REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ROWENA VICENTE ET AL.,
Petitioners,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9096

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 13 2017 10:50 AM

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution are the following:

1. Petitioners' Motion for Partial Reconsideration[1] (Re: Decision[2] dated July 7, 2017 filed on July 25, 2017 with respondent's Comment[3] filed on August 16, 2017; and
2. Respondent's Motion for Partial Reconsideration[4] filed on July 20, 2017 with petitioners' Comment/Opposition[5] filed via registered mail on August 11, 2017.

These two Motions represent both parties' response to this Court's decision dated July 7, 2017, which partially granted the Petition for Review, the dispositive portion of which reads as follows:

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[1] Docket, CTA Case No. 9096, pp. 836-850.
[2] Docket, pp. 776-810.
[3] Docket,
[4] Docket, pp. 824-832.
[5] Docket, pp.

> "**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 petitioners in the amount of Php11,837,379.66 to be individually allocated based on the tabular summary provided earlier, representing the illegally collected income taxes for taxable year 2012."
>
> **SO ORDERED.**

<u>Petitioners' Arguments</u>

Petitioners reiterate their assertion 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 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."

Petitioners cite the above provision, particularly the word "except", as the statement that confirms their position that a specific law is required to "apply the exception of (taxability) instead of the general rule of (non-taxability)".

As a side issue, petitioners also challenge the Court's authority to discuss the taxability, exemption and the application of international conventions in its decision because in doing so, the Court has gone beyond the justiciable issues, that is, merely to determine whether the petitioners are entitled to the claim for refund covering taxable years 2012 and 2013. The legal matters (taxability, exemption etc.) relative to the claim for refund are proper subjects of adjudication by a "regular court of justice" as petitioners assert. This is precisely what they did when they lodged a Petition with the Regional Trial Court of Mandaluyong which incidentally declared void the provisions of RMC 31-2013.

Petitioners now pray that this Court's decision dated July 7, 2017 be partially reconsidered and likewise approve the refund of income tax payments for their 2013 income in the amount of Php11,434,721.00.

Respondent's Arguments

Respondent takes issue with the portion of the ruling of this Court that Revenue Memorandum Circular (RMC) No. 31-2013 should not have been retroactively applied resulting to the refund of the 2012 income taxes paid by petitioner. Respondent primarily cited the decision of this Court in the case entitled *Edzen Jogie B. Garcia vs. CIR*[6] 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's argument also finds support in the Concurring and Dissenting Opinion of Justice Juanito C. Castaneda in the instant case where he opined that RMC

[6] CTA Case 9075, February 9, 2017.

31-2013 merely reiterates the general principles of Section 23 (A) and Section 24 (A) (1) (a) of the 1997 NIRC which have been in effect since January 1, 1998 hence it cannot be said that there was retroactive application of said circular. In fine, the Concurring and Dissenting Opinion of Justice Castaneda points to the 1997 NIRC as the basis of the taxability of the petitioners and not RMC 31-2013 so the principle of non-retroactivity of rulings cannot be made the rationale for granting the claim for refund of the income taxes paid by the petitioners for taxable year 2012.

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".

Respondent prays that the decision dated July 7, 2017 be reconsidered and that the Petition for Review be dismissed for lack of merit.

RULING OF THE COURT

Both motions are without merit.

As to petitioner's Motion for Partial Reconsideration, we find no reason 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 interesting and educational to delve upon the contention of petitioner 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 Regional Trial Court 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.[7] The interpretation or ruling made by a lower court such as the Regional Trial Court, 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*[8], 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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[7] Visayas Geothermal vs. CIR, G.R. No. 197525, June 4, 2014.
[8] 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)

In concluding that respondent's partial motion for reconsideration is likewise without merit, we find that his argument against non-retroactivity is misplaced and ignores the basic tenets of good faith, equity and fair play. As stated in our decision dated July 7, 2017, 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[9] 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[10] hence applying the prospectivity rule in order to avoid injustice. Even respondent in his Partial Motion for Reconsideration admitted that RMC 31-2013 was for the purpose of addressing or 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, Petitioner's **Motion for Partial Reconsideration** and respondents' **Motion for Partial Reconsideration (Re: Decision dated July 7, 2017)** are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[9] Pages 31-32, CTA Decision, CTA Case No. 9096
[10] 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:

(I reiterate my Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A.CASANOVA
Associate Justice