REPUBLIC OF THE PHILIPPINES
***COURT OF TAX APPEALS***
QUEZON CITY

***First Division***

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| **ANTHONY ORTILE TUASON,** Petitioner, | **CTA CASE NO. 9041** |
| | *Members*: |
| **- versus -** | **DEL ROSARIO**, *P.J., Chairperson*, **UY**, *and* **MINDARO-GRULLA**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JUL 3 1 2017 1:45pm |

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# RESOLUTION

***DEL ROSARIO, P.J.:***

For resolution is petitioner's "**Motion for Reconsideration**" filed on March 14, 2017, without respondent's comment thereon despite due notice as per Records Verification dated May 4, 2017.

Petitioner prays that the Court reconsider and set aside its Decision dated February 23, 2017 and order respondent to refund petitioner's income tax payment in the amount of Two Hundred Sixty Four Thousand Five Hundred Eighty Eight Pesos and Four Centavos (P264,588.04). In the alternative, petitioner seeks that the Court hold in abeyance its final resolution of the claim for refund by virtue of judicial courtesy.

In support of his Motion, petitioner argues as follows:

a) The Court went beyond the justiciable issue in the Petition for Review when it declared that the employees of the Asian Development Bank (ADB) are subject to income tax;

b) The "reservation" made by the Philippine Government to tax its citizens when it ratified the ADB Charter is not self-executing and legislation is necessary to put it into effect;

c) A tax on the salary of the Filipino officials and employees of the ADB is discriminatory and violates their right to equal protection of the laws as the immunities and privileges granted by the government to the United Nations and its specialized agencies should be enjoyed likewise by the ADB;

d) The issue on the validity or invalidity of Section 2(d) (1) of Revenue Memorandum Circular (RMC) No. 31-2013 is pending with the Supreme Court; hence, by reason of judicial courtesy, the Court should hold in abeyance its final resolution of the present claim for refund in order to avoid the situation of conflicting rulings.

Except for petitioner's proposition that a tax on the salary of ADB Filipino officials and employees is discriminatory and tantamount to a violation of the equal protection of the laws guaranteed under the Constitution, the other contentions presented in the Motion are mere reiteration or amplification of the arguments raised by petitioner in his Petition for Review[1] filed on May 12, 2015 and in his Memorandum[2] filed on September 23, 2016, all of which were duly considered and addressed in the assailed Decision which was reached after the Court made a judicious study of the parties' respective arguments *vis-à-vis* the relevant laws and jurisprudence on the matter. Thus, the Court finds no reason to discuss them anew.

Anent petitioner's invocation of the Constitutional provision guaranteeing equal protection of laws to justify its position that ADB Filipino Employees should enjoy the same tax exemption provided to those employed by the United Nations (UN), the Court finds the same bereft of merit.

In the absence of any clear provision of law or treaty, the Court cannot extend the tax exemption purportedly enjoyed by those employed by the UN to ADB Filipino employees. It is settled in this jurisdiction that taxation is the rule and exemption is the exception.[3] A claim for refund or exemption from taxes must be clearly shown and be based on language

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[1] *CTA Docket*, pp. 10-20.
[2] *CTA Docket*, pp. 192-205.
[3] *National Power Corporation vs. Province of Isabela*, G.R. No. 165827, June 16, 2006.

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in the law too plain to be mistaken.[4] Tax exemption cannot be extended by mere implication or inference.[5]

As to petitioner's prayer that the Court should refrain from issuing a resolution in view of the pendency of respondent's appeal in Civil Case No. MC14-8775 before the Supreme Court following the principle of judicial courtesy, the same is bereft of merit. Suffice it to say that in the absence of an injunctive writ from the Supreme Court, deferment of proceedings in this Court is procedurally inappropriate.

All told, the Court finds no justifiable reason to modify, much more reverse, the assailed Decision.

**WHEREFORE**, in light of the foregoing, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

***WE CONCUR:***

**ERLINDA P. UY**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

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[4] *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159471, January 26, 2011.
[5] *National Power Corporation vs. Province of Isabela, supra.*