be operative. Petitioner maintains that

²¹ *Supra* note 1.

²² Agreement Establishing the Asian Development Bank; came into force 22 August 1966.

²³ *Ibid*.

the ***ADB Charter*** is a valid treaty and must be accorded respect and complied with in good faith.

Second, petitioner maintains that, as an international agreement, the ***ADB Charter*** forms part of the law of the land in accordance with ***Section 2, Article II of the 1987 Constitution***. She explains that the ***Tax Code***, which took effect in 1997, is to be construed as a general law because of its universal application to the taxability of all citizens of the Philippines residing therein while the ***ADB Charter***, which was ratified in 1966, is a special law which specifically pertains to ADB employees. She argues that the special law should prevail in the absence of express or implied repeal since it evinces the legislative intent more clearly than a general statute. Petitioner thus concludes that tax exemption granted to her as an employee of ADB was not withdrawn with the enactment of the ***Tax Code***.

Third, petitioner maintains that the CTA had no jurisdiction to rule on the validity and constitutionality of ***RMC No. 31-2013***. Petitioner asserts that the determination of whether ***RMC No. 31-2013*** contravenes the ***Constitution*** is within the jurisdiction of the regular courts, and that the RTC's decision is subject to the exclusive appellate jurisdiction of the Court of Appeals, not the CTA. Petitioner adds that she is not even a party to the case before the RTC Mandaluyong City and did not raise the validity or invalidity of the RTC Decision for the CTA in Division to decide and reverse.

The Ruling of the Court *En Banc*

The Petition for Review is unmeritorious.

After a review of petitioner's arguments and pertinent records of the instant case, the Court *En Banc* finds no reason to reverse the Assailed Decision and Assailed Resolution of the Court in Division. The arguments raised by petitioner in the present Petition for Review are mere reiterations of the arguments raised in the Petition for Review²⁴ before the Court in Division and Motion for Reconsideration (of the Decision dated 30 September 2021)²⁵ which were exhaustively discussed by the Court in Division. ✓

²⁴ Division Records pp. 10-25.

²⁵ Division Records, pp. 571-588.

The Court in Division correctly ruled that the tax-exempt privileges of ADB Employees under the ADB Charter must yield to municipal laws or to the prerogative of the Philippine Government to tax its nationals.

Petitioner anchors its tax-exempt privilege on its salaries and emoluments received from ADB from *Article 56 of the ADB Charter* which purportedly states that no tax shall be levied on salaries and emoluments paid to officers and employees of ADB.

Petitioner's interpretation is erroneous.

Article 56 of the ADB Charter provides that no tax shall be levied on the salaries and emoluments of its officers and employees except where the member State retains its right to tax salaries and emoluments of its citizens. It pertinently provides:

“ARTICLE 56
EXEMPTION FROM TAXATION

...

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.**”
(Emphasis and underscoring supplied.)

The Philippines expressly reserved its right to tax the salaries and emoluments paid by ADB to its citizens, as follows:²⁶

“The Government of the Philippines declares that it retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines.”

²⁶ See also Status of the Agreement Establishing the Asian Development Bank, as reported in the Multilateral Treaties Deposited with the Secretary-General of the United Nations, Chapter X(4), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20X/X-4.en.pdf>, last accessed 21 September 2023. Note that the Philippines signed said Agreement on 4 December 1965 and ratified the same on 5 July 1966.

Consistent with the Philippines' reservation, the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank ("ADB Headquarters Agreement")*²⁷ also expressly provides that:

**"ARTICLE XII
Privileges and Immunities of Governors and Other Representatives of
Members, Directors, President, Vice-President and Others**

...

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;**
 - (c) ..."
- (Emphasis, Ours)

From the foregoing, it is clear that the Philippines has reserved its right to tax the salaries and emoluments of its citizens who are ADB employees, such as petitioner.

Petitioner then claims that the reservation clause connotes an element of futurity, the exercise of which requires a positive act from the legislative body to be operative.

The Court *En Banc* reiterates with approval the finding of the Court in Division on this point as follows:

"The necessity of an enabling law as propounded by petitioner is negated by the existence of a national law on taxation as embodied in the 1997 NIRC, as amended, and which shall govern the taxability of the compensation earned by the Filipino employees of ADB such as herein petitioner.

Section 23 of the 1997 NIRC, as amended, specifically provides as follows:

²⁷ 22 December 1966.

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“Section 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 and without the Philippines.”**

Section 24 (A) (1) of the 1997 NIRC, as amended, provides as follows:

“Section 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:**”
(Emphasis supplied)

xxx xxx xxx

In relation to the aforequoted provisions, Sections 30 and 31 of the 1997 NIRC, as amended, provide as follows:

“Section 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.”

“Section 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:**” (Emphasis supplied)

The above provisions leave no doubt that **under Philippine law, the compensation income of a citizen or a resident of the Philippines derived within and without the country, is subject to income tax.**²⁸
(Emphasis and underscoring supplied.)

The Court in Division correctly ruled that the *Tax Code* is the operative act which imposed tax on the income of Philippine nationals working in ADB.

The Court *En Banc* also does not find merit in petitioner's contention that the *ADB Charter* is a special law that is not, in any way, superseded by the *Tax Code*.

Section 23(A) and Section 24 (A) (1) of the Tax Code, as amended, clearly provides that all citizens of the Philippines residing therein are subject to income tax on all income sourced within and outside the Philippines. The provisions of the *Tax Code* unmistakably identify all resident citizens of the Philippines, regardless of the identity of their employer, to be subject to income tax on their income within and without the Philippines. The provision of the *Tax Code* is clear and unequivocal, and needs no statutory construction.

Even assuming that the law is ambiguous, thus requiring statutory construction, had legislature intended for the *Tax Code* to be the general law and the *ADB Charter* as the special law, they could have easily created a provision or a clause in the *Tax Code* stating that the taxability of resident citizens is subject to the exemptions under treaty obligations. For example, in *Section 32(B)(5) of the Tax Code*, it specifically identified as an 'Exclusion from Gross Income' those 'Income Exempt under Treaty'. The absence in the *Tax Code, as amended*, of any equivalent clause or provision confirms that legislature intended to tax all resident citizens on their income within and outside the Philippines.

The Court *En Banc* thus echoes with affirmation the ruling of the Court in Division that it is clear from the *Tax Code, as amended*, that ADB employees who are resident citizens of the Philippines are liable to pay income tax on the compensation received by them.

The Court in Division did not act outside its jurisdiction when it ruled on the clarifications laid down in RMC No. 31-2013.

Petitioner maintains that the Court in Division had no jurisdiction to rule on the validity and constitutionality of *RMC No. 31-2013*.

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Contrary to petitioner's claims, the Court in Division did not rule on the validity of ***RMC No. 31-2013*** but, instead, merely affirmed the interpretation of ***Section 23 (A)*** and ***Sections 24 (A) (1) (a), 31 and 32 of the Tax Code, as amended***, read together with the ***ADB Charter***. The relevant portion in the Assailed Decision of the Court in Division merely states:

“We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord with the ADB Charter and the provisions of the 1997 NIRC, as amended.”²⁹
(Underscoring supplied.)

Thus, the Court in Division further explained in the Assailed Resolution that it merely interpreted the applicable law as follows:

“The ADB Charter and the corresponding Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank,” (ADB Headquarters Agreement), were ratified in 1966 while the NIRC was enacted in 1997 which is the positive act of the Philippine Congress to tax its own citizens including ADB employees who may be resident citizens. In ruling thus, **petitioner seems to have missed the point when it questioned the jurisdiction of the Court to rule on the validity of RMC 31-2013 because the tax obligation of ADB employees who are Philippine nationals does not emanate from said RMC but on the afore-cited provisions of the 1997 NIRC. Thus, when the Court ruled that the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by ADB employees is in accord with the ADB Charter and the provisions of the 1997 NIRC, as amended, it did not rule on its validity but merely affirmed its correct interpretation of the applicable law.** Nonetheless, it is hornbook doctrine that the Court of Tax Appeals has exclusive appellate jurisdiction to determine the validity or constitutionality of administrative issuances of respondent and the RTC has no jurisdiction to decide on the validity or constitutionality of the RMC. Consequently, such RTC decision is a nullity and does not have any legal and binding effect.”³⁰
(Citations omitted; emphasis and underscoring supplied.)

To emphasize, ***RMC No. 31-2013*** merely reiterates the general principles laid down in ***Section 23 (A) of the Tax Code, as amended***, and merely implements ***Sections 24 (A) (1) (a), 31 and 32 of the Tax Code, as amended***, all of which have been in effect since 1 January 1998. Stated otherwise, the taxability of petitioner's income is not dependent on the validity or invalidity of ***RMC No. 31-2013***. Instead, her income as a resident citizen from all sources, including her income from ADB, is subject to Philippine income Tax pursuant to ***Section 23 (A)*** and ***Sections 24 (A) (1) (a), 31 and 32 of the Tax Code, as amended.***✓

²⁹ Decision, dated 30 September 2021, p. 13, *id.*, p. 566.

³⁰ Resolution, dated 3 June 2022, p. 5, *id.*, p. 602.

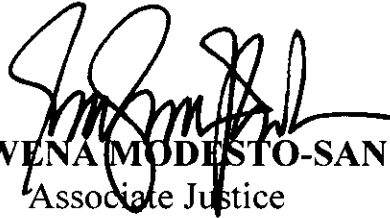
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WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Irish Fe N. Aguilar is hereby **DENIED** for lack of merit.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



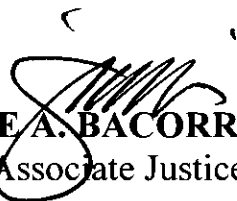
ROMAN G. DEL ROSARIO
Presiding Justice



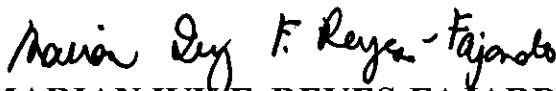
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

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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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a large, stylized initial 'R' and a long horizontal stroke extending to the right.

ROMAN G. DEL ROSARIO

Presiding Justice