REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LICEL CALDERON, ET AL., *Petitioners,*	**CTA Case No. 9090**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
	Promulgated: MAY 2 3 2018 4:15 pm

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution are the following:

1. Respondent's Motion for Partial Reconsideration[1] (Re: Decision dated March 27, 2018) filed on April 13, 2018 with petitioners' Comment/Opposition filed on May 7, 2018; and
2. Petitioners' Motion for Reconsideration filed on April 17, 2018 with respondent's Comment filed on May 4, 2018.

Both parties move for the reconsideration of the Court's Decision dated March 27, 2018, the dispositive portion of which reads:

> **"WHEREFORE,** in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED.**
>
> Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of

[1] Docket, CTA Case No. 9096, pp. 836-850.

petitioners in the amount of Php30,543,307.80 to be individually allocated based on the tabular summary provided earlier representing the illegally collected income taxes for taxable year 2012.

As regards the 2013 claim for tax refund/tax credit certificate in the amount of Php15,229,352.50, the same is hereby **DENIED** for lack of legal basis.

SO ORDERED."

Petitioners' Arguments

Petitioners contend that since the legal rationale or basis for the collection of the tax on their compensation income has been declared invalid by the Regional Trial Court (RTC) of Mandaluyong in the case entitled *Erwin Salaveria and Portia Gonzales vs. CIR*[2] , it follows that the actual collection of the tax was illegal and erroneous, hence refund of said taxes is in order.

Revenue Memorandum Circular (RMC) No. 31-2013 was declared void by said RTC in the aforementioned decision for being issued without legal basis hence petitioners aver that the issue that should have been resolved by the Court is whether or not they have complied with the requisites for a valid refund. Petitioners maintain that the Court should not have over-extended its reach and ruled on the legality of the imposition of income tax on their compensation income received as employees of the Asian Development Bank (ADB) as this was already resolved by the RTC.

Even assuming that the Court has the authority to rule on the legality of the imposition of income tax, petitioners maintain that their salaries/compensation as Filipino employees of the Asian Development Bank (ADB) are clearly exempt from income tax and that the controverted "reservation" clause in the ADB charter is not "self-executing" and as such necessitates a law to put it into effect. In the absence of a corresponding legislation that unequivocally states that their compensation is subject to tax, the exemption provided

[2] Civil Case No. MC14-8775, September 30, 2014.

under the ADB Charter remains to be the applicable and binding tax regime under said Charter. They stress that under the treaty or the ADB Charter, non-taxation of their salaries is the general rule while taxation is the exception as clearly enunciated in Article 56, which reads:

> "Exemptions from Taxation
>
> 2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers, employees of the Bank, including experts performing missions for the Bank, except where a member deposits with it 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."

Absent an implementing law, petitioner asserts that the power to tax may be arbitrarily and whimsically exercised, with discretion being left solely to the respondent.

Petitioners express their disagreement that the Tax Code is the enabling legislation that would exempt taxpayers from the general rule on non-taxability. It theorizes that if a treaty, grants a tax exemption as a general rule, the exception must be established in the manner provided by said treaty which is by way of depositing an instrument retaining the right of the member-state to tax its nationals.

Petitioners now pray that this Court's decision dated March 27, 2018 be reconsidered and likewise approve the refund of income tax payments for their 2013 income, in addition to the refund already granted for the year 2012.

Respondent's Arguments

Respondent objects to the non-retroactive application of the provisions of RMC 13-2013 as regards the claim for refund of 2012 income taxes of petitioners which resulted in the refund of Php30,543,352.50. Respondent cites the decision of this Court in the case entitled *Edzen Jogie B. Garcia vs. CIR*[3] which ruled that as Filipino citizens and residents of the Philippines, petitioners are subject to income tax from sources derived within and without the Philippines pursuant to Section 23 of the 1997 National Internal Revenue Code, as amended (NIRC), hence the retroactive application of RMC 31-2013 is a non-issue because the very basis of the taxability is the 1997 Tax Code and not said RMC 31-2013.

Respondent also finds support in the recent decision of the Court in the case entitled *Christian Oliver C. Mercado vs. Commissioner of Internal Revenue*[4] penned by Justice Juanito Castaneda when it ruled, thus:

> "With regard to RMC 31-2013 as basis for petitioner's exemption, it bears stressing that said circular, which was issued only on April 12, 2013, should not be given retroactive application pursuant to the prohibition under Section 246 of the NIRC of 1997 xxx xxx."

Further, in the Dissenting Opinion of Justice Castaneda in the instant case, respondent quotes as follows:

> "Section 246 on the no-retroactivity of issuances should be carefully read when viewed in the light of ABS-CBN vs. Court of Tax Appeals, where the revocatory administrative issuances were not given retroactive application. In said case, the Supreme Court held that there will be an injustice and it would be violative of fair play if the withholding agent would be made to pay additional withholding taxes for 1965 to 1968 under the provisions of a circular later issued in 1971.
>
> The facts of the case at bench, a refund of income tax paid by petitioner in 2013, are different from that of ABS-CBN. There is no violation of the rules of justice and fair play when petitioner paid the income tax. It is not in question that when the tax was paid, the Reservation Clause in Senate Resolution No. 6 and the provisions of Sections 23 (A) and 24 (A) (1) (a) have long been in force and effect prior to these payments.

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[3] CTA Case 9075, February 9, 2017.
[4] CTA Case No. 9330, March 5, 2018.

> Evidently, when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. RMC 31-2013, therefore, was issued merely to construe the existing treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law."

Respondent sums it all up when he maintains that the issuance of RMC 31-2013 was for the purpose of addressing the confusion on the correct tax treatment of the compensation income earned by Philippine nationals employed by foreign government/embassies/diplomatic missions and international organizations and does not impose additional taxes. He further concludes that RMC 31-2013 should not be applied retroactively because the basis of the tax obligations of the petitioners for taxable years 2012 and 2013 is the fact that they are Philippine citizens and residents pursuant to Section 23 of the NIRC of 1997.

Respondent prays that the decision dated March 27, 2018 be reconsidered and set aside and that the Petition for Review be dismissed for lack of merit.

RULING OF THE COURT

The Court finds that both parties' motions lack merit.

As to petitioner's Motion for Partial Reconsideration, we maintain our resolve not to reverse our ruling that the compensation income of the Filipino employees of the ADB is subject to tax and that an enabling law to put into effect the provisions of the ADB Charter as to the taxability of such income is no longer necessary as the Philippines has its own Tax Code imposing the types and rates of tax of citizens of the Philippines.

We do find it imperative, however, to delve upon the contention of petitioners that this Court has gone beyond the justiciable issue in the petition and overstepped its bounds when it discussed the taxability, exemption and application of international conventions in disposing their claims for refund.

It is curious how petitioners could have made such assertions considering that under their Petition for Review, they anchored their legal entitlement to the refund of income taxes paid for taxable years 2012 and 2013 on an international agreement, i.e., ADB Charter. Could they have expected the Court to merely adopt the ruling of the RTC of Mandaluyong and just grant the claim for refund without adjudicating on the legal and factual bases thereof?

It is well-settled that only Supreme Court decisions constitute binding precedents, being part of the Philippine legal system.[5] The interpretation or ruling made by a lower court such as the RTC, at the very least can only serve as reference in our final adjudication of the merits of a claim for refund. Working on the principle that claims for tax refunds or credit like a claim for tax exemption is construed strictly against the taxpayer, this Court is under strict obligation and well within its jurisdiction, to study all facets of the claim both legal and factual to determine whether or not the same should be granted.

In determining the instant claim for refund, an analysis of the ADB Charter, relevant laws and principles of interpreting treaties/conventions was an essential and necessary task to come up with the conclusion set forth in the decision. This includes analysis and determination of the wisdom of the provisions of RMC 31-2013.

It is also well established that this Court's jurisdiction extends to the review of the rulings of the Commissioner of Internal Revenue as enunciated by the Supreme Court in the case of *Banco de Oro vs. Republic of the Philippines*[6], and we quote:

> "While the Court of Appeals correctly took cognizance of the petition for certiorari, however let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.

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[5] Visayas Geothermal vs. CIR, G.R. No. 197525, June 4, 2014.
[6] G.R. No. 198756, January 13, 2015.

The questioned RMO No. 15-91 and RMC 43-91 are actually rulings or opinions of the Commissioner xxx xxx" (italics ours)

As to the respondent's argument against non-retroactivity, we find this bereft of merit and ignores the basic tenets of good faith, equity and fair play. As clearly enunciated in this Court's Decision dated March 27, 2018, the petitioners relied heavily on the various pronouncements made by revenue officials with regard to the taxability of the income tax payments of ADB personnel hence they should not be faulted for not paying the taxes on their compensation income prior to the issuance of RMC 31-2013.

A judicious ruling on the matter would dictate that we consider the taxpayer's reliance on the position taken by the tax authorities on the issue of whether or not the income of Filipino ADB personnel are subject to income tax. Verily, the provisions in question present a "difficult question of law".

In a slew of refund cases, the Supreme Court has placed a premium on taxpayer's reliance on an erroneous interpretation of the law particularly on a difficult question of law[7] hence applying the prospectivity rule in order to avoid injustice. Even respondent, in his Motion for Partial Reconsideration, admitted that RMC 31-2013 was for the purpose of shedding light on the "confusion" relative to the correct tax treatment of the compensation income earned by Philippine nationals employed by ADB.

WHEREFORE, in light of the foregoing premises, Petitioners' **Motion for Reconsideration** and respondent's **Motion for Partial Reconsideration (Re: Decision dated March 27, 2018)** are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

[7]CIR vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Taganito Mining Corporation vs. CIR, G.R. No. 19613, February 12, 2013.

WE CONCUR:

Juanito C. Castañeda, Jr.

(I reiterate my Concurring and Dissenting Opinion)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A.CASANOVA
Associate Justice