**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SECOND DIVISION***

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| **CRISTETA MAY GALANG CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB** | **CTA Case No. 9081** |
| *Petitioners,* | Members: |
| | **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.* |
| *-versus-* | |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: AUG 30 2017 2:30 pm |

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# RESOLUTION

**MANAHAN, *J.:***

For this Court's resolution are the following:

1. petitioner Cristeta May Galang's **Motion for Partial Reconsideration**[1] filed on June 23, 2017, without respondent's comment despite due notice[2] to file the same; and

2. respondent's **Motion for Reconsideration (Re: Decision dated June 8, 2017)**,[3] filed on June 28, 2017, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 27 June 2017)**,[4] filed on July 20, 2017.

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[1] Docket, CTA Case No. 9081, Vol. II,pp. 493-498.
[2] *Id.*, Resolution dated July 5, 2017, p. 522.
[3] *Id.*, pp. 499-519.
[4] *Id.*, pp. 525-527.

Respondent and petitioner seek reconsideration of the Court's Decision promulgated on June 8, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, the Petition for Review filed by herein petitioners, except for Cristeta May Galang, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of the petitioners in the amount of **TWO MILLION NINE HUNDRED SEVENTY EIGHT THOUSAND THREE HUNDRED TWENTY PESOS AND THIRTY SIX CENTAVOS (PHP2,978,320.36) to be individually allocated based on the table aforecited**, representing the illegally collected income taxes for taxable year 2012.
>
> **SO ORDERED.**

Petitioner Cristeta May Galang (Petitioner Galang) contends that the finding of this Court that the judicial claim of Ms. Cristeta May Galang for taxable period 2012, which was filed on July 1, 2015, was filed beyond the 2-year prescriptive period is contrary to law and jurisprudence. She further argues that such finding is inconsistent with the ruling in the cited case of *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*[5] in the assailed decision.

On the other hand, Respondent argues that the petitioners are not entitled to refund of their income tax payments for taxable years 2012 and 2013 because they failed to substantiate such claim and that the Regional Trial Court (RTC) decision in Civil Case No. MC14-8775 declaring Section 2(d)(1) of Revenue Memorandum Circular No. 31-2013 as void is not a binding precedent. He further argues that the tax paid on the salaries and emoluments of Asian Development Bank (ADB) employees who are resident citizens is not anchored on the retroactive application of Revenue Memorandum Circular (RMC) No. 31-2013.

**<u>Petitioner Galang's Motion for Partial Reconsideration</u>**

This Court finds merit in this motion.

[5] G.R. NO. 162155, August 28, 2007.

Petitioner Galang argues that the filing of her judicial claim on July 1, 2015 was exactly on the last day of the two-year reglementary period.

In the determination of the two-year prescriptive period for claim of refund under Section 229 of the National Internal Revenue Code of 1997 as amended (NIRC), it is necessary to determine first the reckoning date when the two-year prescriptive period will start to run.

In the instant case, there were two installment payments made by petitioner Galang for her income tax liability covering the taxable year 2012 and 2013. *In Commissioner of Internal Revenue v. Carlos Palanca, Jr.*,[6] the Supreme Court ruled that the reckoning date when there are installment payments made should be on the last one, to wit:

> In the second place, the claim at bar refers to the alleged overpayment by respondent Palanca of his 1955 income tax. Inasmuch as the said account was paid by him by installment, then **the computation of the 2-year prescriptive period, under Section 306 of the National Internal Revenue Code, should be from the date of the last installment**. (Antonio Prieto et al v. Collector of Internal Revenue, G. R. No. L-11976, August 29, 1961). Respondent Palanca paid the last installment on his 1955 income tax account on August 14, 1956. His claim for refund of the alleged overpayment on it was filed with the court on August 13, 1958. It was, therefore, still timely instituted. (*Emphasis supplied*)

Thus, the reckoning date for the start of the two-year prescriptive for petitioner Galang's claim of refund is on the second installment, *i.e.* July 1, 2013.

Now, when should the two-year prescriptive period end?

In the cited case of *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[7] the Supreme Court ruled that a year is composed of 12 calendar months where the number of days is irrelevant as provided in Section 31, Chapter VIII, Book I of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

[6] G.R. No. L-16626. October 29, 1966.
[7] G.R. NO. 162155, August 28, 2007.

In the same case, an application of such ruling was also presented thereto, to wit:

> Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months, computed as follows:

| | | | | |
|---|---|---|---|---|
| Year 1 | 1st | calendar month | April 15, 1998 to | May 14, 1998 |
| | 2nd | calendar month | May 15, 1998 to | June 14, 1998 |
| | 3rd | calendar month | June 15, 1998 to | July 14, 1998 |
| | 4th | calendar month | July 15, 1998 to | August 14, 1998 |
| | 5th | calendar month | August 15, 1998 to | September 14, 1998 |
| | 6th | calendar month | September 15, 1998 to | October 14, 1998 |
| | 7th | calendar month | October 15, 1998 to | November 14, 1998 |
| | 8th | calendar month | November 15, 1998 to | December 14, 1998 |
| | 9th | calendar month | December 15, 1998 to | January 14, 1999 |
| | 10th | calendar month | January 15, 1999 to | February 14, 1999 |
| | 11th | calendar month | February 15, 1999 to | March 14, 1999 |
| | 12th | calendar month | March 15, 1999 to | April 14, 1999 |
| Year 2 | 13th | calendar month | April 15, 1999 to | May 14, 1999 |
| | 14th | calendar month | May 15, 1999 to | June 14, 1999 |
| | 15th | calendar month | June 15, 1999 to | July 14, 1999 |
| | 16th | calendar month | July 15, 1999 to | August 14, 1999 |
| | 17th | calendar month | August 15, 1999 to | September 14, 1999 |
| | 18th | calendar month | September 15, 1999 to | October 14, 1999 |
| | 19th | calendar month | October 15, 1999 to | November 14, 1999 |
| | 20th | calendar month | November 15, 1999 to | December 14, 1999 |
| | 21st | calendar month | December 15, 1999 to | January 14, 2000 |
| | 22nd | calendar month | January 15, 2000 to | February 14, 2000 |
| | 23rd | calendar month | February 15, 2000 to | March 14, 2000 |
| | 24th | calendar month | March 15, 2000 to | April 14, 2000 |

> We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

The effect, therefore, of such application is to reckon the month and not the day of the filing date of the claim for refund. Petitioner Galang's argument is tenable. She paid her full income tax liability for taxable year 2012 on July 1, 2013, hence, her July 1, 2015 filing of the administrative and judicial claim for refund falls squarely within the 2-year prescriptive period under Sec. 229 of the NIRC.

Thus, the judicial claim of petitioner Galang was timely filed before this Court, ergo, giving it jurisdiction to hear the case. Hence, the following total income tax payments for taxable year 2012 were illegally collected in violation of the provisions of Sec. 246 of the NIRC, as amended, and Art. 4 of the New Civil Code, *to wit*:

| | |
|---|---|
| Cristeta May Galang | Php210,845.75 |
| Caridad Ortega | 1,387,733.95 |
| Mildred Villareal | 719,855.29 |
| Rona Marie Yngson | 212,862.71 |
| Tanglaw Lupe Gutierrez | 280,123.58 |
| Trinidad Jacob | 377,744.83 |
| **Total** | **Php3,189,166.11** |

**Respondent's Motion for Reconsideration**

The argument of the respondent, as empirically pointed out by Petitioner Galang is a verbatim reiteration of pages 2 to 19 of the Memorandum of respondent.[8] Thus, finding no substantial addition to the earlier discussion of his case, this Court considers the motion of respondent bereft of merit.

Let this Court, however, capsulize its earlier disquisition on the issue at hand.

The assailed decision raises three main points: *first,* that while the Government of the Philippines (GRP) granted tax exemption to the Asian Development Bank (ADB) under the two international agreements, namely, the ADB Charter Agreement and the ADB Headquarters Agreement, it clearly and categorically reserved its power to tax its citizens and nationals, under its legal instruments of ratification; *second,* the implementation of this reserved power was not done immediately with clarity and precision, given the contradictory written statements/guidelines that emanated from the respondent which is supposed to initiate, enforce and supervise the collection of the income taxes that are due from the Filipino employees, officers and directors of the ADB; and *third,* the principle of non-retroactivity of rulings under Sec. 246 of the NIRC must be applied in observance of the principles of equity and due process.

[8] Docket, Vol. II, Comment/Opposition (to Respondent's Motion for Reconsideration dated 27 June 2017, p. 526.

The ponencia has no qualms against the position taken by the respondent as well as the dissenting opinion of the esteemed and learned colleague with regards to the taxable status of the Filipino ADB employees. The reservation by the GRP of its power to tax its nationals is clear in the wordings of the two international agreements.

The question, however, is whether the ADB Filipino employees should be faulted for their failure to comply with their income tax obligations under the NIRC given the absence of accurate, clear, consistent, and timely guidelines from the respondent. The enabling law is the NIRC itself, but, given its various provisions under Title II on Income Tax, compounded by the conflicting pronouncements by BIR officials *sans* the respondent regarding the applicable tax rate on the subject, the concerned taxpayers' hands are in kaput. The importance of clarity of laws is emphasized by no less than the Supreme Court in the case of *People v. Nazario*[9] wherein it ruled, *viz:*

> As a rule, a statute or act may be said to be vague when it **lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.'** It is repugnant to the Constitution in two respects: **(1) It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid**; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (*Emphasis supplied*)

Given the lack of clarity of the applicable income tax rate to the petitioners, RMC No. 31-2013 filled up the lacuna and enabled the Filipino ADB employees, represented by the petitioners in this case, to meet their income tax obligations to the state. This issuance is not just an interpretative rule but an administrative regulation that requires prior notice, hearing and publication pursuant to the Administrative Code of 1987 or Executive Order (EO) No. 292. Thus, the RMC took effect only on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the University of the Philippines (UP) Law Center in observance of the requirement under Section 3, Chapter 2, Book VII of EO 292. Thus, the period to be covered by this regulation should be taxable year 2013 and onwards. By collecting income taxes from the petitioner and her Filipino co-employees in ADB in

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[9] G.R. No. L-44143, August 31, 1988165 [SCRA 186, 195-196 (1988)].

2012, respondent violated Section 246 of the NIRC 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;
>
> (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.

In view of the foregoing, petitioner Galang's **Motion for Partial Reconsideration** is **GRANTED**. Respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioner Galang in the amount of **TWO HUNDRED TEN THOUSAND EIGHT HUNDRED FORTY FIVE PESOS AND SEVENTY FIVE CENTAVOS (PHP210,845.75)**, representing the illegally collected income taxes on her annual compensation income for taxable year 2012. Meanwhile, respondent's **Motion for Reconsideration (Re: Decision dated June 8, 2017)** is denied for lack of merit.

**SO ORDERED.**

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

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

**CAESAR A. CASANOVA**
Associate Justice