REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MA. CARMELA LOCSIN, ET AL., Petitioners,	CTA CASE NO. 9094
	Members:
-versus-	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 04 2019 5:01 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] filed on July 14, 2015, petitioners Filipino employees of the Asian Development Bank (ADB), pray for the refund of alleged erroneously and illegally paid income taxes they paid in the aggregate amount of Fifty-Two Million Two Hundred Ten Thousand Six Hundred Seventy-Four Pesos and 12/100 (₱52,210,674.12) for taxable years (TYs) 2012 and 2013.

Petitioner Ma. Carmela Locsin and her co-petitioners are all Filipino employees of ADB which office is located at 6 ADB Ave., Mandaluyong City.[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who has 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 the National Internal Revenue Code (NIRC) or other laws or portions thereof

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[1] Docket, vol. 1, pp. 14-32
[2] Par. 2, Petition for Review, docket, vol. 1, p. 17

administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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. It provides, among others, that officers and staff of ADB who are not Philippine nationals shall be exempt from Philippine income tax. Section 2(d)(1) of RMC No. 31-2013 reads:

> 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:
>
> xxx xxx xxx
>
> (d) *Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law* –
>
> 1. *Asian Development Bank (ADB)*
>
> Section 45 (b), Article XII of the *Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank* provides:
>
> 'ARTICLE XII
>
> xxx xxx xxx

Section 45.

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

xxx xxx xxx

(b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals;' (Underscoring supplied)

From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax." *(Emphasis supplied)*

RMC No. 31-2013 was given retroactive effect and Filipino employees of ADB were ordered to declare and pay income taxes for 2012 onwards.

Thus, petitioners paid income taxes for income received for TYs 2012 and 2013, as follows:[3]

PETITIONER	INCOME TAX PAID		TOTAL
	2012	2013	
Ma. Carmela Locsin	3,022,590.18	3,202,400.00	6,224,990.18
Nerissa Loria	213,578.84	*264,008.00*[4]	477,586.84
Krista Camille Lozada	490,048.48		490,048.48
Maria Isabelita Lozano	315,708.90		315,708.90
Heidee Lozari	703,092.43	709,026.00	1,412,118.43

[3] Exhibits "P-3", "P-4", "P-5", and "P-6", docket, vol. 1, pp. 312-334.
[4] Exhibits "P-9", "P-9-1", and "P-9-2", docket, vol. 1, pp. 362-364.

Maria Criselda Lumba	148,453.68		148,453.68
Leah Jean Luna	177,330.16		177,330.16
Ma. Solita Mabaquiao	515,525.34		515,525.34
Marianne Macabingkil	163,459.79		163,459.79
Emerlinda Macalintal	162,336.80		162,336.80
Geovanna Maceda-Papa	36,856.67	41,507.00	78,363.67
Ritchelle Ann Madrigal	178,814.24	214,180.00	392,994.24
Maria Angela Malihan	100,872.84	135,002.00	235,874.84
Maureen Mamayson	234,414.86	255,055.00	489,469.86
Imelda Mampusti	299,155.00	149,578.00	448,733.00
Ma. Theresa Manahan	366,266.84	352,241.00	718,507.84
Ma. Rowena Manalansan	214,246.15		214,246.15
Nemrod Manalo	700,279.56	*704,640.00*[5]	1,404,919.56
Buena Marie Manansala	224,483.44		224,483.44
Elnora Mangampat	371,725.82		371,725.82
Joelito Manigo	321,969.67		321,969.67
Madeline Manrique	251,495.00		251,495.00
Marirose Mapua	227,511.80		227,511.80
Roselyn Marantal	*223,379.24*[6]	*247,976.00*[7]	471,355.24
Liza Marasigan	253,091.09		253,091.09
Maritess Marcelino	166,027.00		166,027.00
Ruzette Mariano	176,142.51		176,142.51
Victoria Fe Mariano	594,514.68	920,451.00	1,514,965.68
Girard Pacifico Marin	452,387.38		452,387.38
Ma. Isabel Martin	152,005.48		152,005.48
Eloise Valerie Martinez	232,457.37		232,457.37
Balbina Grace Matullano	233,521.19		233,521.19
Ma Lyn Theresa Medina[8]		*243,438.00*[9]	243,438.00

[5] Exhibits "P-6-4" and "P-6-5", docket, vol. 1, p. 324.
[6] Exhibit "P-5-11", docket, vol. 1, p. 318.
[7] Exhibits "P-6-6" and "P-6-7", docket, vol. 1, p. 325.

Joselito Mendez	704,088.68	710,115.00	1,414,203.68
Rachelle Mendinueto	156,118.83		156,118.83
Teresa Mendoza	451,398.60	457,381.00	908,779.60
Vivian Meneses	231,234.07	245,012.00	476,246.07
Kathrina Millan	135,160.40	227,629.00	362,789.40
Marichu Milward	305,446.00	358,054.00	663,500.00
Alvin Morales	611,181.80		611,181.80
Allison Grace Miravite	82,540.82	357,021.00	439,561.82
Marie Jessamine Mitra	264,959.94		264,959.94
Modesto Modesto	1,100,851.83		1,100,851.83
Caren Joy Mongcupa	170,322.70		170,322.70
Michael John Monreal	214,907.25	223,537.00	438,444.25
Jemellee Monzuela	269,538.10	132,252.00	401,790.10
Sara Mei Mora	294,866.40	158,131.00	452,997.40
Jackie Moreno	123,046.33	152,215.00	275,261.33
Wesam Mostadi	109,600.09	144,024.00	253,624.09
Edgardo Nacpil	557,670.42		557,670.42
Aldalyn Nada-Bere	473,213.38	530,306.00	1,003,519.38
Gilda Nanquil	372,471.94		372,471.94
Socorro Narvasa	261,758.68	262,758.00	524,516.68
Laarni Nasi	164,759.79	171,620.00	336,379.79
Jennifer Navarro[10]	313,075.04		313,075.04
Ma. Agnes Navera	418,010.08		418,010.08
Suzanne Nazal	296,098.52		296,098.52
Belen Kim Ngwe	267,482.75	520,350.00	787,832.75
Maria Oliva Nuestro	566,741.61	556,842.90	1,123,584.51
Ma. Carmela Nuñez	335,374.03		335,374.03

[8] Exhibit "P-12-1", Annual Income Tax Return for 2012 was denied admission for failure to present originals for comparison.
[9] Exhibit "P-6-10", docket, vol. 1, p. 325.
[10] Exhibit "P-13", Ms. Navarro's proof of payment of her 2013 income tax was denied admission for failure to present original copy for comparison.

Lawrence Obias	129,515.90	84,199.00	213,714.90
May Oblefias	143,912.67		143,912.67
Athena Ocampo	267,524.61	269,196.00	536,720.61
Laura Ocampo	291,221.19	293,964.00	585,185.19
Joseph Ochoada	362,461.97	368,798.00	731,259.97
Marjorie Oliver	249,237.62	205,858.00	455,095.62
Ronald Mark Omana	215,062.18		215,062.18
Carol Onchangco	317,652.68		317,652.68
Dino Tante Ordonez	211,287.83		211,287.83
Maria Cynthia Orendain	629,320.00	633,157.00	1,262,477.00
Josephine Orense	301,729.90		301,729.90
Christina Orquiola	437,127.60		437,127.60
Maria Rosa Ortega	503,836.18		503,836.18
Lea Maria Ortiz	337,273.24	349,926.00	687,199.24
Cecille Pacheco	270,798.47	271,448.00	542,246.47
Madelyn Paclibar	221,760.19		221,760.19
Ruperto Padilla	552,920.28	559,135.00	1,112,055.28
Rino Paez	98,102.00		98,102.00
Maria Teresa Pagkalinawan	288,724.85		288,724.85
Zenaida Pangan	251,860.21		251,860.21
Corazon Panganiban	564,160.00	550,265.00	1,114,425.00
Aileen Pangalinan	209,744.01		209,744.01
Maria Virginia Panis	145,297.69		145,297.69
Socorro Panis	823,129.20	819,148.00	1,642,277.20
Melissa Pascua	363,318.57		363,318.57
Pia Angelica Pascual	167,019.52	155,573.00	322,592.52
Wilhelmina Paz	955,070.05		955,070.05
Santiago Raymond Pe-Aguirre	332,078.92		332,078.92
Ma. Agnes Pedro	153,650.18		153,650.18
Michelle Penalosa		79,406.00	

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	155,411.54		234,817.54
Cecilia Peralta	143,091.88		143,091.88
Paulita Perez de Tagle	173,804.34		173,804.34
Roslyn Perez	271,525.06		271,525.06
Donabelle Pineda	202,487.10		202,487.10
Ma Eloisa Pineda	262,236.49		262,236.49
Mitzi Gay Piol	210,035.91		210,035.91
Dario Ponciano	305,319.80		305,319.80
Lilibeth Poot	447,970.83		447,970.83
Mario Antonio Portugal	82,557.14	138,174.00	220,731.14
Grace Potente	327,102.08	330,431.00	657,533.08
Elenita Pura	152,567.14	157,952.00	310,519.14

NOTE: *Amounts that are italicized are different from the amounts stated in the Petition for Review.*

On February 14, 2014, on the belief that RMC No. 31-2013 was invalidly issued, two Filipino ADB employees assailed its legality before the Regional Trial Court (RTC) Branch 213 of Mandaluyong City, in the case entitled as *Erwin Salavera, et al. vs. Commissioner of Internal Revenue* and docketed as Civil Case No. MC14-8775.

In the Decision dated September 30, 2014, the RTC declared Section 2(d)(1) of RMC No. 31-2013 as void on the ground that it was issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary. The said Decision was effectively affirmed by the RTC when it denied respondent's Motion for Reconsideration in the Order dated January 9, 2015.

Respondent elevated the RTC Decision to the Court of Appeals (CA), which was docketed as CA-G.R. CV No. 104374. It was however dismissed in the Resolution dated July 3, 2015. According to the CA, respondent erroneously elevated the RTC Decision to it on ordinary appeal when it should be filed with the Supreme Court via a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil

Procedure since it only involved a question of law. Respondent's subsequent Motion for Reconsideration was denied in the Resolution dated January 4, 2016.

Respondent sought recourse to the Supreme Court via Petition for Review on Certiorari, docketed as G.R. No. 222214. To date, it is still pending resolution by the High Court.

Armed with the rulings by both the RTC and the CA, petitioners, on June 30, 2015[11] and on July 7, 2015[12], filed their respective administrative claims with the BIR for refund of income tax paid. On July 14, 2015, they sought judicial intervention with this Court.

In the Answer[13], respondent contends that petitioners, as Filipino citizens and residents of the Republic of the Philippines, are subject to Philippine income tax pursuant to Sections 23 and 22(E) of the National Internal Revenue Code of 1997 (NIRC), as amended.

Further, pursuant to Article 56 of the ADB Charter, no tax shall be levied on the salaries paid to its officers and employees, except where a member country retains its right to tax the salaries and emoluments of its citizens.

Such reservation to tax the salaries and emoluments of its citizens who are officers and employees of ADB is clearly provided in Section 45(b) Article XII of the ADB Headquarters Agreements signed by the Philippines in 1956. Further, in its Resolution No. 06, the Philippine Congress concurred with the ratification of the Agreement Establishing the Asian Development Bank by the Philippine President, subject to the reservation in Article 56, paragraph 2 thereof that the Philippines retains its right to tax the salaries and emoluments of its citizens or nationals.

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[11] Annex "A", Petition for Review, docket, vol. 1, pp. 132-142.
[12] Annex "B", Petition for Review, docket, vol. 1, pp. 143-156.
[13] Docket, vol. 1, pp. 209-220.

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In any event, the reservation is only a clarification of existing policies etched in Philippine law, and an affirmation of the inherent right of the State to tax its nationals, which cannot be supplanted by any practice or tradition to the contrary as claimed by petitioners.

Moreover, it is upon petitioners to provide the basis for their claimed tax exemption of their income received from ADB, and to prove compliance with the requisites for the refund sought. Respondent points out that tax exemptions are never presumed and are strictly construed against the taxpayer, such as petitioners, and liberally in favor of the taxing authority.

After they filed their respective Pre-Trial Briefs[14], the parties submitted their Joint Stipulation of Facts and Issues[15] on the basis of which a Pre-Trial Order[16] was issued on January 19, 2016.

During trial, petitioners presented their sole witness, Attorney Esther R. Ibañez, who testified[17] that upon her request as counsel for petitioners, the Revenue Accounting Division of the BIR issued Certifications reflecting the amount of income taxes paid by each of the petitioners for TYs 2012 and 2013. However, not all of the petitioners were issued a Certification prompting them to submit proof of payment of income taxes in the form of bank deposits, payment slips, official receipts, or tax returns.

The witness further confirmed that the RTC Decision voiding RMC No. 31-2013 was elevated by respondent to the CA, which denied it on the ground of improper mode of appeal. The said case is now with the Supreme Court on Petition for Review on Certiorari, docketed as G.R. No. 222214.

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[14] Docket, vol. 1, pp. 230-233.
[15] Docket, vol. 1, pp. 251-254.
[16] Docket, vol. 1, pp. 267-273.
[17] Docket, vol. 1, pp. 286-295 and 353-358.

After petitioners rested their case, per Resolutions dated September 14, 2017[18] and January 9, 2018[19], respondent, in open court manifested that he would not present any evidence.

The case was submitted for decision on February 5, 2018.[20]

THE ISSUES

The parties submitted the following issue for the Court's resolution:[21]

> Whether petitioners are entitled to refund for income taxes paid for TYs 2012 and 2013 alleged to be erroneously and/or illegally paid.

Petitioner's Arguments[22]

Petitioners claim that as employees of the ADB, they are exempted from paying income tax. Petitioners allege that they have enjoyed income tax-exempt status for close to five decades since the inception of the ADB, with the knowledge and silent acquiescence of the BIR. Such tax-exempt status was disturbed only when RMC No. 31-2013 was issued.

In any event, petitioners heavily relied on the Decision of the RTC of Mandaluyong City in Civil Case No. MC14-8775 declaring RMC No. 31-2013 void, thereby affirming their income tax-exempt status. Petitioners believe that the Court is bound to take judicial notice of the RTC decision declaring RMC No. 31-2013 unconstitutional and should rule in their favor.

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[18] Docket, vol. 2, pp. 544-546.
[19] Docket, vol. 2, pp. 584-587.
[20] Docket, vol. 2, p. 600.
[21] Docket, vol. 1, p. 252.
[22] Docket, vol. 1, pp. 28-29.

Respondent's Arguments[23]

Respondent argues that petitioners, being Filipino citizens and residents of the Republic of the Philippines, are subject to Philippine income tax pursuant to Sections 23 and 22(E) of the NIRC, as amended, and anchored on the inherent right of the State to tax its citizens.

Further, Article 56 of the ADB Charter which provides that no tax shall be levied on the salaries paid to its officers and employees, admits of exception, and that is when a member country retains for itself the right to tax the salaries and emoluments of its citizens.

Such reservation is clearly provided in Section 45(b) Article XII of the ADB Headquarters Agreement establishing ADB headquarters in the Philippines and in the Resolution No. 06 of the Philippine Congress which confirmed the ratification by no less than the President of the Philippines of the Agreement Establishing the Asian Development Bank.

The reservation in RMC No. 31-2013 seeking to tax Philippine nationals who are employees of ADB only clarifies the existing policies under Philippine law and affirms the inherent right of the State to tax its nationals.

Lastly, respondent invokes the principle that tax refunds are in the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government, hence, the burden is on petitioners to prove the basis of their claim but failed.

DISCUSSION/RULING

First, the Court shall determine the timeliness of the filing of the refund claim. Section 229 of the NIRC of 1997, as amended, provides:

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[23] Docket, vol. 2, pp. 518-536.

> 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, 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.

On the basis of the foregoing provision, a claim for refund must be filed with the Commissioner of Internal Revenue and the Court of Tax Appeals within the two-year prescriptive period from the date of payment of tax.

It was held in a myriad of cases that when a tax is paid in installment basis, the computation of the two-year prescriptive period should be from the date of the last installment or final payment.[24]

Below is the table detailing the dates pertaining to petitioners' respective income tax payments:

PETITIONER	**Date of Full Payment of Income Tax[25]**	**Last day to file refund claim**	**Date of filing**	**Date of filing of**

[24] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 141104 and 148763, June 8, 2007; *Collector of Internal Revenue vs. Prieto, et al.*, G.R. No. L-11976, August 29, 1961; *Commissioner of Internal Revenue vs. Palanca, Jr.*, G.R. No. L-16626, October 29, 1966.

[25] Exhibits "P-3", "P-4", "P-5", and "P-6", docket, vol. 1, pp. 312-334.

					of Admin. Claim	Judicial Claim
	2012	2013	2012	2013		
Ma. Carmela Locsin	7/15/13	3/21/14	7/15/15	3/21/16	6/30/15	7/14/15
Nerissa Loria	7/15/13	4/08/14[26] 7/11/14[27]	7/15/15	7/11/16	6/30/15	7/14/15
Krista Camille Lozada	7/15/13		7/15/15		6/30/15	7/14/15
Maria Isabelita Lozano	7/15/13		7/15/15		6/30/15	7/14/15
Heidee Lozari	7/15/13	4/11/14[28] 7/11/14[29]	7/15/15	7/11/16	6/30/15	7/14/15
Maria Criselda Lumba	7/15/13		7/15/15		6/30/15	7/14/15
Leah Jean Luna	7/15/13		7/15/15		6/30/15	7/14/15
Ma. Solita Mabaquiao	7/15/13		7/15/15		6/30/15	7/14/15
Marianne Macabingkil	7/15/13		7/15/15		6/30/15	7/14/15
Emerlinda Macalintal	7/15/13		7/15/15		6/30/15	7/14/15
Geovanna Maceda-Papa	7/15/13	4/10/14	7/15/15	4/10/16	6/30/15	7/14/15
Ritchelle Ann Madrigal	7/15/13	4/21/14	7/15/15	4/21/16	6/30/15	7/14/15
Maria Angela Malihan	7/15/13	3/27/14	7/15/15	3/27/16	6/30/15	7/14/15
Maureen Mamayson	7/15/13	4/14/14	7/15/15	4/14/16	6/30/15	7/14/15
Imelda Mampusti	7/15/13	4/14/14	7/15/15	4/14/16	6/30/15	7/14/15
Ma. Theresa Manahan	7/12/13	3/20/14	7/12/15	3/20/16	6/30/15	7/14/15
Ma. Rowena Manalansan	7/15/13		7/15/15		6/30/15	7/14/15
Nemrod Manalo	7/15/13	4/11/14 7/15/14	7/15/15	7/15/16	6/30/15	7/14/15
Buena Marie Manansala	7/15/13		7/15/15		6/30/15	7/14/15
Elnora Mangampat	7/15/13		7/15/15		6/30/15	7/14/15
Joelito Manigo	7/15/13		7/15/15		6/30/15	7/14/15
Madeline Manrique	7/15/13		7/15/15		6/30/15	7/14/15
Marirose Mapua	7/15/13		7/15/15		6/30/15	7/14/15
Roselyn Marantal	7/15/13	4/11/14 7/14/14	7/15/1	7/14/1	6/30/1	7/14/15

[26] Exhibit "P-9", docket, vol. 1, p. 362.
[27] Exhibit "P-9-1", docket, vol. 1, p. 363.
[28] Exhibit "P-10", docket, vol. 1, p. 365.
[29] Exhibit "P-10-1", docket, vol. 1, p. 366.

			5	6	5	
Liza Marasigan	7/15/13		7/15/15		6/30/15	7/14/15
Maritess Marcelino	7/16/13		7/16/15		6/30/15	7/14/15
Ruzette Mariano	7/15/13		7/15/15		6/30/15	7/14/15
Victoria Fe Mariano	7/15/13	3/24/14[30]	7/15/15	3/24/16	6/30/15	7/14/15
Girard Pacifico Marin	7/15/13		7/15/15		6/30/15	7/14/15
Ma. Isabel Martin	7/15/13		7/15/15		6/30/15	7/14/15
Eloise Valerie Martinez	7/15/13		7/15/15		6/30/15	7/14/15
Balbina Grace Matullano	7/15/13		7/15/15		6/30/15	7/14/15
Ma Lyn Theresa Medina	7/15/13[31]	4/14/14	7/15/15	4/14/16	6/30/15	7/14/15
Joselito Mendez	7/15/13	4/10/14 7/15/14	7/15/15	7/15/16	6/30/15	7/14/15
Rachelle Medinueto	7/15/13		7/15/15		6/30/15	7/14/15
Teresa Mendoza	7/15/13	4/11/14	7/15/15	4/11/16	6/30/15	7/14/15
Vivian Meneses	7/15/13	4/10/14	7/15/15	4/10/16	6/30/15	7/14/15
Kathrina Millan	7/15/13	4/10/14 7/11/14	7/15/15	7/11/16	6/30/15	7/14/15
Marichu Milward	7/15/13	3/20/14 7/2/14	7/15/15	7/2/16	6/30/15	7/14/15
Alvin Morales	7/15/13		7/15/15		6/30/15	7/14/15
Allison Grace Miravite	7/15/13	4/15/14 7/10/14	7/15/15	7/10/16	6/30/15	7/14/15
Marie Jessamine Mitra	7/15/13		7/15/15		6/30/15	7/14/15
Modesto Modesto	7/15/13		7/15/15		6/30/15	7/14/15
Caren Joy Mongcupa	7/15/13		7/15/15		6/30/15	7/14/15
Michael John Monreal	7/15/13	4/14/14	7/15/15	4/14/16	6/30/15	7/14/15
Jemellee Monzuela	7/15/13	4/15/14	7/15/15	4/15/16	6/30/15	7/14/15
Sara Mei Mora	7/15/13	4/11/14	7/15/15	4/11/16	6/30/15	7/14/15
Jackie Moreno	7/15/13	4/15/14	7/15/15	4/15/16	6/30/15	7/14/15
Wesam Mostadi	7/15/13	4/14/14	7/15/15	4/14/16	6/30/15	7/14/15
Edgardo Nacpil	7/15/13		7/15/15		7/07/15	7/14/15
Aldalyn Nada-Bere	7/15/13	3/21/14 7/15/14	7/15/1	7/15/1	7/07/1	7/14/15

[30] Exhibit "P-11", docket, vol. 1, p. 368.
[31] Exhibit "P-12", docket, vol. 1, p. 369.

			5	6	5	
Gilda Nanquil	7/15/13		7/15/15		7/07/15	7/14/15
Socorro Narvasa	7/15/13	4/10/14	7/15/15	4/10/16	7/07/15	7/14/15
Laarni Nasi	7/15/13	4/11/14 7/10/14	7/15/15	7/10/16	7/07/15	7/14/15
Jennifer Navarro	7/15/13	3/13/14[32]	7/15/15	3/13/16	7/07/15	7/14/15
Ma. Agnes Navera	7/15/13		7/15/15		7/07/15	7/14/15
Suzanne Nazal	7/15/13		7/15/15		7/07/15	7/14/15
Belen Kim Ngwe	7/15/13	4/10/14	7/15/15	4/10/16	7/07/15	7/14/15
Maria Oliva Nuestro	7/15/13	4/11/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Ma. Carmela Nuñez	7/15/13		7/15/15		7/07/15	7/14/15
Lawrence Obias	7/15/13	4/14/14	7/15/15	4/14/16	7/07/15	7/14/15
May Oblefias	7/15/13		7/15/15		7/07/15	7/14/15
Athena Ocampo	7/15/13	4/11/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Laura Ocampo	7/15/13	4/10/14 7/09/14	7/15/15	7/09/16	7/07/15	7/14/15
Joseph Ochoada	7/15/13	3/20/14	7/15/15	3/20/16	7/07/15	7/14/15
Marjorie Oliver	7/15/13	4/02/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Ronald Mark Omana	7/15/13		7/15/15		7/07/15	7/14/15
Carol Onchangco	7/15/13		7/15/15		7/07/15	7/14/15
Dino Tante Ordonez	7/15/13		7/15/15		7/07/15	7/14/15
Maria Cynthia Orendain	7/15/13	4/10/14[33] 7/11/14[34]	7/15/15	7/11/16	7/07/15	7/14/15
Josephine Orense	7/15/13		7/15/15		7/07/15	7/14/15
Christina Orquiola	7/15/13		7/15/15		7/07/15	7/14/15
Maria Rosa Ortega	7/15/13		7/15/15		7/07/15	7/14/15
Lea Maria Ortiz	7/15/13	4/15/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Cecille Pacheco	7/15/13	4/14/14 7/08/14	7/15/15	7/08/16	7/07/15	7/14/15
Madelyn Paclibar	7/15/13		7/15/1		7/07/1	7/14/15

[32] Exhibit "P-13", docket, vol. 1, p. 371.
[33] Exhibit "P-14", docket, vol. 1, p. 373.
[34] Exhibit "P-14-1", docket, vol. 1, p. 374.

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			5		5	
Ruperto Padilla	7/15/13	3/20/14	7/15/15	3/20/16	7/07/15	7/14/15
Rino Paez	7/15/13		7/15/15		7/07/15	7/14/15
Maria Teresa Pagkalinawan	7/15/13		7/15/15		7/07/15	7/14/15
Zenaida Pangan	7/15/13		7/15/15		7/07/15	7/14/15
Corazon Panganiban	7/15/13	4/10/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Aileen Pangalinan	7/15/13		7/15/15		7/07/15	7/14/15
Maria Virginia Panis	7/15/13		7/15/15		7/07/15	7/14/15
Socorro Panis	7/15/13	3/21/14	7/15/15	3/21/16	7/07/15	7/14/15
Melissa Pascua	7/15/13		7/15/15		7/07/15	7/14/15
Pia Angelica Pascual	7/15/13	4/11/14	7/15/15	4/11/16	7/07/15	7/14/15
Wilhelmina Paz	7/15/13		7/15/15		7/07/15	7/14/15
Santiago Raymond Pe-Aguirre	7/15/13		7/15/15		7/07/15	7/14/15
Ma. Agnes Pedro	7/15/13		7/15/15		7/07/15	7/14/15
Michelle Penalosa	7/15/13	4/08/14	7/15/15	4/08/16	7/07/15	7/14/15
Cecilia Peralta	7/15/13		7/15/15		7/07/15	7/14/15
Paulita Perez de Tagle	7/15/13		7/15/15		7/07/15	7/14/15
Roslyn Perez	7/15/13		7/15/15		7/07/15	7/14/15
Donabelle Pineda	7/15/13		7/15/15		7/07/15	7/14/15
Ma Eloisa Pineda	7/15/13		7/15/15		7/07/15	7/14/15
Mitzi Gay Piol	7/15/13		7/15/15		7/07/15	7/14/15
Dario Ponciano	7/15/13		7/15/15		7/07/15	7/14/15
Lilibeth Poot[35]	7/15/13		7/15/15		7/07/15	7/14/15
Mario Antonio Portugal	7/15/13	4/10/14 7/15/14	7/15/15	7/15/16	7/07/15	7/14/15
Grace Potente	7/15/13	3/20/14	7/15/15	3/20/14	7/07/15	7/14/15
Elenita Pura	7/15/13	4/08/14 7/14/14	7/15/15	7/14/16	7/07/15	7/14/15

From the above Table, all the payments for TY 2012 were made on July 15, 2013 while for TY 2013, the latest payments were made in July of 2014.

[35] Exhibit "P-8", docket, vol. 1, p. 359.

Petitioners had two (2) years or until July 15, 2015 for the payments made for the year 2012, and until July of 2016 at the latest, for payments made for 2013, to file both their administrative and judicial claims for refund.

Petitioners' administrative claims for refund were filed on June 30, 2015 and on July 7, 2015, while the judicial claim was filed on July 14, 2015. Thus, petitioners timely filed their administrative and judicial claims for refund within the two-year period from their respective dates of income tax payments.

On the merits of their refund claim, under the NIRC of 1997, as amended, resident citizens are subject to tax on income derived from all sources within and without the Philippines as provided in Section 23 of the NIRC, as amended, to wit:

> 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**; *(Emphasis supplied)*

Clearly, Sections 23(A) and 24(A)(1)(a) of the NIRC of 1997, as amended, impose tax on the income of resident citizens from all sources within or without the Philippines.

On the other hand, Section 32 of the NIRC of 1997, as amended, enumerates certain items which are excluded from gross income, thus exempted from taxation, *viz.*:

> SEC. 32. *Gross Income*. –
>
> (A) *General Definition*. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income*. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> xxx xxx xxx
>
> (5) *Income Exempt under Treaty*. – Income of any kind, to the extent required by a treaty obligation binding upon the Government of the Philippines.
>
> xxx xxx xxx"

Based on the afore-quoted provision, a resident citizen is taxable on all income derived from all sources within and without the Philippines, except when the resident citizen is exempt under the provisions of a treaty, which is binding upon the Philippine Government.

A scrutiny of the relevant treaty and legal provisions confirms that Congress intended to tax the salaries and emoluments received by Filipino employees of ADB.

On December 4, 1965, the ADB Charter was executed. Article 56 thereof reads:

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.** *(Emphasis supplied)*

Subsequently, the Philippine Government via Senate Resolution No. 6 dated March 16, 1966, ratified and confirmed the ADB Charter with a reservation on 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,

> **subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines**. *(Emphasis supplied)*

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 was signed and included a similar provision recognizing the right of the Philippine Government to tax Filipino employees of the ADB, to wit:

> ARTICLE XII
> Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others
>
> xxx xxx xxx
>
> Section 45.
>
> **Officers and staff of the Bank**, including for the purposes of this Article experts and consultants performing missions for the Bank, **shall enjoy the following privileges and immunities**:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;
>
> (b) **Exemption from taxation** on or in respect of the salaries and emoluments paid by the Bank **subject to the power of the Government to tax its nationals** xxx. *(Emphasis supplied)*

The cited provisions of ADB-related treaties evidently provide for tax exemption of the salaries and emoluments paid by ADB to its officers and employees, but with a proviso that when a member-country, such as the Philippines, chooses to retain its right to tax the salaries and

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emoluments paid by ADB to its citizens or nationals. If the Philippine Government intended to exempt from income tax the salaries or emoluments that its citizens or nationals will receive from ADB, a full ratification of the ADB Charter could have been made, without the reservation pertaining to its right to tax its citizens or nationals.

Further, the NIRC, as amended, is the law that enables the enforcement of the reservation clauses found in Senate Resolution No. 6 and Section 45(b) of ADB Headquarters Agreement. Sections 23(A) and 24(A)(1)(a) of the NIRC of 1997, as amended, leave no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines.

Contrary to petitioners' assertion, the taxability of the income received by petitioners from the ADB is not dependent on the validity of Section 2(d)(1) of RMC No. 31-2013. The same is based on the existing provisions of the NIRC of 1997, as amended, in relation to the treaty/agreement between the Government of the Philippines and the ADB.

The NIRC of 1997, as amended, which took effect on January 1, 1998 is the governing law implementing the reservation clauses found in Senate Resolution No. 6 and Section 45(b) of ADB Headquarters Agreement.

Significantly, RMC No. 31-2013 is only an interpretative rule issued by the BIR regarding the existing provisions of the NIRC in relation to treaty obligations entered into by the Philippine Government. RMCs are mere BIR issuances that disseminate and embody pertinent and applicable portions, as well as amplifications, of laws, rules, regulations, precedents, opinions and orders issued for the information and guidance of BIR personnel.

As to the Decision dated September 30, 2014 of the RTC Branch 213, Mandaluyong City declaring Section 2(d)(1) of RMC No. 31-2013 void, such has yet to attain finality, as it is still on appeal with the Supreme Court, hence, cannot as yet be a binding jurisprudence. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[36]

It must be stressed that the power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed.[37] An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction.[38] Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government.[39]

In sum, petitioners' income tax payments for salaries and emoluments from ADB for TYs 2012 and 2013 were not erroneously and/or illegally collected by the BIR. Consequently, such income tax payments cannot be refunded.

However, all is not lost for petitioners.

It is indubitable that from the ratification of the ADB Charter by the Philippine Government via Senate Resolution No. 6 dated March 16, 1966, and from the execution 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 on December 22, 1966, no income tax has been imposed and collected from the officers and employees of ADB who are Philippine nationals. Neither have these officers and employees of ADB been subjected to withholding tax on their compensation income.

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[36] Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.
[37] *Luzon Stevedoring Corporation vs. Court of Tax Appeals, et al.*, G.R. No. L-30232, July 29, 1988.
[38] *Lung Center of the Philippines vs. Quezon City, et al.*, G.R. No. 144104, June 29, 2004.
[39] *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.

It was only when RMC No. 31-2013 dated April 12, 2013 was issued that the officers and employees of ADB who are Philippine nationals were required to file income tax return and pay income tax.

From the ratification of the ADB Charter in 1966 up to the issuance of RMC No. 31-2013 in 2013, the officers and employees of ADB have not been subjected to income tax. This occurred with the silent acquiescence of the BIR for despite its conflicting regulations on the matter, the tax-exempt status of ADB personnel who were Philippine citizens was not disturbed. The BIR kept mum on the claimed reservation in favor of the State and that was for a considerable length of time.

During the period of 1966 to 2013, the BIR issued three varying guidelines on the taxable status of ADB Filipino employees, to wit:

> 1. On March 11, 1999, former Commissioner Beethoven L. Rualo issued a ruling that ADB Filipino employees holding managerial and technical positions are subject to a preferential rate of 15%;
>
> 2. On January 29, 2001, the BIR, through its Regional Director (RD) which had the jurisdiction over the ADB, issued an opinion stating that salaries and emoluments received by ADB officers and staff are exempt from taxation; and
>
> 3. On February 6, 2013, the Chief, Legal Division of Revenue Region No.7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are subject to the preferential tax rate of 15°/o on their compensation income. [40]

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[40] See RTC Decision dated September 30, 2014 pp. 26-27.

It was only upon the issuance of RMC No. 31-2013 that ADB employees were clearly and unequivocally subjected to income tax on their compensation income

While RMC No. 31-2013 was issued on April 12, 2013, it took effect on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the UP Law Center in observance of the requirement under the 1987 Administrative Code, Section 3, Chapter 2, Book VII.[41] Considering that the requirements of publication and filing of administrative issuances are mandatory for their effectivity,[42] hence, RMC No. 31-2013 took effect on May 2, 2013.

Nevertheless, respondent retroactively applied RMC No. 31-2013 which took effect on May 2, 2013, prompting petitioners to make income tax payments for TY 2012.

This retroactive application of RMC No. 31-2013 contravened Section 246 of the NIRC of 1997, as amended, which provides:

> 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;

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[41] 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.
[42] National Association of Electricity Consumers for Reforms vs. Energy Regulatory Commission, G.R. No. 163935, February 2, 2006

> (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. (Emphasis supplied)

It appearing that neither of the above elements is present or that there is no circumstance that will justify imputation of fraud or acted in bad faith against petitioners, the principle of non-retroactivity provided in Section 246 of the NIRC, as amended, applies in their favor.

In cases more than one, the Supreme Court had been consistent in ruling that the rulings, circulars, rules and regulations promulgated by the Commissioner on Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.[43]

Moreover, retroactive application of RMC No. 31-2013 will not be in accord with the principle of justice and fair play. Petitioners for a long period of time were made to believe that they were exempted from income taxation being employees of ADB. And only upon the issuance RMC No. 31-2013 that they learned about this burden on their compensation income.

Also basic is the rule is that if any BIR ruling or issuance promulgated by the CIR is subsequently revoked or nullified by the CIR herself or by the court, the revocation/nullification cannot be applied retroactively to the prejudice of the taxpayers.[44]

While the Court is mindful of the well-entrenched principle that the government is never estopped from collecting taxes due to the mistakes or errors on the part of

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[43] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007.

[44] Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, G.R. No. 209776, December 7, 2016.

its agents, but this rule admits of exceptions in the interest of justice and fairplay.[45]

With the foregoing, petitioners are held liable for income taxes for the TY 2013, but not for the year 2012, hence, the income taxes paid for the year 2012 should be refunded in their favor.

WHEREFORE, the Petition for Review dated July 14, 2015 is **PARTIALLY GRANTED**.

Respondent is hereby ORDERED TO REFUND or TO ISSUE TAX CREDIT CERTIFICATE in the total amount of P33,704,567.53, broken down, as follows:

NAME OF PETITIONER	**Income Tax Paid For 2012**
Ma. Carmela Locsin	3,022,590.18
Nerissa Loria	213,578.84
Krista Camille Lozada	490,048.48
Maria Isabelita Lozano	315,708.90
Heidee Lozari	703,092.43
Maria Criselda Lumba	148,453.68
Leah Jean Luna	177,330.16
Ma. Solita Mabaquiao	515,525.34
Marianne Macabingkil	163,459.79
Emerlinda Macalintal	162,336.80
Geovanna Maceda-Papa	36,856.67
Ritchelle Ann Madrigal	178,814.24
Maria Angela Malihan	100,872.84
Maureen Mamayson	234,414.86
Imelda Mampusti	299,155.00
Ma. Theresa Manahan	366,266.84
Ma. Rowena Manalansan	214,246.15
Nemrod Manalo	700,279.56
Buena Marie Manansala	224,483.44
Elnora Mangampat	371,725.82
Joelito Manigo	321,969.67
Madeline Manrique	251,495.00
Marirose Mapua	227,511.80
Roselyn Marantal	*223,379.24*[46]
Liza Marasigan	253,091.09
Maritess Marcelino	166,027.00
Ruzette Mariano	176,142.51
Victoria Fe Mariano	594,514.68
Girard Pacifico Marin	452,387.38
Ma. Isabel Martin	152,005.48

[45] Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 107135, February 23, 1999.
[46] Exhibit "P-5-11", docket, vol. 1, p. 318.

Eloise Valerie Martinez	232,457.37
Balbina Grace Matullano	233,521.19
Ma Lyn Theresa Medina[47]	
Joselito Mendez	704,088.68
Rachelle Mendinueto	156,118.83
Teresa Mendoza	451,398.60
Vivian Meneses	231,234.07
Kathrina Millan	135,160.40
Marichu Milward	305,446.00
Alvin Morales	611,181.80
Allison Grace Miravite	82,540.82
Marie Jessamine Mitra	264,959.94
Modesto Modesto	1,100,851.83
Caren Joy Mongcupa	170,322.70
Michael John Monreal	214,907.25
Jemellee Monzuela	269,538.10
Sara Mei Mora	294,866.40
Jackie Moreno	123,046.33
Wesam Mostadi	109,600.09
Edgardo Nacpil	557,670.42
Aldalyn Nada-Bere	473,213.38
Gilda Nanquil	372,471.94
Socorro Narvasa	261,758.68
Laarni Nasi	164,759.79
Jennifer Navarro	313,075.04
Ma. Agnes Navera	418,010.08
Suzanne Nazal	296,098.52
Belen Kim Ngwe	267,482.75
Maria Oliva Nuestro	566,741.61
Ma. Carmela Nuñez	335,374.03
Lawrence Obias	129,515.90
May Oblefias	143,912.67
Athena Ocampo	267,524.61
Laura Ocampo	291,221.19
Joseph Ochoada	362,461.97
Marjorie Oliver	249,237.62
Ronald Mark Omana	215,062.18
Carol Onchangco	317,652.68
Dino Tante Ordonez	211,287.83
Maria Cynthia Orendain	629,320.00
Josephine Orense	301,729.90
Christina Orquiola	437,127.60
Maria Rosa Ortega	503,836.18
Lea Maria Ortiz	337,273.24
Cecille Pacheco	270,798.47
Madelyn Paclibar	221,760.19
Ruperto Padilla	552,920.28
Rino Paez	98,102.00
Maria Teresa Pagkalinawan	288,724.85
Zenaida Pangan	251,860.21
Corazon Panganiban	564,160.00
Aileen Pangalinan	209,744.01
Maria Virginia Panis	145,297.69
Socorro Panis	823,129.20
Melissa Pascua	363,318.57

[47] Exhibit "P-12-1", Annual Income Tax Return for 2012 was denied admission for failure to present originals for comparison.

Pia Angelica Pascual	167,019.52
Wilhelmina Paz	955,070.05
Santiago Raymond Pe-Aguirre	332,078.92
Ma. Agnes Pedro	153,650.18
Michelle Penalosa	155,411.54
Cecilia Peralta	143,091.88
Paulita Perez de Tagle	173,804.34
Roslyn Perez	271,525.06
Donabelle Pineda	202,487.10
Ma Eloisa Pineda	262,236.49
Mitzi Gay Piol	210,035.91
Dario Ponciano	305,319.80
Lilibeth Poot	447,970.83
Mario Antonio Portugal	82,557.14
Grace Potente	327,102.08
Elenita Pura	152,567.14
TOTAL	**33,704,567.53**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting 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