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:
JUL 07 2017
3:05 p.m.

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DECISION

MANAHAN, *J.:*

This case is a consolidation of the various claims for refund of alleged erroneous/illegal payment of income taxes on the compensation income of several Filipino employees of the Asian Development Bank (ADB) during the period 2012 and 2013 in the total amount of **TWENTY THREE MILLION TWO HUNDRED SEVENTY TWO THOUSAND ONE HUNDRED PESOS AND SIXTY SIX CENTAVOS (P23,272,100.66)** or more particularly:[1]

PETITIONER	TAX PAID FOR 2012 INCOME (in Php)	TAX PAID FOR 2013 INCOME (in PhP)	TOTAL CLAIM OF PETITIONER (in Php)
Rowena Vicente	185,228.67		185,228.67
Aiza Jane Vila	127,210.95		127,210.95
Ma. Cristina Villa	435,194.21	434,388.00	869,582.21
Luz Villaflores	221,563.71	64,973.00	286,536.71

[1] Petition for Review, pp 14-28, Docket.

Virginia Villaluz	661,691.21	423,791.00	1,085,482.21
Carmela Villamar	140,484.00		140,484.00
Maria Carmela Villamor	247,551.13		247,551.13
Franzella Pinky Villanueva	177,155.13		177,155.13
Ana ligaya Villarama	393,892.00		393,892.00
Ghia Villareal	134,611.85		134,611.85
Theresa Villareal	446,072.00	446,280.00	892,352.00
Mary Claribel Villarico	390,625.11		390,625.11
Nerinda Villones	168,736.50		168,736.50
Maria Angelica Vivar	177,758.95	174,533.00	352,291.95
Encarnacion Webb	213,406.70		213,406.70
Donna Marie de lara Wenceslao	353,328.86		353,328.86
Maria Celeste Yabut	136,091.87		136,091.87
Kristine Yalung	300,052.73	306,327.00	606,379.73
Sheryl Yanez	212,211.47	216,172.00	428,383.47
Elaine Yu	130,037.18		130,037.18
Generosa Yumul-Lalic	156,728.40		156,728.40
Milkos Patrick Zalameda	232,559.30		232,559.30
Maria Dulce Victoria Zara	470,866.52		470,866.52
Ruby Cruz	353,401.31		353,401.31
Maria Roselia Babalo	138,368.71		138,368.71
Lorna Lyn Leonen	229,724.48		229,724.48
Josephine Joy	826,430.61	627,976.00	1,454,406.61

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Raymundo Raz			
Gertrude Anne Santiago-Abao	302,409.16	218,670.00	521,079.16
Tina Bonoan	639,117.69	526,367.00	1,165,484.69
Ofelia Caalim	953,738.65	788,659.00	1,742,397.65
Mary Joyce Ibaviosa	587,895.72	427,309.00	1,015,204.72
Rogelio Jordan	546,038.96		546,038.96
Majarreis Honoriza	279,838.75	298,724.00	578,562.75
Anthony Tuason		571,073.00	571,073.00
Aura Abon		408,113.00	408,113.00
Ivan Canlas		140,231.00	140,231.00
Veronica Dela Cruz		275,400.00	275,400.00
Shiela Estacion		124,610.00	124,610.00
Maria Dionelle Facun		298,404.00	298,404.00
Eugenia Go		394,276.00	394,276.00
Vissia Camille Guarico		107,375.00	107,375.00
Stella Rae Lorenzo		146,766.00	146,766.00
Renato Lumain	867,357.17	875,612.00	1,742,969.17
Arleen Mabale		306,180.00	306,180.00
Elizabeth Montaniel		297,245.00	297,245.00
Marga Domingo Morales		368,684.00	368,684.00
Arlyn Orong		117,110.00	117,110.00
Renalyn Padilla		171,486.00	171,486.00
Christine Genalyn Uy		1,600,747.00	1,600,747.00
Anthony Victoria		277,240.00	277,240.00

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Total Claim of petitioners =	**11,837,379.66**	**11,434,721.00**	**23,272,100.66**

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[2]. 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*[3]:

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)

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2 Agreement Establishing The Asian Development Bank.

3 *Id.*

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

> NOW THEREFORE, be it know 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.*[4] (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.[5]

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;

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[4] Regional Trial Court Decision dated September 30, 2014, p. 77, Docket.

[5] Regional Trial Court Decision dated September 30, 2014, p. 66, Docket.

(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*)

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On May 18, 1967, the Senate of the Philippines, under P.S.R. No. 38[6] 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 from foreign governments/embassies and missions and international organizations shall be as follows:

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(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

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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:

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[6] Resolution Concurring in the Ratification of the Headquarters Agreement Between the Government of the Philippines and the Asian Development Bank, Done at Manila on December 22, 1966, Philippine Law Journal, Vol.42, No. 3, July 1967.

> (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.[7]

A challenge to the legality of RMC 31-2013 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.[8] 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.[9] Respondent moved for its reconsideration but was also denied under Resolution dated January 6, 2016.[10]

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.[11]

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:

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[7] Exhibit P-13, Court of Appeals Resolution dated July 3, 2015, p. 390, Docket.

[8] Petition for Review, paragraph 17, page 24, Docket.

[9] Exhibit "P-13", pp. 387-394, Docket.

[10] Exhibit "P-13-1", pp. 395-400, Docket.

[11] Memorandum for the Petitioners, pp 759-769, Docket.

1. May 29, 2015[12];

2. June 11, 2015[13];

3. June 22, 2015[14];

4. June 30,2015[15];

5. July 7, 2015[16];

6. July 13, 2015[17];

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.[18]

On August 20, 2015, respondent filed his Answer to the Petition for Review.

On September 10, 2015, the respondent filed her Pre-Trial Brief[19] while petitioners filed their Pre-Trial Brief on September 28, 2015[20]. Subsequently, a pre-trial conference was held on October 29, 2015 where the parties were given fifteen (15) days to submit their Joint Stipulation of Facts and Issues ("JSFI").

On December 1, 2015, the parties filed their JSFI[21] where the sole issue for resolution was laid down and documents and witnesses were identified. The parties however, failed to stipulate on the facts, but narrowed the stipulations to the issue to be resolved, the documents and exhibits to be marked, the witnesses to be presented, and the available trial dates. The Court approved the JSFI and

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12 Annex "A" of the Petition, pages 79-89, Docket.

13 "Annex" B of the Petition, pages 90-100, Docket.

14 Annex "C" of the Petition, pages 101-120, Docket.

15 Annex "D" of the Petition, pages 121-140, Docket.

16 Annex "E" of the Petition, pages 141-154, Docket.

17 Annex "F" of the Petition, pages 155-168, Docket.

18 Petition for Review, pp. 14-28, Docket.

19 Pages 231 – 235, Docket.

20 Pages 238 – 242, Docket

21 Pages 258- 260, Docket.

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terminated the pre-trial in the Pre-Trial Order[22] dated January 10, 2016.

On October 10, 2016, petitioner filed its Formal Offer of Evidence[23]. Records show that respondent failed to file his Comment (to the Formal Offer of Evidence) within the time prescribed by the Court[24].

In a resolution dated December 12, 2016, the Court resolved petitioner's Formal Offer of Evidence.[25]

During the hearing held on December 12, 2016, counsel for respondent manifested that no report of investigation was submitted to her by the revenue examiner and that she will no longer present any evidence.

On December 19, 2016, respondent filed her Memorandum[26]followed by Petitioners' "Memorandum with Manifestation" [27]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.

ISSUES

The sole issue raised by the parties is:

"Whether or not petitioners are entitled to claim refund for income taxes paid in taxable years 2012 and 2013 alleged to be erroneously and/or illegally paid."

Petitioner's Arguments

Petitioners proffer the theory that Philippine nationals employed by ADB are exempt from income tax on the compensation they received on the basis of categorical provisions contained in the ADB

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[22] Pages 262- 264, Docket

[23] Pages 611-629, Docket

[24] Page 733. Docket

[25] Pages 735- 736, Docket

[26] Pages 739-753, Docket.

[27] Pages 759 - 768, Docket.

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Charter. Thus, the income tax payments made for the taxable years 2012 and 2013 were erroneously and illegally collected by the government qualifying such payments as proper subject of refund.

In paragraph 13 of their Petition for Review, petitioners presented a table providing their names, the amount of taxes paid for the years 2012 and 2013 and the total amount of taxes claimed by each.[28]

Further, petitioners challenge the legality of the provisions of RMC No. 31-2013 which served as the focal point of the then Commissioner's authority to demand income tax payments from the compensation received by Filipino employees at the ADB.

Up until the issuance of RMC 31-2013, petitioners claim that Filipino employees of ADB were enjoying the tax exempt privileges on their compensation income for almost five (5) decades by virtue of the relevant provisions of the ADB Charter.

Petitioners find extra comfort in the fact that the Court of Appeals in a decision promulgated on July 3, 2015[29] dismissed the appeal of the respondent Commissioner (of the subject RTC decision) on the ground that the appeal was improperly elevated to them as it should have been raised by a petition for review on certiorari to the Supreme Court as it raised questions of law.

In its Memorandum, petitioners assert that their prayer in this Court is not to nullify the provisions of RMC 31-2013 because this has already been accomplished by the RTC in the aforementioned decision, but instead their plea is to ask for the refund of the income taxes that were collected on the basis of a void BIR issuance making such collection erroneous and/or illegal. [30] Also, in their Memorandum, petitioner manifested that they have no objection if the resolution of the issues in this case is deferred until after the Supreme Court resolves the appeal in G.R. No. 222214 following the aforesaid decision of the Court of Appeals.

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[28] Petition for Review, pp. 22-23, Docket.

[29] Ibid.

[30] Petitioners' Memorandum with Manifestation pp. 759-768, Docket.

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Respondent's Counter-Arguments

Limited to the single issue stipulated by the parties in their JSFI, respondent counters with the following legal arguments:

1. Petitioners are all Philippine citizens and as such are subject to Philippine income tax law, whether they be resident or non-resident;

2. The ADB Headquarters Agreement, specifically Article XII, Section 45 (b) made a clear limitation in so far as its right to tax its nationals , thus:

   "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:

   xxx xxx xxx

   (b) Exemptions 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.* Xxxx" (italics ours)."

Respondent avers that such tax exemption is still subject to the power of the Government to tax its nationals.[31]

Aside from these two main points, respondent raised the following conditions before a claim for refund may be granted:

1. Petitioners must prove that they were able to comply with the following documentary and legal requirements as provided under Section 229 of the 1997 National Internal Revenue Code (NIRC);

2. Petitioners must prove that their incomes are not taxable or exempt from income tax;

[31] Answer of Respondent, page 224, Docket.

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3. Petitioners must provide the basis for the alleged tax exemptions. Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority.

Respondent argues that petitioners, being Filipino citizens and under the employ of ADB, with business address in Metro Manila, Philippines are liable for income tax on compensation income earned on account of such employment. Under the present circumstances, the taxability of the petitioners is found in Sections 23 and 22 (E) of the 1997 National Internal Revenue Code ("NIRC").

In conclusion, respondent avers that such exemption is still subject to the power of the Government to tax its nationals and it is clear that the compensation/salaries of the Filipino employees of the ADB are still subject to income tax under the relevant provisions of the Tax Code.

RULING OF THE COURT

The petition is partly meritorious.

Foremost among the issues to be resolved in claims for refund is the timeliness of the administrative and judicial claims for refund which determines the jurisdiction of this Court to take cognizance thereof.

Section 229 of the NIRC provides that:

> SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - *No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax* hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Commissioner*; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, *no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax* or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on

the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Italics ours)

Applying the aforequoted provisions, this Court finds that petitioners have established that they were able to file both their administrative and judicial claims for refund for 2012 and 2013 within the two-year period.

As shown by the tabular summary below, the dates of the administrative as well as the judicial claims for refund were filed within the two -year period from payment of the taxes alleged to have been illegally collected by respondent, thus:

1. Rowena Vicente

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

2. Aiza Jane Vila

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

3. Ma. Cristina Villa

Date of Full Payment of Income Tax for taxable period	Last day of filing for claim of refund for taxable period	Date of filing of Administrative Claim	Date of filing of Judicial Claim

2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013	March 22,2014	Wednesday, July 15, 2015	Tuesday, March 22, 2016		

4. Luz Villaflores

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13,2015	July 14, 2015
July 15, 2013	June 17, 2014	Wednesday, July 15, 2015	Friday, June 17, 2016		

5.Virginia Villaluz

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013	April 15,2014	Wednesday, July 15, 2015	Friday, April 15, 2016		

6. Carmela Villamar

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

7. Maria Carmela Villamor

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15,2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

8.Franzella Pinky Villanueva

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

9. Ana Ligaya Villarama

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

10. Ghia Villareal

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

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11. Theresa Villareal

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013	April 15, 2014	Wednesday, July 15, 2015	Friday, April 15, 2016	July 13, 2015	July 14, 2015

12.Mary Claribel Villarico

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

13. Nerinda Villones

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

14. Maria Angelica Vivar

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013		
July 15, 2013	July 15, 2014	Wednesday, July 15, 2015	Friday, July 15, 2016	July 13,2015	July 14, 2015

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15. Encarnacion Webb

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

16. Donna Marie de lara Wenceslao

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

17. Maria Celeste Yabut

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**	2012	2013	July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

18. Kristine Yalung

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**			July 13, 2015	July 14, 2015
July 15, 2013	April 4, 2014	Wednesday, July 15, 2015	Monday, April 04, 2016		

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19. Sheryl Yanez

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**			July 13, 2014	July 14, 2015
July 15, 2013	March 20, 2014	Wednesday, July 15, 2015	Monday, March 21, 2016		

20. Elaine Yu

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**			July 13, 2014	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

21. Generosa Yumul-lalic

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**			July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

22. Milkos Patrick Zalameda

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**			July 13, 2015	July 14, 2015
July 15, 2013		Wednesday, July 15, 2015			

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23. Maria Dulce Victoria Zara

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
July 15, 2013		Wednesday, July 15, 2015		July 13, 2015	July 14, 2015

24. Ruby Cruz

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 2, 2013		Monday, August 03, 2015		June 11, 2015	July 14, 2015

25. Maria Roselia Babalo

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 15,2013		Saturday, August 15, 2015 Monday, August 17. 2015		May 29, 2015	July 14, 2015

26. Lorna Lyn Leonen

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 27, 2013		Thursday, August 27, 2015		June 30, 2015	July 14, 2015

27. Josephine Joy Raymundo Raz

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 27, 2013	April 1, 2014	Thursday, August 27, 2015	Friday, April 01, 2016	July 7, 2015	July 14, 2015

28. Gertrude Anne Santiago-Abad

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 27, 2013	April 7, 2014	Monday, August 17, 2015 Thursday, August 27, 2015	Thursday, April 07, 2016	July 13, 2015	July 14, 2015

29. Tina Bonoan

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 30, 2013	April 15, 2014	Monday, August 31, 2015	Friday, April 15, 2016	May 29, 2015	July 14, 2015

30. Ofelia Caalim

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 30, 2013	April 2, 2014	Monday, August 31, 2015	Monday, April 04, 2016	June 11, 2015	July 14, 2015

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31. Mary Joyce Ibaviosa

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
August 30, 2013	April 14, 2014	Monday, August 31, 2015	Thursday, April 14, 2016	June 22, 2015	July 14, 2015

32. Rogelio Jordan

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
September 2, 2013		Wednesday, September 02, 2015		June 22, 2015	July 14, 2015

33. Majarreis Honoriza

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
September 30, 2013	March 5, 2014	Wednesday, September 30, 2015	Monday, March 07, 2016	June 22, 2015	July 14, 2015

34. Anthony Tuazon

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
	March 27, 2014		Monday, March 28, 2016	July 13, 2015	July 14, 2015

35. Aura Abon

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			May 29, 2015	July 14, 2015
	April 8, 2014		Friday, April 08, 2016		

36. Ivan Canlas

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 11, 2015	July 14, 2015
	March 20, 2014		Monday, March 21, 2016		

37. Veronica Dela Cruz

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 11, 2015	July 14,2015
	April 15, 2014		Friday, April 15, 2016		

38. Shiela Estacion

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 22, 2015	July 14, 2015
	March 27, 2014		Monday, March 28, 2016		

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39. Maria Dionelle Facun

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 22, 2015	July 14, 2015
	March 21, 2014		Monday, March 21, 2016		

40. Eugenia Go

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 22, 2015	July 14, 2015
	April 10, 2014		Monday, April 11, 2016		

41. Vissia Camille Guarico

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 22, 2014	July 14, 2014
	March 24, 2014		Thursday, March 24, 2016		

42. Stella Rae Lorenzo

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			June 30, 2015	July 14, 2015
	April 8, 2014		Friday, April 08, 2016		

43. Renato Lumain

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	**2013**				
July 15, 2013	March 21, 2014	Wednesday, July 15, 2015	Monday, March 21, 2016	June 30, 2015	July 14, 2015

44. Arleen Mabale

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013				
	April 14, 2014		Thursday, April 14, 2016	June 30, 2015	July 14, 2015

45. Elizabeth Montaniel

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013				
	April 11, 2014		Monday, April 11, 2016	June 30, 2015	July 14, 2015

46. Marga Domingo Morales

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013				
	March 27, 2014		Monday, March 28, 2016	June 30, 2015	July 14, 2015

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47. Arlyn Ong

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			July 7, 2015	July 14, 2015
	March 21, 2014		Monday, March 21, 2016		

48. Renalyn Padilla

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			July 7, 2015	July 14, 2015
	April 11, 2014		Monday, April 11, 2016		

49. Christine Genalyn Uy

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			July 13, 2015	July 14, 2015
	April 11, 2014		Monday, April 11, 2016		

50. Anthony Victoria

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
	2013			July 13, 2015	July 14, 2015
	April 15, 2014		Friday, April 15, 2016		

Having shown that petitioners timely filed their administrative and judicial claims for refund well within the two- year period from dates of payment, we can thus conclude that this Court has jurisdiction to adjudicate the appeal filed by petitioners in accordance with Section 7 (a) of Republic Act (RA) No. 1125 which reads as follows:

"Section 7. Jurisdiction. – The CTA shall exercise :

a. Exclusive appellate jurisdiction to review by appeal, as herein provided

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees, or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (italics ours)

We now proceed to the main issue of this case.

Petitioners rely heavily on Chapter VIII, Article 56 (2) of the ADB Charter as the basis of the non-imposition of income tax on their compensation as ADB employees and we quote:

" CHAPTER VIII

Article 56.

(2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the 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)

The above proviso in the ADB Charter has in effect been "carved in stone" as it has been the practice for several decades of the ADB not to withhold tax on the compensation of the people covered by the aforequoted Section 56 (including Filipino employees) which practice was claimed to have been disturbed only by the issuance of RMC 31-2013 dated April 12, 2013, the relevant portions of which were quoted earlier.

The ADB Charter and the ADB Headquarters Agreement" both partake the nature of a treaty or an international agreement[32].

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[32] Memorandum Circular issued by the Office of the President on May 31, 1994 and signed by President Fidel Ramos which in part provides, thus,:

" The Charter and the Headquarters Agreement, which are *international treaties* executed by the Executive Branch of the Government of the Republic of the Philippines and ratified by the Senate of the Republic of the Philippines, are incorporated as part of the law of the Republic of the Philippines." (italics ours).

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As an international agreement, it forms part of the law of the land in accordance with Section 2, Article II of the 1987 Constitution which reads as follows:

ARTICLE II
Declaration of Principles

> Section 2. The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations." (italics ours)

This constitutional principle adheres to the basic tenet of international law of *pacta sunt servanda* or international comity which demands the performance in good faith of treaty obligations as aptly defined in the case of *Deutsche Bank AG Manila Branch v. CIR*[33], and we quote:

> "Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of pacta sunt servanda demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction."

The instant case, however, clearly indicates that the issue at bar is not a controversy suggestive of whether our country should observe its commitments under an international agreement but rather centers on its coverage of the privileges and the interpretation which may or may not include tax exemption of Filipino employees of the ADB on their compensation income.

The very same provisions, both of the ADB Charter and the ADB Headquarters Agreement, relied upon by the petitioners are the same ones that would produce the bases of this Court's denial of their petition. An examination of the entirety of Section 56 (2), Chapter VIII of the ADB Charter clearly contains an exception to the tax exempt privilege accorded by this Agreement to the covered ADB personnel as encapsulated by the clause "except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political

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[33] G.R. No.188550 promulgated on August 19, 2013.

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subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member."

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".[34] (italics ours)

However, unlike the municipal laws of a member country, treaties or international agreements are not enacted by the Legislative branch of the government but instead ratified by the Philippine Senate as what was done in the case of the ADB Charter. Under the 1935 Philippine Constitution which was the prevailing Constitution in 1966, it is the President of the Philippines, as head of State who ratifies the treaty while the Philippine Senate concurs with the President's ratification.[35] Then as now, in strict constitutional legalese, ratification of treaties is made by the President while concurrence is done by two thirds of all the members of the Senate.[36] Such ratification and concurrence are the operative acts that endow the ADB Charter with the character of a law.

Treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.[37]

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

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[34] Philip Morris Inc. vs. Court of Appeals, G.R. No. 91332 dated July 16, 1993.

[35] Article VII, Section 10 of the 1935 Philippine Constitution:
"The President shall have the power, with the concurrence of two thirds of all the members of the Senate to make treaties xxx xxx. " ."

[36] Article VII, Section 21 of the 1987 Constitution. " No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

[37] Pharmaceutical & Health Care Assn. of the Philippines vs. Health /secretary Duque, et. Al. , G.R. No. 173034 dated October 19, 2007.

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.

Section 23 of the 1997 National Internal Revenue Code (NIRC) specifically provides as follows:

> "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. 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."

We cannot take cognizance of the declarations made by the RTC in its decision in the case entitled *"Erwin Salavera and Portia Gonzales vs. Commissioner of Internal Revenue"*, which declared void the provisions of RMC No. 31-2013 issued on April 12, 2013 for being issued without legal basis. Decisions of lower courts are not binding precedents as succinctly enunciated by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[38], *viz*:

> "Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system".

We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord

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[38] G.R. No. 197525 dated June 4, 2014.

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with the ADB Charter and the subsequent ratification made by the President of the Philippines.

The contention of the petitioners that the exclusion of Filipino employees from the tax-exempt provisions of the ADB Charter would entail an enactment of an enabling law to put this into effect is bereft of merit as it is clear that the Philippines had already enacted its own Tax Code at the time of the ratification of the ADB Charter imposing the types and rates of tax of citizens of the Philippines. The word "reservation" in the aforequoted ratification therefore is to be construed as an excepting clause to the tax exemptions found in the treaty establishing the ADB.

In the case of *PHAP vs. Duque*[39], the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

> "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by *transformation* or *incorporation*. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism *such as local legislation*. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.
>
> Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law *must go through a process prescribed by the Constitution for it to be transformed into municipal law* that can be applied to domestic conflicts. (italics ours)

By the same token, both the ADB Charter and the ADB Headquarters Agreement became valid and effective and had the force and effect of a municipal law upon the concurrence of the Senate as prescribed by the Constitution. Such process no longer necessitated a local legislation for it to take effect as the concurrence of the Senate was sufficient to transform the treaty as part of the "domestic law" of the land.

There should be no question then that the compensation income of the Filipino employees of the ADB is subject to tax and that

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[39] G.R. No. 173034 dated October 9, 2007.

respondent Commissioner of Internal Revenue did not abuse her discretion in issuing the controverted RMC No. 31-2013.

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 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 emphasis, we provide below the various pronouncements of revenue officials with regard to the taxability of the income tax payments of ADB personnel, to wit:

1. In BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, in response to a query on the taxability of the compensation income of ADB personnel, stated as follows: gn

> "Such being the case, Filipinos employed and are occupying managerial and technical positions as those of aliens employed by

the bank xxx xxx are subject to the preferential tax of 15% of their gross compensation income."

2. In a Letter Opinion dated January 29, 2001, BIR Regional Director Antonio Ortega confirmed that officers and staff of the ADB need not secure Tax Identification Numbers (TINs) since their salaries are exempt from taxation.

3. In an opinion issued by the Chief of the Legal Division of Revenue Region No. 7 dated February 6, 2013, Amado Rey B. Pagarigan reiterated the opinion of Mr. Rualo and opined that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

The ADB as employer as well as the concerned employees should not be faulted on the apparently confirmatory but inconsistent opinions of senior officials of the BIR. It was only by the issuance of RMC 31-2013 that then Commissioner Kim Henares categorically clarified that they are subject to tax. Pertinent portions of the said RMC are quoted below:

> "The tax treatment of Philippine nationals and alien individuals on compensation income received by them from foreign governments/embassies and missions and international organizations shall be as follows:
>
> xxx xxx xxx
>
> From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax."

More than the lifeblood doctrine, we find that the principles of fundamental fairness and equity behoove us to apply the non-retroactive rule under Section 246 of the Tax Code and we quote:

> 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, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; *em*

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith. (italics ours)

In the case of *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*[40], the Supreme Court rejected the retroactive application of rulings and circulars when such would cause prejudice to the taxpayers, thus:

> "It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers. The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them.
>
> xxx xxx xxx
>
> " without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax ."

Further in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.*[41], the Supreme Court enunciated the non-retroactivity principle in this manner:

> "However, well entrenched is the rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers." gm

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[40] G.R. No. L-52306 dated October 12, 1981.

[41] G.R. No. 117982 dated February 6, 1997.

> "Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

It bears stressing that the retroactive application of the provisions of RMC 31-2013 to income received by the petitioners in 2012 made prior to its publication in 2013 already caused serious prejudice to the Filipino employees who relied heavily on the pronouncements/interpretations made by the government officials earlier mentioned. To put it more concretely, the Filipino employees were not ready to incur such huge tax obligations for the past taxable year 2012, neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits and assets if they fail to settle such deficiency income tax assessment.

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.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(With Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ROWENA VICENTE ET AL., Petitioners,	**CTA CASE NO. 9096**
	Present:
-versus-	Castañeda, Jr., *Chairperson*, Casanova, and, Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 07 2017 3:05 p.m.

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CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

I concur with the decision of J. Manahan which denied the refund of ₱11,434,721.00 representing income taxes paid in 2013.

However, with due respect, I register my dissent on the grant of refund of ₱11,837,379.66 representing income taxes paid in 2012.

Specifically, I am of the view that the *entire* claim for refund of ₱23,272,100.66, computed as follows:

Income Taxes Paid in 2012	₱ 11,837,379.66
Income Taxes Paid in 2013	11,434,721.00
Total	₱ 23,272,100.66

should be denied under Sections 23(A) and 24(A)(1)(a) of the 1997 National Internal Revenue Code (NIRC), as amended. gr

The discussion below reiterates the position I have taken in my Concurring and Dissenting Opinion in *Cristeta May Galang et al. v. Commissioner of Internal Revenue*.[1]

As in *Galang*, all the petitioners in this case, who are claiming for refund of allegedly erroneously and/or illegally collected income tax under Section 229, are Filipino employees of the Asian Development Bank (ADB).

First, a review of the relevant treaty and legislative provisions will demonstrate that Congress really intended to tax the salaries and emoluments received by Filipinos from ADB.

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

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

> "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, <u>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</u>." (underscoring supplied)

On December 22, 1966, 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, which provides in pertinent part:

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

[1] CTA Case No. 9081, June 8, 2017.

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." (underscoring supplied)

The 1997 NIRC, a subsequent legislation which took effect on January 1, 1998,[2] is the law that implements the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under its Sections 23(A) and 24(A)(1)(a) as amended:

"**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 and 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 (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;" (underscoring supplied) *Je*

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[2] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130.

Second, it is postulated that Revenue Memorandum Circular (RMC) No. 31-2013, which was issued only on April 12, 2013, should not be given retroactive application pursuant to the prohibition under Section 246.[3]

It bears emphasis, however, that RMC 31-2013 merely *reiterates* the general principles laid down in Section 23(A) and *amplifies* Section 24(A)(1)(a), both of which have been in effect since January 1, 1998, before the income tax payments in 2012 and 2013.

The preface of RMC 31-2013 in Section 1 states these objectives when it cites Sections 23 and 24 of the 1997 NIRC as the foundation and states that the guidelines were intended to address the "confusion on the correct tax treatment of the compensation income earned by Philippine nationals xxx employed by foreign governments/embassies/diplomatic missions and international organizations xxx," thus:

> **"SECTION 1. BACKGROUND.—**
>
> Foreign governments/embassies/diplomatic missions and international organizations situated in the Philippines acting as employers enjoy immunity from collecting taxes on salaries and emoluments of their employees, whether they are foreigners or Philippine nationals. This immunity from being constituted as withholding agents of the Philippine Government is accorded to these entities on the basis of international comity as embodied in several international agreements to which the Philippines is a signatory, such as, the Vienna Convention for International Relations (for embassies and diplomatic missions), Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of Specialized Agencies (for the various agencies of the United Nations), Asian Development Bank Headquarters Agreement (for ADB), Articles of Agreement of the International Finance Corporation, among others.
>
> In recognition of this immunity, the Withholding Tax Regulations (Revenue Regulations No. 2-98, as amended), clearly

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[3] "**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, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith."

reiterate the exemption from the withholding tax system of the remunerations being paid by foreign governments and international organizations to their employees who are residents or nationals of the Philippines. Section 2.78.1(B)(5) provides thus:

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However, it has been observed that the foregoing provisions have been a source of confusion on the correct tax treatment of the compensation income earned by Philippine nationals and alien individuals employed by foreign governments/embassies/diplomatic missions and international organizations. **To clarify, 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**.

Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxations of citizens and alien individuals, to wit:

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As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.

The tax consequence of compensation income received by those employed by foreign governments/embassies/ diplomatic missions situated in the Philippines hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended ("Tax Code"). (underscoring and emphases supplied) gr

Section 246 on the non-retroactivity of issuances should be carefully read when viewed in the light of *ABS-CBN v. Court of Tax Appeals*,[4] an *assessment* case discussed in the *ponencia*, wherein 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 taxes paid by the taxpayers only in 2012 and 2013, are different from that of *ABS-CBN*. It is submitted that there has been *no violation* of the rules of justice and fair play when petitioners paid the income taxes. It is not in question that when the taxes were 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.

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law*.[5] RMC 31-2013, therefore, was issued merely to construe the *existing* provisions of the 1997 NIRC in relation to the various *existing* treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law.

Third, construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law.[6] It is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies.[7] RMC 31-2013 was precisely issued to fill in the details and manner of the enforcement of Sections 23(A) and 24(A)(1)(a) pursuant to Section 4[8] of the 1997 NIRC, as amended. *ju*

[4] G.R. No. L-52306, October 12, 1981, 108 SCRA 148.

[5] *La Suerte Cigar and Cigarette Factory, et al. v. Court of Tax Appeals, et al.*, G.R. No. L-36130, January 17, 1985, 134 SCRA 39.

[6] *Senator Heherson T. Alvarez, et al. v. Hon. Teofisto T. Guingona, Jr., in his capacity as Executive Secretary, et al.*, G.R. No. 118303, January 31, 1996, 252 SCRA 703.

[7] *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003.

[8] "**SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof

RMC 31-2013 belongs to a group of issuances that "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[9] Based on this definition, RMC 31-2013 is an *interpretative rule* issued by the administrative agency headed by the respondent.

In *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.*,[10] the Supreme Court held that Administrative Order No. 7, an administrative regulation issued by the Department of Health, and BFAD Circulars No. 1 and 8, issued by the Food and Drug Administration (FDA), were all valid issuances of administrative agencies tasked to implement the law. It discussed the nature and function of *interpretative rules* in this wise:

> "Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by

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administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

[9] Section 3(g), Revenue Administrative Order No. 1-2003 provides:

"SECTION 3. *Classification of BIR Rulings and Issuances.* — The following terms shall have the meaning described below:

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g) *Revenue Memorandum Circulars (RMC)* — These issuances shall disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."

[10] G.R. No. 190837, March 5, 2014, 718 SCRA 160-162.

> Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the 'Administrative Code of 1987,' on prior notice, hearing, and publication in order to be valid and binding, **except when the same is merely an interpretative rule. This is because '[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.'" (underscoring and emphases supplied; citations omitted)

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*,[11] the Supreme Court upheld the validity of RMC 25-2011, issued in 2011, and ruled that the *retroactive* application of the circular to the taxable transaction in 2009 did not contravene Section 246, thus:

> "Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted." (underscoring supplied)

Fourth, even assuming there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such deficit does not operate to estop the government

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[11] G.R. No. 210987, November 24, 2014, 741 SCRA 601.

from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals*:[12]

> "The cigarette manufacturers contend that for a long time prior to the transactions herein involved, the Collector of Internal Revenue had never subjected their purchases and importations of stemmed leaf tobacco to excise taxes. This prolonged practice allegedly represents the official and authoritative interpretation of the law by the Bureau of Internal Revenue which must be respected.
>
> We are not persuaded.
>
> In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*, this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a misapprehension of law may be corrected when the true construction is ascertained. Thus:
>
> > The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an authoritative construction of great weight. *This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained.* Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here. (Emphasis supplied)
>
> This court reiterated this rule in *Abello v. Commissioner of Internal Revenue* where it **rejected** petitioners' claim that the prolonged practice (since 1939 up to 1988) of the Bureau of Internal Revenue in not subjecting political contributions to donor's tax was an authoritative interpretation of the statute, entitled to great weight and the highest respect:
>
> > *This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed. It is a well-entrenched rule that* [:] Jr

[12] G.R. No. 125346, November 11, 2014, 739 SCRA 561.

> *...erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.* (Emphasis supplied, citations omitted)
>
> **Prolonged practice of the Bureau of Internal Revenue in not collecting the specific tax** on stemmed leaf tobacco **cannot validate what is otherwise an erroneous application and enforcement of the law**. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.
>
> In *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*, this court upheld the validity of a revenue memorandum circular issued by the Commissioner of Internal Revenue to correct an error in a previous circular that resulted in the non-collection of tobacco inspection fees for a long time and declared that estoppel cannot work against the government:
>
> xxx xxx xxx" (underscoring and emphases supplied; citations omitted)

As a final word, taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.[13] Any claim for refund take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[14]

WHEREFORE, I vote to deny the petition entirely.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[13] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 417.

[14] *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001, 360 SCRA 583.