Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ROWENA VICENTE ET. AL.,
Respondents.

CTA EB NO. 1717
(CTA Case No. 9096)

x-----------------------------x

ROWENA VICENTE ET. AL.,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1718
(CTA Case No. 9096)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
AUG 08 2019
2:23 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision are consolidated Petitions for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the

---

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

Decision[2] dated July 7, 2017, rendered by the Second Division of this Court in CTA Case No. 9096, and its Resolution[3] dated September 13, 2017.

The Second Division of this Court partially granted the claim for refund in the total amount of Php 11,837,379.66 representing the illegally collected income taxes for taxable year 2012.

Both parties assail both the aforesaid Decision and Resolution, the pertinent portions of which, respectively, read as follows:

Decision dated July 7, 2017:

*"**WHEREFORE**, in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED** for lack of merit.*

*Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/ TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of Php 11,837,379.66 to be individually allocated based on the tabular summary provided earlier, representing the illegally collected income taxes for taxable year 2012.*

***SO ORDERED.**"*

Resolution September 13, 2017:

*"**WHEREFORE**, in light of the foregoing premises, Petitioner's Motion for Partial Reconsideration and*

---

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.-*

(a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

[2] En Banc Docket, pp. 17-51.

[3] En Banc Docket, pp. 62-68.

L

respondents' Motion for Partial Reconsideration (Re: Decision dated July 7, 2017) are both ***DENIED*** *for lack of merit.*

SO ORDERED."

The antecedent facts as narrated by the Court in Division in its Decision read as follows:

"PARTIES

Petitioners are all Filipinos, of legal age and employees of ADB.

The Commissioner of Internal Revenue ("respondent") is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

On December 4, 1965, the ADB was established. Among the provisions of its Charter ("ADB 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. (italics ours)

xxx xxx

L

The ratification made by then President Marcos on said agreement was couched in the following manner, viz:

> *NOW THEREFORE, be it known 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 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. (Italics ours)*

On March 16, 1966, Senate Resolution No. 6 was adopted whereby the Senate of the Philippines concurred in the ratification by then President Marcos on the ADB Charter with the declaration 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" pursuant to Article 56, paragraph 2 of the Agreement.

On December 22, 1966, the Government of the Republic of the Philippines (GRP), represented by then Secretary of Foreign Affairs, Narciso C. Ramos, and the ADB, represented by its President, Takeshi Watanabe, entered into an "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" regarding 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*
>
> *<u>Officers and staff of the Bank</u>, including for the purposes of this Article experts and consultants performing missions for the Bank, <u>shall enjoy the following privileges and immunities</u>:*
>
> *(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 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

The tax treatment of Philippine nationals and alien individuals on compensation income received by them governments/embassies and missions and 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

L

> *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. (Emphasis ours.)*

As a result, Filipino employees of the ADB, including the petitioners, 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.

A challenge to the legality of RM C 31-20 13 as well as to the authority of the respondent Commissioner to issue said circular was formalized by two Filipino ADB employees who filed a petition with the Regional Trial Court (RTC) of Mandaluyong City in February 2014, seeking to nullify the aforequoted Section 2 (d) (1) of said RMC. The RTC ruled in favor of the Filipino employees and nullified Section 2 (d) (1) of the aforequoted RMC.

Respondent appealed said decision to the Court of Appeals docketed as CA-G.R. CV No. 104374 which ruled in favor of the petitioners under its Resolution dated July 3, 2015. Respondent moved for its reconsideration but was also denied under Resolution dated January 6, 2016.

Respondent elevated the case before the Supreme Court by filing a Petition for Review on Certiorari entitled "Commissioner of Internal Revenue v. Erwin Salaveria and Portia Gonzales" docketed as G.R. No. 222214. The case is still pending for resolution.

On the basis of the decision of the RTC declaring the invalidity of the pertinent provisions of RMC 31-2013, petitioners alleged to have filed letter claims for refund with the office of the respondent Commissioner on the following dates:

1. May 29, 20 15;
2. June 11, 2015;

L

> *3. June 22, 20 15;*
> *4. June 30,2015;*
> *5. July 7, 2015;*
> *6. July 13, 2015;*
>
> *Due to the inaction of the respondent on their claims for refund and anxious that the two-year period was about to lapse, petitioners filed a Petition for Review with this Court on July 14, 2015.*
>
> *On August 20, 2015, respondent filed his Answer to the Petition for Review.*
>
> *xxx xxx xxx.*
>
> *On December 19, 2016, respondent filed her Memorandum followed by Petitioners' "Memorandum with Manifestation" filed on January 20, 2017.*
>
> *The parties having submitted their respective Memoranda, the Court issued a Resolution on January 25, 2017, submitting this case for Decision."*

On July 7, 2017, the Second Division of this Court rendered a Decision which partially granted the taxpayer-claimants claim for tax refund. The Court in Division ruled that there should be no question then that the compensation income of the Filipino employees of the Asian Development Bank (ADB) is subject to tax, however, the Revenue Memorandum Circular (RMC) No. 31-2013 should not be applied retroactively. Thus, the Court in Division ordered total amount of Php 11,837,379.66 representing the illegally collected income taxes for taxable year 2012 be refunded while those claim for refunds for taxable year 2013 is in effect denied. Thereafter, both parties filed their respective motion for partial reconsideration which were denied in a Resolution dated September 17, 2017.

Hence, the Petitions for Review were filed.

In CTA EB No. 1717 (CTA Case No. 9096), petitioner Commissioner of Internal Revenue (CIR) submits that the Court in Division erred in ruling that RMC 31-2013 should not be retroactively applied, which results in the refund of Php 11,837,379.66, representing income tax for taxable

l

year 2012. Petitioner CIR argued that there is no retroactive application of RMC 31-2013 for taxable year 2012 on the basis that tax obligation of Philippine national including respondents already exist pursuant to Section 23 of the NIRC of 1997[4], as amended.

On the other hand, in CTA EB No. 1718 (CTA Case No. 9096), petitioners Rowena Vicente et al. (taxpayer-claimant) submit that the "reservation" of the Philippine Government to tax its citizen when it ratified the ADB Charter is not self-executing and legislation is necessary to put it into effect contrary to the assailed Decision. Moreover, petitioners Rowena Vicente, et al. maintain that a tax on the salary of the Filipino officials and employees of the ADB is discriminatory and a violation of the equal protection clause.

We resolved to grant the petition in CTA EB No. 1717 and deny the petition in CTA EB No. 1718.

In claiming tax refund in the nature of tax exemption, this Court is guided by the principle that such tax exemptions are strictly construed against the taxpayer claimant and must be based under clear and unmistakable terms. The Supreme Court in the case *Commissioner of Internal Revenue vs. Solidbank Corporation*[5] instructively ruled the treatment of tax refunds as follows:

> *"Tax refunds are in the nature of tax exemptions. Such exemptions are strictly construed*

---

[4] 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.

(B) A nonresident alien is taxable only on income derived from sources within the Philippines;

(C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income derived from sources within the Philippines: Provided , That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker;

(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; A domestic corporation is taxable on all income derived from sources within and without the Philippines; and

(E) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines

[5] G.R. No. 148191, November 25, 2003.

L

> *against the taxpayer, being highly disfavored and almost said "to be odious to the law." Hence, those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. They must be able to point to some positive provision, not merely a vague implication, of the law creating that right.*
>
> *The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty — its most essential power of taxation — by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption."*
>
> *No less than our* <u>*1987 Constitution*</u> *provides for the mechanism for granting tax exemptions. They certainly cannot be granted by implication or mere administrative regulation. Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim."*

In the case at bar, the following facts are undisputed:

1) An "Agreement Establishing the Asian Development Bank" (ADB Charter) was executed on December 4, 1965.

2) The ADB Charter was ratified and confirmed by the Philippine Government in Senate Resolution No. 6 dated March 16, 1966 with a reservation of its right to tax the Filipino employees of ADB, to wit:

> *"NOW THEREFORE, be it known 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 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.****" (Emphasis supplied)*

3) 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) was signed on December 22, 1966, giving 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, the pertinent part states:

> *"ARTICLE XII*
>
> *Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice President and Others*
>
> *xxx xxx 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:*
>
> *(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****; xxx." (Emphasis supplied)*

4) On January 1, 1998, Republic Act No. 8424 "Tax Reform Act of 1997" took effect. The National Internal Revenue Code (NIRC) of 1997 provides the principle of Income taxation in the Philippines. Sections 23(A) and 24(A)(1)(a) of the 1997 NIRC read as follows:

> *"Section 23. General Principles of Income Taxation in the Philippines. -Except when otherwise provided in this Code:*

ረ

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines."

xxx xxx xxx.

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)*

5) On April 12, 2013, Revenue Memorandum Circular 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", was issued. It clarifies that the exemption from withholding taxes on the compensation of officials and employees applies to foreign governments/embassies/ diplomatic missions and international organizations. Since the withholding of tax is merely a method of tax collection, the exemption from withholding taxes does not equate to the exemption from paying the income tax itself. It also provides, among others, that officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax, to wit;

(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

L

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."

From the foregoing, we find that while officers and staff of Asian Development Bank were expressly given exemption from taxation with respect to the salaries and emoluments they received, the same is not absolute as the exemption from taxation is subject to the power of the Government (Philippine) to tax its nationals. Thus, based on the agreement with the ADB, the Philippine government did not relinquish its sovereign right to tax its national. Otherwise stated, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine taxation on or in respect of the salaries and emoluments paid by the ADB.

As to the argument that legislation is necessary since the Philippine government reserved in its concurrence to a treaty the power to tax its nationals, we find the same without merit. In taxing Philippine nationals, taxation is the rule and exemption is the exception. No separate legislation is necessary for Philippine government to tax its nationals since Philippine government did not relinquish its sovereign right to tax its nationals at the outset. Furthermore, the act of the Philippine government in entering an agreement, giving the privilege of tax exemption on salaries emolument paid by ADB to its employees and at the same time not relinquishing its power of taxation over its own citizens and

L

nationals is a political question [6], not a justiciable controversy, thus, we find the alleged violation of the equal protection clause untenable.

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 clearly provides that privilege of exemption from taxation on or in respect of the salaries and emoluments paid by the ADB **is subject to the power of the Philippine Government to tax its nationals**. Clearly, no separate legislation is required for a member state to tax its nationals.

Moreover, Article 56 (2) of the ADB charter[7] provides that "no tax shall be levied on or in respect of the salaries and emoluments paid by the ADB except where a member deposits with its instruments 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". The Philippine Government in Senate Resolution

---

[6]Political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government." Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question. In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question." (Garcia v. Executive Secretary, G.R. No. 157584, April 2, 2009, 583 SCRA 119, 129 citing Tañada v. Cuenco 103 Phil. 1051)

[7] *"EXEMPTION FROM TAXATION*

xxx xxx xxx.

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 instruments 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 supplied)*

L

No. 6 dated March 16, 1966, declares 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. Such declaration, for all intent and purpose clearly shows that the Philippine government withhold the tax exemption and retains the right to tax the salaries and emoluments paid by the Bank to Philippine citizens or nationals; and no separate legislation is required to implement the same. Thus, We find that the Court in Division aptly ruled as follows:

> *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 i.e. Philippine 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".*
>
> *xxx xxx xxx.*
>
> *In our analysis of the taxability of the compensation received by Filipino employees of the ADB, we go no further than the statements contained in the ADB Charter and the presidential ratification which followed where then President Ferdinand Marcos declared that the Philippine government "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." This Court finds that this particular statement overrules and clarifies any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB and upholds the applicability of national laws on taxation insofar as their compensations are concerned.*
>
> *Under our national tax laws, Philippine citizens are taxable on their income derived from both inside and outside the country.*

As to the application of RMC 31-2013 for taxable year 2012, we find the Court in Division erred when it ruled that due to the various confirmations and affirmations of various revenue officials that the income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the principles of

L

fair play and substantial justice dictate that its provisions should apply to claims starting only from 2013 and onwards.

At the outset, in a claim for tax refund, an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[8] In the case at bar the payment and collection of taxes for taxable year 2012 is neither erroneous nor illegal. The collection was subject to statutory authority and the income was subject to tax.

Even prior to Agreement between the Asian Development Bank and the Government of the Republic of the Philippines (executed on December 4, 1965, ratified and confirmed by the Philippine Government in Senate Resolution No. 6 dated March 16, 1966), the Philippine government was exercising its sovereign right to tax its citizens or nationals. Pursuant to Sections 21, 28 and 29 of the National Internal Revenue Code of 1939[9], there shall be levied, assessed, collected, and paid annually upon the entire net income of citizen and resident of the Philippines.

Moreover, We find based on the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines, that the Philippine government in entering an agreement and giving the privilege of tax exemption on salaries emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals.

---

[8] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012,

[9] "SECTION 21. Rates of Tax on Citizens or Residents. - There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year of the Philippines, a tax equal to the sum of the following:

xxx xxx xxx.

"SECTION 28. Meaning of Net Income. - 'Net income' means the gross income computed under section 29 less the deductions allowed by section 30."

"SECTION 29. Gross Income. - (a) General Definition. - {Gross income' includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, xxx, and income derived from any source whatever."

L

Similarly, pursuant to Sections 21, 28 and 29 of the National Internal Revenue Code of 1977[10], tax was imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines. Thereafter, pursuant to Section 23(A), 24, 31(A)(1) of the NIRC of 1997[11], all of a resident citizen's income is subject to tax (derived for each taxable year from all sources within and without the Philippines).

Thus, despite the alleged reliance on various confirmations and affirmations of various revenue officials

---

[10] SECTION 21. Rates of tax on citizens or Residents. - A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines determined in accordance with the following schedule: xxx

xxx xxx xxx.

"SECTION 28. Meaning of net income. - 'Net income' means the gross income computed under section twenty-nine, less the deductions allowed by section thirty."

"SECTION 29. Gross Income. - (a) General Definition. - 'Gross income' includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, xxx, and income derived from any source whatever."

[11] "SEC. 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 or without the Philippines;"

xxx xxx xxx.

"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 (8), (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 xxx.

"SEC. 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."

"SEC. 32. Gross Income. - (A) General Definition. - Except when otherwise provided in this Title, gross income means all income"

ℒ

that the income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the fact remains that Philippine government in giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals, that amount of tax paid in taxable year 2012 is not in excess on what is due; that the payment and collection of taxes for taxable year 2012 was subject to statutory authority and is neither erroneous nor illegal. "Render to Caesar what is Caesar's". In sum, claim for refund must perforce fail.

Taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.[12]

Furthermore, every citizen has a civic responsibility nay an obligation to honestly pay the right taxes as a contribution to the government in order to keep and maintain a civilized society. Corollarily, the government is expected to implement tax laws in good faith; to discharge its duty to collect what is due to it; and consistent with the principles of fair play and equity to justly return what has been erroneously and excessively given to it after careful verification but without infringing upon the fundamental rights of the taxpayer.[13]

In sum, the claim for tax refund for taxable year 2012 and 2013 are not in excess on what is due; the payments

---

[12] Commissioner of Internal Revenue v. Algue, Inc., G.R. No. L-28896, February 17, 1988, 158 SCRA 9
[13] Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. GST Philippines, Inc., G.R. No. 190872, October 17, 2013.

h

and collections of taxes were subject to statutory authority and is neither erroneous nor illegal.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1717(CTA Case No. 9096) is **GRANTED**. The Petition for Review docketed as CTA EB No. 1718(CTA Case No. 9096) is **DENIED** for lack of merit.

Accordingly, the July 7, 2017 Decision and September 13, 2017 Resolution of the Second Division in CTA Case No. 9096 are **REVERSED and SET ASIDE**. The claim for refund in the petition docketed as CTA Case No. 9096 is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

I join the Concurring and Dissenting Opinion of Justice Catherine T. Manahan
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I join the Concurring and Dissenting Opinion of Justice Catherine T. Manahan
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 among the members of the Court En Banc before the cases were assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ROWENA VICENTE ET. AL.,
Respondents.

CTA EB NO. 1717
(CTA Case No. 9096)

x---x

ROWENA VICENTE ET. AL.,
Petitioners,

-versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1718
(CTA Case No. 9096)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

AUG 08 2019

2:23p.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review in CTA EB No. 1717 and in denying the Petition for Review in CTA EB No. 1718.

I, however, 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. Irrespective of the existence of RMC No. 31-2013, the obligation of resident citizens or nationals to pay income tax on salaries and emoluments paid to them by ADB **commenced on the taxable year that they were employed by ADB**.

The issuance of RMC No. 31-2013 does not have the effect of modifying any rules or regulations promulgated by the Commissioner of Internal Revenue (CIR) as **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 of the NIRC of 1997, as amended, on the non-retroactivity of rulings, does not find any application in resolving these cases. As aforestated, employees of ADB who are resident citizens or Philippines nationals are subject to income tax on salaries and emoluments they receive from ADB beginning on the date of their employment therein.

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 April 12, 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 non-implementation 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."

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.

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1717** (CTA Case No. 9096)
-versus-	
ROWENA VICENTE ET.AL., *Respondents.*	

x- x

ROWENA VICENTE ET.AL., *Petitioners,*	**CTA EB No. 1718** (CTA Case No. 9096)
-versus-	Present:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO**, *JJ.*
	Promulgated: AUG 08 2019 2:23 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.*:

The *En Banc* decision granted the Petition for Review of the Commissioner of Internal Revenue (CIR) in CTA *EB* No. 1717 and denied the Petition for Review of Rowena Vicente, et al., in CTA *EB* No. 1718.

The overall conclusion in the grant and denial of the Petitions for Review is that the salaries and emoluments of the Filipino officers and employees of the Asian Development Bank (ADB) are subject to Philippine income tax notwithstanding the provisions of the ADB Charter exempting officers and staff of the ADB from taxation.

I concur with the majority's ruling that the relevant law and treaties applicable to the case at hand, so far proved that such exemption provided in the ADB Charter is not clear and categorical. Thus, I see no further need to elaborate on the decision of the Court *En Banc* on this matter since such position was also adopted by me as *ponente* in a number of promulgated decisions assigned to me.[1]

I do, however, express my opposition to the denial of the claims for refund of the concerned ADB employees representing the income taxes paid for taxable year 2012 on the grounds of violation of the non-retroactive rule under Section 246 of the National Internal Revenue Code of 1997 as amended (NIRC)[2], and the constitutional right to due process[3].

My position remains consistent.

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"* issued on April 12 2013, clarified, once and for all, the tax obligations of the Filipinos working in ADB. Noteworthy is the rationale for the issuance of such circular which, in part, is quoted hereinbelow:

> " SECTION 1. *Background.* _ x x x
>
> Xxx it has been observed that the <u>foregoing provisions have been a source of confusion on the correct tax treatment of the compensation income earned by Philippine nationals</u> and alien individuals <u>employed by</u> foreign governments/embassies/diplomatic missions and <u>international organizations</u>. X x x <u>This Circular is</u>

[1] CTA Case No. 9096 dated July 7, 2017 and CTA Case No. 9081 dated June 8, 2017.
[2] 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 xxx."
[3] Article III, Sec.1, 1987 Philippine Constitution.

being issued to evoke compliance by Philippine nationals and individual aliens who are liable to Philippine income tax under the provisions of the Tax Code and who were not given exemption under the terms of duly recognized international agreements or other Philippine laws. (underscoring supplied) "

Germane to the right of due process are the elements of publication and clarity of laws. The RMC became effective only on May 22, 2013, the date when a copy thereof was officially submitted to the Office of the National Administrative Register pursuant to the requirements of the Administrative Code. A law that is utterly vague is defective because it fails to give notice of what it commands.[4] As quoted in the case of *People v. Nazario*[5], to wit:

> "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." (underscoring supplied)

Applying the aforequoted jurisprudence to the case at hand, respondent admitted that there was indeed a "confusion" in the earlier guidelines of the BIR[6] as to the tax treatment of the compensation income of the Filipino employees at ADB , thus, such circular was now being issued to ensure compliance by the said taxpayers. Enforcing therefore the retroactive application of the provisions of RMC 31-2013, which entailed the collection of back taxes prior to its effectivity with imminent fine and imprisonment *sans* compliance is in dire violation of the constitutional right to due process of the petitioners under Section 1, Article III of the 1987 Philippine Constitution, Section 246 of the NIRC as it wreaks havoc and prejudice to the financial resources of the taxpayers and Article 4 of the New Civil Code which provides that laws shall have no retroactive effect.

---

[4] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary", p. 122.
[5] 165 SCRA 186, 195-196 (1988), as cited in Bernas, p. 123, supra Note 4.
[6] BIR Ruling No. 029-99 dated March 11, 1999; Letter Opinion dated January 29, 2001; and Opinion of Chief of Legal Division of RR No. 7 dated February 6, 2013.

Furthermore, the taxes as the lifeblood doctrine must be balanced with the individual's constitutional right to due process. The Supreme Court minced no less when it ruled in the case of *CIR v. BASF Coating + Inks Phils., Inc.*[7], to wit:

> " It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution." (underscoring supplied)

Allow me to quote portions of my *ponencia* in the case of *Rowena Vicente, et.al., vs. Commissioner of Internal Revenue*[8], where I held the position that the principles of fair play and substantial justice dictate that the provisions of RMC No. 31-2013 should apply only prospectively to the taxable income of petitioners covering the years 2013 and onwards and I quote:

> "In saying this, it is vital at this point to legally scrutinize the application of the provisions of RMC 31-2013 to the instant claims for refund.
>
> Section 7 of RMC 31-2013 clearly provides that the provisions thereof "shall take effect immediately" which means that it should take effect starting May 2, 2013 the date when a copy thereof was officially submitted to the Office of the National Administrative Register of the UP Law Center pursuant to the requirement of the 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, the Supreme Court emphasized in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission, G.R. No. 163935, February 2, 2006* that both the requirements of

---

[7] G.R. No. 198677, November 26, 2014.
[8] *Supra* at Note 1.

> publication and filing of administrative issuances are mandatory for their effectivity."
>
> However, despite these clear wordings on its effectivity, respondent still proceeded to collect income tax payments from petitioner starting 2012. Seen against the backdrop of confirmations and affirmations of various revenue officials that their income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the principles of fair play and substantial justice dictate that its provisions should apply to claims starting only from 2013 and onwards."

For reasons aforestated, I vote to **DENY** the petition for review of the CIR under CTA EB No. 1717 and **PARTIALLY GRANT** the petition for review of Rowena Vicente, et. al. under CTA EB No. 1718.

CATHERINE T. MANAHAN
Associate Justice