REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2104
(CTA Case No. 9094)

- versus -

MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MARIA ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA MACALINTAL, GEOVANNA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINE MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS

MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, JOSELITO MENDEZ, RACHELLE MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALISSON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCUPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARA MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVA NUESTRO, MA. CARMELA NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE OLIVER, RONALD MARK OMANA, CAROL ONCHANGCO, DINO

x - x

TANTE ORDONEZ, MARIA CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINA ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILLE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA TERESA PAGKALINAWAN, ZENAIDA PANGAN, CORAZON PANGANIBAN, AILEEN PANGALINAN, MARIA VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARIO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,

Respondents.

x-------------------------------x

MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MA. ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH	CTA EB NO. 2110 (CTA Case No. 9094)

JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA SOCORRO MACALINTAL, GEOVANA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAMPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA-MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINA MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, MA-LYN THERESA MEDINA, JOSELITO MENDEZ, RACHEL MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALLISON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCOPA, MICHAEL JOHN MONREAL,

JEMELLEE MONZUELA, SARAH MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO JOSEFINA NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVIA NUESTRO, MA. CARMEN NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE LEE OLIVER, RONALD MARK OMAÑA, CAROL ONGCHANGCO, DINO TANTE ORDONEZ, MARIAN CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINE ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA THERESA PAGKALIWANGAN, ZENAIDA PANGAN, MARIA CORAZON PANGANIBAN, AILEEN PANGILINAN, MA. VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE

PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONNABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARCO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,
Petitioners,

Present:

DEL ROSARIO, ***P.J.*****,**
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, ***JJ.***

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 13 2021 4:05 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar are two (2) consolidated Amended Petitions for Review[1] filed by Commissioner of Internal Revenue[2] (**CIR**) and Ma. Carmela Locsin,

[1] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper

et al.[3] (**Locsin Group**), assailing the Decision dated 04 February 2019[4] and the subsequent Resolution dated 02 July 2019[5], respectively, of the Court's Special Third Division[6] in CTA Case No. 9094, entitled *Ma. Carmela Locsin, et al. v. Commissioner of Internal Revenue.*

The Locsin Group is comprised of employees of the Asian Development Bank (**ADB**). On the other hand, the CIR is the head of the Bureau of Internal Revenue (**BIR**) and 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**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

The antecedent facts follow.

On 12 April 2013, the BIR issued Revenue Memorandum Circular (**RMC**) No. 31-2013[7] affirming the income tax exemption of ADB officers and staff in accordance with the Section 45(b), Article XII[8] 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* (**ADB Headquarters Agreement**). Section 2(d)(1) of RMC 31-2013 reads:

> ...
>
> **SEC. 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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motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 *Rollo* (CTA EB Case No. 2104), Amended Petition for Review, pp. 73-87.

3 Id., Amended Petition for Review, pp. 88-178.

4 Division Docket, Volume II, pp. 602-630.

5 Id., pp. 671-677.

6 Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

7 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.

8 Privileges and immunities of Governors and Other Representatives of Members, Directors, President and Vice-President and Others.

(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

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

(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';

From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.[9]

...

RMC 31-2013 was given retroactive effect and ADB's Filipino employees were ordered to declare and pay income taxes for 2012 onwards. Thus, petitioners paid income taxes for income received for taxable years (**TYs**) 2012 and 2013, as follows:

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[10]	477,586.84
Krista Camille Lozada	490,048.48		490,048.48

[9] Emphasis and underscoring in the original text and supplied.
[10] Exhibits "P-9", "P-4", "P-9-1" and "P-9-2", Division Docket, Volume I, pp. 362-364.

Maria Isabelita Lozano	315,708.90		315,708.90
Heidee Lozari	703,092.43	709,026.00	1,412,118.43
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[11]	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[12]	247,976.00[13]	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[14]		243,438.00[15]	243,438.00
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

[11] Exhibits "P-6-4", and "P-6-5", id., p. 324.
[12] Exhibit "P-5-11", id., p. 318.
[13] Exhibits "P-6-6", and "P-6-7", id., p. 325.
[14] Exhibit "P-12-1", Annual Income Tax Return for 2012 was denied admission for failure to present originals for comparison.
[15] Exhibit "P-6-10", id., p. 325.

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[16]	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
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

16 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.

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	155,411.54	79,406.00	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	157,592.00	310,519.14

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

On 14 February 2014, the validity of RMC 31-2013 was challenged by two (2) Filipino ADB employees before the Regional Trial Court (**RTC**), Mandaluyong City, Branch 213, in *Civil Case No. MC14-8775* entitled as *Erwin Salavera, et al. v. Commissioner of Internal Revenue.*

On 30 September 2014, the RTC promulgated a Decision[17], declaring RMC 31-2013 void. The RTC denied the CIR's motion for reconsideration (**MR**) and affirmed its Decision in an Order dated 09 January 2015.[18]

The CIR filed an appeal before the Court of Appeals (**CA**), docketed as CA-G.R. CV No. 104374. However, it was dismissed in the Resolution dated 03 July 2015[19] on the ground that the case posed pure questions of law.

Thereafter, the Locsin Group filed a Petition for Review on *Certiorari*, docketed as G.R. No. 222214, before the Supreme Court. To this date, the same has yet to be resolved.

On 30 June 2015[20] and 07 July 2015[21], given the RTC's favorable decision, employees from the Locsin Group filed their respective administrative claims with the BIR for refund of income tax (**IT**) paid. On 14 July 2015[22], the Locsin Group also filed a Petition for Review (CTA Case No. 9094) before this Court.

After trial on the merits, Court in Division rendered the assailed Decision on 04 February 2019, partially granting the Petition for Review (CTA Case No. 9094).[23] The dispositive portion thereof reads:

> ...
>
> **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:

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[17] Division Docket, Volume I, pp. 157-188.
[18] Id., pp. 189-190.
[19] Id., pp. 192-198.
[20] Annex "A", Petition for Review, id., pp. 132-142.
[21] Annex "B", id., pp. 143-156.
[22] Id., pp. 14-131.
[23] Supra at note 4.

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
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
Eloise Valerie Martinez	232,457.37
Balbina Grace Matullano	233,521.19
Ma. Lyn Theresa Medina	
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
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	52,567.14
TOTAL	33,704,567.53

SO ORDERED.

...

Except for Ma. Lyn Theresa Medina, who failed to present an original or certified true copy of her Annual Income Tax Return (**AITR**) for TY 2012, the refund was granted to the members of the Locsin Group.

Unsatisfied, both parties moved for the reconsideration of the assailed 04 February 2019 Decision. The Court's Special Third Division denied both motions for reconsideration (**MRs**) for lack of merit in its similarly assailed Resolution of 02 July 2019.[24]

Both the CIR and the Locsin Group filed their present Amended Petitions for Review before the Court *En Banc*, docketed as CTA EB Nos. 2104 and 2110, respectively.

In support of its Amended Petition for Review, the CIR argues that ADB's Filipino employees were never exempt from the payment of IT, only that the same was never enforced until the issuance of RMC 31-2013. He maintains that the Locsin Group is not entitled to the refund or issuance of a tax credit certificate (**TCC**) in the amount of ₱33,704,567.53, representing the IT paid for TY 2012.

The Locsin Group, on the other hand, contends otherwise. They submit the following issues for the Court's determination:

I.
WHETHER LEGISLATION IS NECESSARY IN ORDER TO TAX THE INCOME OF FILIPINO ASIAN DEVELOPMENT BANK (ADB) EMPLOYEES; and,

II.
WHETHER THE CLAIM FOR 2012 INCOME TAX REFUND OF PETITIONER-APPELLANT MEDINA SHOULD BE GRANTED.[25]

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24 Supra at note 5.
25 *Rollo*, CTA EB Case No. 2104, p. 97.

Gauging from their arguments and discussions in support thereof, the Locsin Group insists on the need of a subsequent legislative act to enforce the Philippines' reservation to tax Filipino employees of the ADB.

The Locsin Group argues that, ever since then President Ferdinand Marcos (with concurrence of the Senate through Senate Resolution No. 6) ratified the ADB Charter, the IT exemption of ADB's Filipino employees had been observed. Therefore, the subsequent issuance of RMC 31-2013 cannot serve as the operative act by which the tax exemption provided in the ADB Charter can be removed.

The Court deems the *crux* of the parties' issues to be –

WHETHER THE LOCSIN GROUP, COMPRISING OF FILIPINO EMPLOYEES OF THE ASIAN DEVELOPMENT BANK OF THE PHILIPPINES, ARE EXEMPT FROM PAYMENT OF INCOME TAX.

We rule below.

After an assiduous review of the records of the case and the parties' arguments, We find merit in the CIR's arguments.

It bears stressing that the Locsin Group claiming erroneously and/or illegally collected IT under Section 229 of the NIRC of 1997, as amended, for TYs 2012 and 2013 are *all* Filipino citizens.[26] The NIRC of 1997, as amended, provides, thus:

...

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;

...

[26] Id., p. 21.

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 <u>all sources within and without the Philippines by every individual citizen of the Philippines residing therein[.]</u>

...

Sec. 31. *Taxable Income Defined.* – <u>The term taxable income means the pertinent items of gross income specified in this Code</u>, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

...

Sec. 32. *Gross Income.* –

(A) *General Definition.* – Except when otherwise provided in this Title, <u>gross income means all income derived from whatever source</u>, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.[27]

...

[27] Underscoring supplied.

Moreover, the ADB Charter, which the Philippine Government ratified and confirmed[28], provides the following reservation:

> ...
>
> 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 <u>right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines</u>**.[29]
>
> ...

The same reservation is incorporated in the ADB Headquarters Agreement which was signed on 22 December 1966, to wit:

> ...
>
> **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:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;

---

28 Senate Resolution No. 6, 16 March 1966.
29 Emphasis in the original text and underscoring supplied.

> (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[.][30]
>
> ...

From the foregoing, it is clear that the Philippine Government reserved its right to tax its nationals. As such, the Filipino employees of the ADB would fall under the resident citizen tax classification, who are taxable on *all* income **derived from *all* sources within and outside** the Philippines.

We echo the Special Third Division's disquisition on the matter, *viz*:

> ...
>
> 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

[30] Underscoring supplied.

> and orders issued for the information and guidance of BIR personnel.[31]
>
> ...

The Court finds the Locsin Group's contention that RMC 13-2013 cannot be retroactively applied pursuant to the prohibition under Section 246[32] of the Tax Code bereft of merit.

As the Special Third Division correctly found, RMC 31-2013 merely reiterates the general principles laid down in Section 23(A)[33] and merely implements Sections 24(A)(1)(a)[34], 31 and 32[35] of the NIRC of 1997, as amended, all of which have been in effect since 01 January 1998, as stated in the preface of the said Circular, as follows:

> ...
>
> **SECTION 1.** ***BACKGROUND.*** –
>
> ...
>
> 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.

---

31 Emphasis in the original text and supplied.

32 **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.

33 Supra on page 16.

34 Supra on page 17.

35 Id.

> **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:**
>
> ...
>
> 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")**.[36]
>
> ...

When an administrative agency renders an opinion by means of circulars or memoranda, they are to be treated as interpretative rules designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[37] Therefore, RMC 31-2013 was issued merely to construe the provisions of the NIRC of 1997, as amended, in relation to the various existing treaty obligations of the State. The circular was not issued to impose additional tax burdens not otherwise already found in existing law.

In *Empesando, et al. v. Commissioner of Internal Revenue*[38], this Court held that RMC 31-2013, as an interpretative rule, can be retroactively applied, as follows:

[36] Emphasis in the original text and supplied.

[37] *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, et al.*, G.R. No. 108524, 10 November 1994.

[38] CTA EB Nos. 1995 & 1996 (CTA Case No. 9093), 30 July 2020; Citations omitted, emphasis and underscoring in the original text and supplied.

...

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." 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.*, the Supreme Court held that Administrative Order No. 67, an administrative regulation issued by the Department of Health, and BFAD Circular No[s]. 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 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.'"

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*, the Supreme Court upheld the validity of **RMC 25-2011 and ruled that the application of the circular to the taxable transaction in 2009 did not contravene Section 246 of the 1997 NIRC**, 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**."

...

Furthermore, even a supposed long-standing practice of the BIR (of not subjecting to income tax the salaries and emoluments derived by the Locsin Group from their employment with ADB) could not estop the government from correcting the same. A similar sentiment was expressed in *Republic of the Philippines, et al. v. Hachero, et al.*[39], wherein the Supreme Court held that:

> ...
>
> ...[I]t is a time-honored principle that the statute of limitations or the lapse of time does not run against the State. Jurisprudence also recognizes the State's immunity from estoppel as a result of the mistakes or errors of its officials and agents.
>
> ...

Therefore, it would appear that even a prolonged practice of non-collection of certain taxes, if proven to be erroneous, could not ripen into an enforceable right or one that is demandable as a matter of right.

On the above note, the Supreme Court's decision in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals, et al.*[40], is instructive:

> ...
>
> 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

---

[39] G.R. No. 200973, 30 May 2016.

[40] G.R. No. 125346, 11 November 2014; Citations omitted, emphasis supplied and italics in the original text.

> 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.**
>
> 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[:]
> >
> > ...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.
>
> **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:...
>
> ...

As it stands, the income taxes paid in 2012 and 2013 by ADB's Filipino employees are not in excess of what is due and the payment and collection of the same is neither erroneous nor illegal as it is anchored on a statutory authority.

A final note. Tax refunds are in the nature of tax exemptions which must be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[41]

WHEREFORE, the foregoing considered, the Amended Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 2104, is hereby **GRANTED**. On the other hand, the Amended Petition for Review filed by Ma. Carmela Locsin, et al., docketed as CTA EB No. 2110, is hereby **DENIED** for lack of merit.

Accordingly, the Decision and Resolution dated 04 February 2019 and 02 July 2019, respectively, of the Court's Special Third Division in CTA Case No. 9094 entitled *Ma. Carmela Locsin, et al. v. Commissioner of Internal Revenue,* granting the claim of refund of Ma. Carmela Locsin, et al., are **REVERSED** and **SET ASIDE**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

41 *International Container Terminal Services, Inc. v. The City of Manila, et al.*, G.R. No. 185622, 17 October 2018; *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*, 656 Phil. 68 (2011); *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005); *Paseo Realty & Development Corp. v. Court of Appeals*, 483 Phil. 254 (2004).

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(With due respect, please see Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus –

MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MARIA ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA MACALINTAL, GEOVANNA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINE MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, JOSELITO MENDEZ, RACHELLE MENDINUETO, TERESA

CTA EB NO. 2104
(CTA Case No. 9094)

MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALLISON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCUPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARAH MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA BERE, GILDA NANQUIL, SOCORRO NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVA NUESTRO, MA. CARMELA NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE OLIVER, RONALD MARK OMANA, CAROL ONCHANGCO, DINO TANTE ORDONEZ, MARIA CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINA ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILLE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA TERESA PAGKALINAWAN, ZENAIDA PANGAN, CORAZON PANGANIBAN, AILEEN PANGALINAN, MA. VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA

PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARIO ANTONIO PORTUGAL, GRACE POTENTE, ELENITA PURA,

Respondents.

x - x

MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MA. ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA SOCORRO MACALINTAL, GEOVANA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAMPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA-MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINA MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, MA-LYN THERESA MEDINA, JOSELITO MENDEZ, RACHEL MENDINUETO, TERESA

CTA EB NO. 2110
(CTA Case No. 9094)

MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALLISON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCOPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARAH MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO JOSEFINA NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVA NUESTRO, MA. CARMEN NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE OLIVER, RONALD MARK OMAÑA, CAROL ONGCHANGCO, DINO TANTE ORDONEZ, MARIAN CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINE ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA THERESA PAGKALIWANGAN, ZENAIDA PANGAN, MARIA CORAZON PANGANIBAN, AILEEN PANGILINAN, MA. VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE

PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONNABELLE PINEDA, MA ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARCO ANTONIO PORTUGAL, GRACE POTENTE, ELENITA PURA,

Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 13 2021 4:05 p.m.

x- -x

CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, ***J.:***

I concur with the *ponente* that the National Internal Revenue Code (NIRC) of 1997, as amended, imposes tax on the income of resident individual citizens from all sources within and without the Philippines. And in the absence of a specific grant of tax-exemption, the salaries and emoluments received by Filipino employees of the Asian Development Bank ("ADB") are subject to income tax.

I do not agree, however, with the denial of the claims for refund of the concerned ADB employees representing the income taxes they paid for taxable year 2012.

It has been my consistent position that while Revenue Memorandum Circular No. 31-13 is a mere interpretation of an existing law, justice and equity dictate that it should be applied prospectively. Income of resident citizens employed by foreign governments and international organizations, such as the ADB in the case at bar, should be subjected to income tax only starting from year 2013 and onwards. Income tax paid for taxable year 2012 by the concerned ADB employees should be refunded.[1]

To quote my ponencia in the case of *Leah Empesando, et al. v. Commissioner of Internal Revenue*:

> "RMC No. 31-13 was issued by Respondent in 2013. Nevertheless, Respondent sought to subject Petitioners income for 2012 and 2013 to income tax. **<u>In the past, however, compensation income of resident citizens employed by foreign governments and/or international organizations were not subjected to income tax.</u>**
>
> While it can be argued that RMC No. 31-13 is a mere interpretation of existing law and should thus be applied even to the compensation income of petitioners for taxable year 2012, **the Court holds that it should be applied prospectively in the interest of justice and equity**. Consequently, the income of resident citizens employed by foreign governments and/or international organizations should only be subjected to income tax beginning taxable year 2013, the year RMC No. 31-13 took effect.
>
> **In the present case, Petitioners who received the compensation income during 2012 were of the honest belief - and neither did Respondent enforce rules to the contrary - that their compensation income were exempt from tax**. When Respondent issued RMC No. 31-13 and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, Petitioners were constrained to file their Income Tax Return for 2012 and pay their deficiency tax liabilities in one payment. **<u>Whereas previously, their income was not subjected to tax, they now had to come up a substantial amount for an individual in order to settle their income tax liability</u>**. Hence, it would be in keeping with justice and equity for the implementation of RMC No. 31-13 to begin prospectively and to apply to compensation income earned by Petitioners beginning taxable year 2013."[2]

From the foregoing, I vote to **AFFIRM** the Decision dated February 04, 2019 and Resolution dated July 02, 2019. The income tax payments for taxable

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[1] Erwin Casaclang v. Commissioner of Internal Revenue (RDO 041 Mandaluyong City), CTA Case No. 9091, August 06, 2018; Leah Empesando, et. al v. Commissioner of Internal Revenue, CTA Case No. 9093, September 17, 2018.

[2] *Emphasis and underscoring supplied.*

year 2012 which were proven to be erroneously or illegally collected should be refunded by the Commissioner of Internal Revenue to the concerned ADB employees.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

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MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MARIA ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA MACALINTAL, GEOVANNA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINE MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, JOSELITO

CTA EB NO. 2104
(CTA Case No. 9094)

MENDEZ, RACHELLE MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALISSON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCUPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARA MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVA NUESTRO, MA. CARMELA NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE OLIVER, RONALD MARK OMANA, CAROL ONCHANGCO, DINO TANTE ORDONEZ, MARIA CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINA ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILLE PACHECO, MADELYN PACLIBAR, RUPERTO PADILLA, RINO PAEZ, MARIA TERESA PAGKALINAWAN, ZENAIDA PANGAN, CORAZON PANGANIBAN, AILEEN PANGALINAN, MARIA VIRGINIA PANIS, SOCORRO

PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARIO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,
Respondents.

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MA. CARMELA LOCSIN, NERISSA LORIA, KRISTA CAMILLE LOZADA, MA. ISABELITA LOZANO, HEIDEE LOZARI, MARIA CRISELDA LUMBA, LEAH JEAN LUNA, MA. SOLITA MABAQUIAO, MARIANNE MACABINGKIL, EMERLINDA SOCORRO MACALINTAL, GEOVANA MACEDA-PAPA, RITCHELLE ANN MADRIGAL, MARIA ANGELA MALIHAN, MAUREEN MAMAYSON, IMELDA MAMPUSTI, MA. THERESA MANAHAN, MA. ROWENA MANALANSAN, NEMROD MANALO, BUENA-MARIE MANANSALA, ELNORA MANGAMPAT, JOELITO MANIGO, MADELINA MANRIQUE, MARIROSE MAPUA, ROSELYN MARANTAL, LIZA MARASIGAN, MARITESS MARCELINO, RUZETTE

CTA EB NO. 2110
(CTA Case No. 9094)

MARIANO, VICTORIA FE MARIANO, GIRARD PACIFICO MARIN, MA. ISABEL MARTIN, ELOISE VALERIE MARTINEZ, BALBINA GRACE MATULLANO, MA-LYN THERESA MEDINA, JOSELITO MENDEZ, RACHEL MENDINUETO, TERESA MENDOZA, VIVIAN MENESES, KATHRINA MILLAN, MARICHU MILWARD, ALVIN MORALES, ALLISON GRACE MIRAVITE, MARIE JESSAMINE MITRA, MODESTO MODESTO, CAREN JOY MONGCOPA, MICHAEL JOHN MONREAL, JEMELLEE MONZUELA, SARA MEI MORA, JACKIE MORENO, WESAM MOSTADI, EDGARDO NACPIL, ALDALYN NADA-BERE, GILDA NANQUIL, SOCORRO JOSEFINA NARVASA, LAARNI NASI, JENNIFER NAVARRO, MA. AGNES NAVERA, SUZANNE NAZAL, BELEN KIM NGWE, MARIA OLIVIA NUESTRO, MA. CARMEN NUÑEZ, LAWRENCE OBIAS, MAY OBLEFIAS, ATHENA OCAMPO, LAURA OCAMPO, JOSEPH OCHOADA, MARJORIE LEE OLIVER, RONALD MARK OMAÑA, CAROL ONGCHANGCO, DINO TANTE ORDONEZ, MARIAN CYNTHIA ORENDAIN, JOSEPHINE ORENSE, CHRISTINE ORQUIOLA, MARIA ROSA ORTEGA, LEA MARIA ORTIZ, CECILE PACHECO, MADELYN PACLIBAR, RUPERTO

PADILLA, RINO PAEZ, MARIA THERESA PAGKALIWANGAN, ZENAIDA PANGAN, MARIA CORAZON PANGANIBAN, AILEEN PANGILINAN, MA. VIRGINIA PANIS, SOCORRO PANIS, MELISSA PASCUA, PIA ANGELICA PASCUAL, WILHELMINA PAZ, SANTIAGO RAYMOND PE-AGUIRRE, MA. AGNES PEDRO, MICHELLE PENALOSA, CECILIA PERALTA, PAULITA PEREZ DE TAGLE, ROSLYN PEREZ, DONNABELLE PINEDA, MA. ELOISA PINEDA, MITZI GAY PIOL, DARIO PONCIANO, LILIBETH POOT, MARCO ANTONIO PORTUGAL, GRACE POTENTE and ELENITA PURA,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 13 2021 4:05 p.m.

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DISSENTING OPINION

MANAHAN, J.:

With due respect to my distinguished colleague, Justice Jean Marie A. Bacorro-Villena, who is the ponente in the instant case, as well as to the opinion of the majority, I dissent to the ponencia and instead concur with the Assailed Decision that the income of the Filipino employees of Asian Development Bank (ADB) including that of the herein petitioners is taxable only for calendar year (CY) 2013 and not for CY 2012.

The conflicting statements issued by the previous Commissioners of Internal Revenue (CIR) regarding the tax treatment as well as the proper tax rate to be imposed on the compensation income of ADB employees were only put to rest upon the issuance of Revenue Memorandum Circular (RMC) No. 31-2013 by petitioner CIR under CTA EB No. 2104. Hence, it should only be applied on the income earned in taxable year 2013 and not on income earned prior to its promulgation.

It is true that the power to interpret tax laws is vested upon the CIR under Section 4 of the 1997 National Internal Revenue Code (NIRC) as amended[1], as implemented by the Department of Finance (DOF) Order No. 07-2002 (May 7, 2002) which provides for the implementing rules on the exercise of the power of the Secretary of Finance to review the rulings of the CIR.

From the effectivity dates of the twin agreements, namely, the ADB Charter Agreement and the ADB Headquarters Agreement, there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the Government of the Republic of the Philippines on the Filipino ADB employees, except until the issuance of RMC No. 31-2013. The ADB Filipino employees, petitioners included, were never subjected to withholding tax on their compensation income. Likewise, they did not pay any annual income tax to the BIR. During this interregnum period (1966 to 2013), the BIR issued three varying guidelines on the taxable status of the ADB Filipino employees[2], 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

[1] **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.
[2] Docket, CTA Case No. 9081, Vol. I, Regional Trial Court Decision, pp. 79-80.

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% on their compensation income.

Then, RMC No. 31-2013 was issued requiring all Philippine nationals to file their annual income tax returns using BIR Form No. 1700 or 1701, without stating what income tax rate was applicable, unlike the earlier letter-rulings. This latest BIR issuance was not explicit enough in denoting the particular income tax rate that will be imposed on the petitioners, to wit:

> SECTION 3. FILING OF INCOME TAX RETURNS AND DECLARATION OF COMPENSATION INCOME. - Philippine nationals and alien individuals who were not granted tax exemption or immunities under duly recognized international agreements or local laws **shall file their annual income tax returns or or before the 15th day of April each year using BIR Form no. 1700 or 1701**, as may be applicable, declaring therein the amounts of their respective compensation income for the preceding taxable year for services rendered or performed for such foreign government embassy, diplomatic mission, agency or international organization. (*Emphasis supplied*)

The aforesaid BIR tax guidelines for ADB Filipino employees sent contradictory signals to the petitioners. While one opined that the ADB Filipino employees are exempt from taxation, two prescribed a final 15% tax rate, and the latest one imposed graduated income tax rates. Given the inconsistent legal interpretations, the petitioners are caught in a quagmire as to how to go about complying with their tax obligations since the principal implementing agency of the tax laws has yet to come up with a unified crystal clear position on their taxable status. The RMC was the first ever comprehensive guideline issued by respondent and 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, 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**.

Thus, under the RMC, with the express repealing clause that any revenue issuance which is inconsistent with the circular is deemed revoked, repealed or modified accordingly, the petitioners and the rest of the ADB Filipino employees are finally declared to be taxable under Section 24(A)(1)(a) and (2) of the Tax Code.

This court is well aware of the hornbook doctrine in statutory construction that laws operate prospectively only and never retrospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.[3] Article 4 of the New Civil Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."

In the instant case, the assailed RMC 31-2013 stated under its **Section 7. EFFECTIVITY**, that **"This Circular shall take effect immediately.** xxx." However, in reality, the respondent proceeded to collect from the petitioners income tax payments starting 2012 despite the fact that the RMC took effect only on May 2, 2013.

Section 246 of the 1997 Tax Code 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:

---

[3] Diaz, Statutory Construction 249 (4th Edition, 2013).

> (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.
> (*Emphasis supplied*)

The factual antecedents of the case reveal that petitioners neither committed fraud nor acted in bad faith when they failed to pay their income taxes to the government. To believe that they are exempt from income tax obligation based on their limited layman's understanding of the ADB Charter and its declared tax exempt status is not to be taken against them. The contradictory official statements of the BIR sowed confusion among the ADB employer as well as its employees with regard to their taxability under the international agreements.

True, the inaction on the part of the previous BIR commissioners to enforce the collection of income taxes from petitioners does not estop the respondent from collecting said taxes. This court is mindful of the well-entrenched principle that the government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. However, this rule admits of exceptions in the interest of justice and fair play.[4]

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*[5], the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now Section 246 of 1997 NIRC, as amended, as to the CIR's rulings or circulars, *viz*:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. *Non-retroactivity of rulings.* — Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the

[4] Vitug and Acosta, Tax Law And Jurisprudence 31 (2^{nd} edition, 2000).
[5] G.R. No. L-52306, October 12, 1981.

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> *modification, or reversal will be prejudicial to the taxpayers*, except in the following cases: (a) where the taxpayer deliberately mis-states 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. (*italics for emphasis*)

> **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. (*Emphasis and underscoring ours*)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*[6], it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers*.
>
> The applicable law is Sec. 246 of the Tax Code which provides -
>
> Sec. 246. *Non-retroactivity of rulings*.- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue 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 in any document required of him by the Bureau of Internal Revenue; b) where the facts

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

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> facts from his return or in 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.
>
> Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax. *(Emphasis ours)*

Given the aforesaid disquisition, the amount of Php33,704,567.53 that was collected from the petitioners in CTA EB No. 2110 for taxable year 2012, despite the RMC being only effective in 2013, is prejudicial to their interest as they were neither cash awash and ready to incur such huge tax obligations for the past taxable year 2012 nor were they prepared to face the grim prospect of law suits, imprisonment and potential garnishment of their bank deposits and assets if they fail to settle such huge deficiency income tax assessments.

Thus, the income tax payments of the petitioners in CTA EB No. 2110 for taxable year 2012 were illegally collected in violation of the provision of Sec. 246 of the NIRC, as amended, and Art. 4 of the New Civil Code.

All told, I vote to **DENY** both Petitions for Review and **AFFIRM** the assailed decision and resolution.

CATHERINE T. MANAHAN
Associate Justice