REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDZEN JOGIE B. GARCIA,
Petitioner,

CTA EB No. 1674
(CTA Case No. 9075)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 06 2018
3:21 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

This is a *Petition for Review*[1] filed by petitioner Edzen Jogie B. Garcia on July 4, 2017 which seeks the review and reversal of the Decision dated February 9, 2017,[2] (Assailed Decision) as well as the Resolution dated June 5, 2017[3] (Assailed Resolution) of the First Division (Court in Division) of this Court in CTA Case No. 9075, entitled *Edzen Jogie B. Garcia v. Commissioner of Internal Revenue.*

---

[1] Court *En Banc's* Docket, pp. 1-31.

[2] Penned by Presiding Justice Roman G. Del Rosario, concurred in by Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla; Court *En Banc*'s Docket, pp. 35-53.

[3] Penned by Presiding Justice Roman G. Del Rosario, concurred in by Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla; Court *En Banc*'s Docket, pp. 86-88.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Edzen Jogie B. Garcia on June 22, 2015 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, premises considered, the **Motion for Reconsideration and Motion to Hold in Abeyance Resolution** filed by petitioner is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated February 9, 2017, are as follows:[4]

> "On April 12, 2013, respondent CIR issued Revenue Memorandum Circular ('RMC') 31-2013 *(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)*, which provides, among others, that officers and staff of the ADB who are **not** Philippine nationals shall be exempt from Philippine income tax, to wit:
>
> '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:

[4] Court *En Banc's* Docket, pp. 36-40 (Citations omitted).

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

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**.' (Emphases supplied)

On July 15, 2013, petitioner Garcia filed his Annual Income Tax Return for 2012 and paid the income tax due of ₱426,245.27.

On February 14, 2014, other Filipino employees of the ADB, represented by Mr. Erwin Salaveria and Ms. Portia Gonzales, filed a Petition to Nullify Revenue Memorandum Circular 31-2013, particularly Section 2 (d) (1), with Branch 213 of Regional Trial Court ('RTC') in Mandaluyong City, docketed as Civil Case No. MC14-8775.

On April 15, 2014, petitioner Garcia filed his Income Tax Return for calendar year 2013 reflecting therein an overpayment of income tax in the amount of ₱426,245.27. According to petitioner, the overpayment reflected in said 2013 ITR is premised on the illegality of the assessment and collection of income tax on July 15, 2013 under RMC 31-2013.

On September 30, 2014, the RTC promulgated a decision in Civil Case No. MC14-8775 declaring Section 2 (d) (1) of RMC 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law due to absence of legislation and/or regulation to the contrary. A Motion for Reconsideration was filed by the CIR, but was denied on January 9, 2015.

On January 14, 2015, petitioner Garcia filed his formal request for tax refund of the income tax paid on July 15, 2013 for calendar year 2012, in the amount of ₱426,245.27.

Alleging inaction of respondent CIR on his claim for refund, petitioner Garcia filed the instant Petition for Review on June 22, 2015.

On July 27, 2015, the Office of the Solicitor General ('OSG') filed a Manifestation and Motion, praying that they be excused from filing an Answer, as mandated by the Memorandum of Agreement dated March 17, 2010 between the Bureau of Internal Revenue ('BIR') and the OSG. The Court noted and granted the Manifestation and Motion in an Order dated August 12, 2015.

On July 28, 2015, respondent CIR filed a Motion for Extension of Time to File Answer, which the Court granted in an Order dated July 30, 2015, thereby extending respondent's time to file an Answer until August 12, 2015.

On August 12, 2015, respondent CIR filed an Answer stating, among others, that petitioner, being a Filipino citizen and resident of the Philippines, is subject to the Philippine Income Tax; that in signing the ADB Headquarters Agreement in 1956, the Philippine government accorded tax exemption privileges to ADB and its staff but held on to the State's inherent power to tax its nationals; and that in ratifying the agreement with ADB, the Philippines, by making a 'reservation', simply intimated that only the income of ADB is exempt from tax but not the income derived by Filipinos from ADB.

Petitioner Garcia filed his Reply on September 3, 2015.

On September 17, 2015, respondent CIR filed a Pre-Trial Brief, while petitioner Garcia filed his Pre-Trial Brief on December 16, 2015.

In his Pre-Trial Brief, petitioner stated that the RTC Decision in Civil Case No. MC14-8775 was elevated by respondent to the Court of Appeals ('CA') under Rule 41 of the Rules of Civil Procedure, entitled *Erwin Salaveria, et al. vs. Commissioner of Internal Revenue*, CA-GR CV No. 104374. The CA promulgated a Resolution dated July 3, 2015 dismissing the appeal with a pronouncement that the same should have been raised by Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure with the Supreme Court. A Motion for Reconsideration was filed by respondent CIR, but the same was denied by the CA on January 4, 2016.

In the Pre-Trial Conference held on January 28, 2016, the Court ordered both parties to submit a Joint Stipulation of Facts and Issues. As per Records Verification dated March 9, 2016, however, the parties failed to do so. The Court deemed the right of both parties to submit a Joint Stipulation of Facts and Issues as waived. The Court then issued a Pre-Trial Order on May 12, 2016.

At the hearing on May 17, 2016, petitioner Garcia proceeded to present his evidence. On the other hand, a manifestation that no evidence will be presented was made by respondent CIR.

Petitioner Garcia filed his Formal Offer of Evidence on May 27, 2016, without respondent's comment despite notice as per Records Verification dated June 23, 2016. The Court admitted all the evidence offered by petitioner Garcia, except for Exhibit 'P-5', which was denied for failure to present the original for comparison.

Petitioner Garcia submitted his Memorandum on August 23, 2016, while respondent CIR submitted a Memorandum on September 6, 2016.

The case was submitted for decision on September 14, 2016."

On February 9, 2017, the Court in Division rendered the assailed Decision denying petitioner's *Petition for Review* for lack of merit.

Aggrieved, petitioner filed a *Motion for Reconsideration and Motion to Hold in Abeyance Resolution*[5] on March 8, 2017 but the Court in Division likewise denied the same for lack of merit in the assailed Resolution.

On July 4, 2017, petitioner filed the present *Petition for Review*.

In a Resolution[6] dated July 17, 2017, the Court *En Banc* directed the respondent to file his Comment, which he did on August 16, 2017.[7] Thus, on August 31, 2017 the Court *En Banc* resolved to give due course to the Petition for Review and granted the parties a period of thirty (30) days within which to file their respective Memoranda.[8]

On September 15, 2017, petitioner filed a Reply (To Respondent's Comment).[9] In a Resolution[10] dated October 4, 2017, the Court *En Banc* noted petitioner's Reply.

On October 4, 2017, respondent filed his *Memorandum*[11] while petitioner filed his *Memorandum*[12] on November 9, 2017.

With the filing of both parties' Memoranda, the present case was submitted for decision in a Resolution[13] dated December 6, 2017.

THE ISSUES

Petitioner submits the following issues for resolution of the Court *En Banc*:[14]

[5] *Id.*, pp. 54-73.
[6] *Id.*, pp. 229-230.
[7] *Id.*, pp. 231-236.
[8] *Id.*, pp. 239-240.
[9] *Id.*, pp. 241-245.
[10] *Id.*, pp. 247-248.
[11] *Id.*, pp. 249-268.
[12] *Id.*, pp. 270-296.
[13] *Id.*, pp. 299-300.
[14] *Id.*, p. 8.

a. Whether or not income tax was illegally or erroneously assessed and collected on July 15, 2013 on the petitioner's 2012 compensation from ADB pursuant to RMC No. 31-2013 issued on April 12, 2013;

b. Whether or not RMC 31-2013 can be applied retroactively; and

c. Whether or not petitioner is entitled to a tax refund under Sec. 229 of the National Internal Revenue Code.

THE COURT *EN BANC*'S RULING

In his *Petition*, petitioner claims that the Court in Division erred in finding that the taxability of the compensation of the Filipino ADB employees is not affected by the validity or invalidity of Revenue Memorandum Circular (RMC) No. 31-2013.[15] According to petitioner, if the assessment was based on existing provisions of NIRC, particularly Sec. 24 thereof, there will be no need to specify and/or indicate in the Revenue Official Receipt issued by the BIR that the assessment was [made] pursuant to RMC 31-2013.[16] Petitioner also wants this Court to take cognizance of the alleged Decision of the Regional Trial Court of Mandaluyong City in Civil Case No. MC14-8775 and the resolution of the Court of Appeals wherein the issue of validity or invalidity of Section 2(d)(1) of RMC No. 31-2013 was allegedly deemed a question of law. Given the said pronouncement, petitioner contends that the said issue certainly affects its claim for refund.[17]

Petitioner also faults the Court in Division in not finding that the retroactive application of RMC No. 31-2013 is contrary to law and existing jurisprudence.[18] He maintains that RMC No. 31-2013 was issued to revoke the ruling of former Commissioner of Internal Revenue Beethoven L. Rualo dated March 11, 1999. Accordingly, the revocation of a previous ruling through RMC No. 31-2013 cannot be given retroactive effect, the same being contrary to Section 246 of the NIRC.[19]

Petitioner likewise asserts that the Court in Division erred in not finding that respondent exceeded his authority when he interpreted the provisions of the ADB Charter and ADB Headquarters Agreement, the said interpretation not being within his power under Section 4 of the NIRC.[20]

[15] *Id.*, p. 10.
[16] *Id.*
[17] *Id.*, pp. 10-11.
[18] *Id.*, pp. 14-15, 29-30.
[19] *Id.*
[20] *Id.*, pp. 16-19.

Petitioner also assails the Court in Division's ruling that the non-payment of income tax by Filipino ADB employees is contrary to law, public order and public policy.[21] He asserts that while it is true that as a general rule, all resident Filipino citizens are taxed on its worldwide income, the same is not without exceptions.[22] Section 32(B)(5) of the NIRC provides that income exempt under a treaty are excluded from gross income. According to petitioner, considering that Filipino ADB employees are receiving compensation from ADB whose charter grants tax exemption to all its officers, staff or employees, there exists a legal basis for the Filipino ADB employees to avail of such privilege.[23]

Petitioner likewise challenges the Court in Division's ruling that the RTC Decision in Civil Case No. MC14-8775 was jurisdictionally infirm insofar as it declared Section 2(D)(1) of RMC No. 13-2013 a nullity.[24] Petitioner states that the petition to nullify RMC No. 31-2013 was filed with the Regional Trial Court of Mandaluyong, Branch 213 pursuant to the Supreme Court's ruling in the case of *Holy Spirit Homeowners Association, Inc. v. Defensor, G.R. No. 163980, August 3, 2006* in which the Supreme Court states that: "Where the principal relief sought is to invalidate an IRR, petitioner's remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court."[25]

Finally, petitioner also asserts that the Court in Division erred in finding that statutes granting tax exemption are considered as derogation of sovereign authority.[26] While petitioner agrees that statutes granting tax exemption are considered as derogation of sovereign authority, it nevertheless asserts that the said rule has exceptions.[27]

Respondent, on the other hand, maintains that the income tax imposed upon petitioner was neither erroneously nor illegally collected.[28] Accordingly, petitioner was not entitled to a refund pursuant to Section 229 of the NIRC.[29] It is respondent's position that the income tax imposed upon petitioner was based on Section 23 of the NIRC which imposes income tax upon the worldwide income of resident citizens.[30]

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should

---

[21] *Id.*, pp. 19-21.
[22] *Id.*
[23] *Id.*
[24] *Id.*, pp. 21-27.
[25] *Id.*
[26] *Id.*, pp. 27-28.
[27] *Id.*
[28] *Id.*, pp. 231-232.
[29] *Id.*
[30] *Id.*

be denied for lack of merit. Notably, the arguments herein raised by petitioner are substantially identical to or mere reiterations of the arguments in his *Motion for Reconsideration and Motion to Hold in Abeyance Resolution* which have already been sufficiently considered, discussed, and passed upon by the Court in Division in the assailed Resolution. Verily, there is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the assailed Decision and Resolution.

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

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

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

> "NOW THEREFORE, be it known that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the Agreement Establishing the Asian Development Bank done on December 4, 1965 at Manila, Philippines, do hereby in pursuance of the aforesaid concurrent of the Senate of the Philippines, ratify and confirm the said Agreement and every article and clause thereof, <u>subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines</u>." *(Underscoring supplied)*

On December 22, 1966, the "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" (ADB Headquarters Agreement) was signed, which provides in pertinent part:

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

Section 45.

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

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

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

The 1997 NIRC, a subsequent legislation which took effect on January 1, 1998,[31] is the law that implements the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under its Sections 23(A) and 24(A)(1)(a) as amended:

"**SEC. 23.** *General Principles of Income Taxation in the Philippines.* - Except when otherwise provided in this Code:

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;

xxx xxx xxx

SEC. 24. *Income Tax Rates.* –

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* -

(1) An income tax is hereby imposed:

(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B),

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

> (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;" *(Underscoring supplied)*

As stated earlier, petitioner claims that the Court in Division erred in finding that the taxability of the compensation of the Filipino ADB employees is not affected by the validity or invalidity of RMC No. 31-2013. However, nowhere in the assailed Decision or Resolution was it stated by the Court in Division that the taxability of the compensation of Filipino ADB employees is not affected by the validity or invalidity of RMC No. 31-2013. What the Court in Division actually held, and in which the Court *En Banc* fully agrees, is that RTC Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. Indeed, the alleged rulings of the RTC and of the Court of Appeals are immaterial in the resolution of the present case because the decisions of these courts are not binding precedents. Under Philippine legal system, only decisions of the Supreme Court constitute binding precedents, in consonance with Article 8 of the Civil Code.[32] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[33] As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation,*[34] to wit:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. **Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.**" *(Emphasis supplied)*

Besides, petitioner himself had manifested that the foregoing decisions of the RTC and Court of Appeals are still pending appeal before the Supreme Court.[35] Evidently, any pronouncement concerning the issues involved in those decisions has not yet attained finality. Until and unless the said issues are definitely settled by the Supreme Court on appeal, RMC No. 31-2013 shall

---

[32] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[33] *The Philippine Veterans Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[34] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336, 411 ("*San Roque*").
[35] Petition for Review, Court *En Banc*'s Docket, p. 11.

be presumed valid. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality.[36]

The Court *En Banc* also concurs with the Court in Division's finding that the RTC Decision in Civil Case No. MC14-8775 appears to be jurisdictionally infirm insofar as it declared Section 2(d)(1) of RMC No. 31-2013 a nullity. In a number of cases,[37] the Supreme Court already established that the CTA has **exclusive jurisdiction** to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue. As held by the Supreme Court in the *En Banc* case of *Banco De Oro, et. al. v. Republic,* to wit:[38]

> "We revert to the earlier rulings in *Rodriguez*, *Leal*, and *Asia International Auctioneers, Inc.* **The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue**.
>
> x x x x x x x x x
>
> **Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:**
>
> Section 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other

---

[36] *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003, 416 SCRA 436; *Land Bank of the Philippines v. American Rubber Corporation,* G.R. No. 188046, July 24, 2013, 702 SCRA 166; *Land Bank of the Philippines v. Obias et. al.*, G.R. No. 184406, March 14, 2012, 688 SCRA 265.

[37] *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*, G.R. No. 207843 (Resolution), February 14, 2018; *Banco De Oro et. al. v. Republic*, G.R. No. 198756 (Resolution), August 16, 2016, 800 SCRA 392; *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, G.R. No. 212530, August 10, 2016, 800 SCRA 123; *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014, 741 SCRA 578; *Asia International Auctioneers, Inc. v. Parayno, Jr.*, G.R. No. 163445, December 18, 2007, 565 Phil. 255; *Commissioner of Internal Revenue v. Leal*, G.R. No. 113459, November 18, 2002, 392 SCRA 9; *Rodriguez v. Blaquera*, G.R. No. L-13941, September 30, 1960, 109 Phil. 598.

[38] G.R. No. 198756, August 16, 2016, 800 SCRA 392 ("*Banco De Oro*").

laws administered by the Bureau of Internal Revenue;

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

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under

Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. **Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424." *(Emphasis and underscoring supplied; citations omitted)*

It bears emphasis that the Supreme Court, in the recent case of *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*,[39] had confirmed that its ruling in *Banco De Oro* stands as the prevailing jurisprudence on the matter, *i.e.*, the CTA's jurisdiction to determine the validity or constitutionality of a particular tax regulation, ruling, or issuance.

It is also postulated that RMC No. 31-2013, which was issued only on April 12, 2013, should not be given retroactive application pursuant to the prohibition under Section 246.[40]

The Court *En Banc* is unconvinced.

A plain reading of RMC No. 31-2013 would reveal that it merely *reiterates* the general principles laid down in Section 23(A) and *amplifies* Section 24(A)(1)(a), both of which have been in effect since January 1, 1998, before the income tax payment in 2013.

The preface of RMC No. 31-2013 in Section 1 states these objectives when it cites Sections 23 and 24 of the 1997 NIRC as the foundation and states that the guidelines were intended to address the "confusion on the correct tax treatment of the compensation income earned by Philippine nationals xxx employed by foreign governments/embassies/diplomatic missions and international organizations xxx," thus:

---

[39] G.R. No. 207843 (Resolution), February 14, 2018.

[40] "**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."

"SECTION 1. BACKGROUND.—

Foreign governments/embassies/diplomatic missions and international organizations situated in the Philippines acting as employers enjoy immunity from collecting taxes on salaries and emoluments of their employees, whether they are foreigners or Philippine nationals. This immunity from being constituted as withholding agents of the Philippine Government is accorded to these entities on the basis of international comity as embodied in several international agreements to which the Philippines is a signatory, such as, the Vienna Convention for International Relations (for embassies and diplomatic missions), Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of Specialized Agencies (for the various agencies of the United Nations), Asian Development Bank Headquarters Agreement (for ADB), Articles of Agreement of the International Finance Corporation, among others.

In recognition of this immunity, the Withholding Tax Regulations (Revenue Regulations No. 2-98, as amended), clearly reiterate the exemption from the withholding tax system of the remunerations being paid by foreign governments and international organizations to their employees who are residents or nationals of the Philippines. Section 2.78.1(B)(5) provides thus:

xxx xxx xxx

However, it has been observed that the foregoing provisions have been a source of confusion on the correct tax treatment of the compensation income earned by Philippine nationals and alien individuals employed by foreign governments/embassies/diplomatic missions and international organizations. **To clarify, the exemption from withholding taxes on the compensation of officials and employees applies to foreign governments/embassies/diplomatic missions and international organizations. Since the withholding of tax is merely a method of tax collection, the exemption from withholding taxes does not equate to the exemption from paying the income tax itself**.

> Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxations of citizens and alien individuals, to wit:
>
> xxx xxx xxx
>
> As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.
>
> The tax consequence of compensation income received by those employed by foreign governments/embassies/ diplomatic missions situated in the Philippines hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended ("Tax Code"). *(Underscoring and emphases supplied)*

Section 246 on the non-retroactivity of issuances should be carefully read when viewed in the light of *ABS-CBN v. Court of Tax Appeals*,[41] an *assessment* case wherein the revocatory administrative issuances were not given retroactive application. In said case, the Supreme Court held that there will be an injustice and it would be violative of fair play if the withholding agent would be made to pay additional withholding taxes for 1965 to 1968 under the provisions of a circular later issued in 1971.

The facts of the present case, a *refund* of income taxes paid by the taxpayers only in 2013, are different from that of *ABS-CBN*. It is submitted

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

that there has been *no violation* of the rules of justice and fair play when petitioners paid the income taxes. It is beyond doubt that when the taxes were paid, the Reservation Clause in Senate Resolution No. 6 and the provisions of Sections 23(A) and 24(A)(1)(a) have long been in force and effect *prior* to petitioner's income payment.

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law.*[42] RMC No. 31-2013, therefore, was issued merely to construe the *existing* provisions of the 1997 NIRC in relation to the various *existing* treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law.

The construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law.[43] It is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies.[44] RMC No. 31-2013 was precisely issued to fill in the details and manner of the enforcement of Sections 23(A) and 24(A)(1)(a) pursuant to Section 4[45] of the 1997 NIRC, as amended.

RMC No. 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."[46] Based on this

---

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

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

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

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

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

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

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

xxx xxx xxx

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

definition, RMC No. 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.*,[47] the Supreme Court held that Administrative Order No. 7, an administrative regulation issued by the Department of Health, and BFAD Circulars No. 1 and 8, issued by the Food and Drug Administration (FDA), were all valid issuances of administrative agencies tasked to implement the law. It discussed the nature and function of *interpretative rules* in this wise:

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

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

> binding, **except when the same is merely an interpretative rule. This is because '[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.'" *(Underscoring and emphases supplied; citations omitted)*

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*,[48] the Supreme Court upheld the validity of RMC No. 25-2011, issued in 2011, and ruled that the *retroactive* application of the circular to the taxable transaction in 2009 did not contravene Section 246, thus:

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

Even assuming there was a failure in the past by respondent to take a categorical position on the taxation of Filipino ADB employees, such deficit does not operate to estop the government from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals*:[49]

> "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.

[48] G.R. No. 210987, November 24, 2014, 741 SCRA 601.
[49] G.R. No. 125346, November 11, 2014, 739 SCRA 561.

We are not persuaded.

In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*, this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a misapprehension of law may be corrected when the true construction is ascertained. Thus:

> The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an authoritative construction of great weight. *This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained.* Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here. (Emphasis supplied)

This court reiterated this rule in *Abello v. Commissioner of Internal Revenue* where it **rejected** petitioners' claim that the prolonged practice (since 1939 up to 1988) of the Bureau of Internal Revenue in not subjecting political contributions to donor's tax was an authoritative interpretation of the statute, entitled to great weight and the highest respect:

> *This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed. It is a well-entrenched rule that* [:]
>
> > *...erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its*

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

Taxes are the lifeblood of the nation. Consequently, it must be remembered that **tax refunds are construed strictly against the taxpayers.**[50] Any claim for refund takes the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[51]

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

---

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

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Pls. See Concurring and Dissenting Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in above Decision were reached in consultation before the case was 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

EDZEN JOGIE B. GARCIA,
Petitioner,

- **versus** -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1674
(CTA Case No. 9075)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, ***and***
MANAHAN, *JJ.*

Promulgated:

DEC 06 2018
3:21 p.m.

x---x

CONCURRING & DISSENTING OPINION

With all due respect to the *ponencia* of my esteemed colleague, Hon. Juanito C. Castañeda, Jr., which denied the Petition for Review for lack of merit, I concur with the finding that the relevant treaty and legislative provisions demonstrate that Congress really intended to tax the salaries and emoluments received by the Filipinos from ADB and that the RTC Decision in Civil Case No. MC14-8775 *(RTC Decision)* declaring void Section 2(d)(1) of Revenue Memorandum Circular 31-2013 does not constitute a binding precedent.

However, as regards the propriety of enforcing RMC 31-2013 to petitioner's income from the ADB for calendar year 2012, while I agree with the *ponencia* that RMC 31-2013 is an interpretative rule, I believe that Justice and Equity dictate that it should be applied prospectively.

RMC 31-2013 was issued by respondent in calendar year 2013. Nonetheless, respondent subjected petitioner's income for the previous year (*i.e.*, calendar year 2012) to income tax. In the past, however, compensation income of resident citizens employed by foreign governments and/or international organizations were not subjected to income tax.

Section 7 of RMC 31-2013 clearly provides that the provisions thereof "shall take effect immediately" which means that it should take effect starting May 2, 2013 the date when a copy was officially submitted to the Office of the National Administrative Register of the UP Law Center pursuant to the requirement of the Administrative Code, Section 3, Chapter 2, Book VII, which provides:

> "*Filing.* (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons."

In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission*[1], the Supreme Court reiterated that both the **requirements of publication and filing of administrative issuances are mandatory for their effectivity.** The *National Association* case was promulgated in 2006 and the doctrine regarding the effectivity of administrative issuances has not been overturned to this day. Even if the date of filing of RMC 31-2013 is used as the reckoning point of its effectivity, specifically, May 2, 2013, the taxable period in which respondent wishes to impose the subject administrative issuance on petitioner, TY 2012, is one in which the said RMC was still non-existent. The only way it can be made to apply to that specific taxable period is if RMC 31-2013 were to be applied retroactively which, if done, would be anathema to the principles of justice and fair play.

For one thing, it is to be noted that prior to RMC 31-2013, in addition to the long standing practice of not taxing the income tax of Filipino ADB personnel, revenue officials have made various pronouncements regarding the subject when queried.

First, in BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, stated as follows:

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

[1] G.R. No. 163935, February 2, 2006.

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

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

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

From being taxed at a preferential tax rate of 15% on their compensation income to being exempted from being taxed at all, at any rate, the opinions given by revenue officials on the matter have been inconsistent, to say the least. Both the ADB and its Filipino resident employees who have relied on these inconsistent rulings by the BIR should not be faulted for relying thereon.

It was only when RMC 31-2013 was issued that then Commissioner Kim Henares categorically clarified that they are subject to tax. Pertinent portions of the said RMC are quoted below:

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

Considering the foregoing, the fundamental principles of fairness and equity dictate that the non-retroactive rule under Section 246 of the Tax Code be applied in this case. Section 246 provides, as follows:

> "SEC. 246. *Non- Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations

[2] *Id.* at Note 4, pp. 34-35.

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." *(Emphasis supplied)*

In the case of *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*[3], the Supreme Court rejected the retroactive application of rulings and circulars when such would cause prejudice to the taxpayers, thus:

"It is clear from the foregoing that **rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers**. The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated regulations promulgated by the Commission

x x x   x x x   x x x

Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax." *(Emphasis supplied)*

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

The non-retroactivity principle was later on reiterated in *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.,*[4] where the Supreme Court emphasized the following:

> "However, well entrenched is the rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers.
>
> x x x x x x x x x
>
> "Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

It is readily apparent that the retroactive application of the provisions of RMC 31-2013 to income received by the petitioners in 2012 made prior to its publication in 2013 already caused serious prejudice to the Filipino employees of the ADB. Due to lack of notice on the taxability of their income for TY 2012, none of the ADB Filipino employees were prepared to incur such huge tax obligations. They were not given a chance to allot or budget their finances to account for this debt to the government that they were blindsided with. Neither were they prepared to face the consequences of being unable to pay the same such as the prospect of law suits and potential garnishment of their bank deposits.

In the present case, petitioner received the compensation income being subject to income tax in calendar year 2012. During this period, petitioner believed in good faith that his compensation income was exempt from tax. Prior to the issuance of RMC 31-2013, respondent did not enforce any rules that would lead petitioner to believe otherwise. When respondent issued RMC 31-2013 and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, petitioner was constrained to file his Income Tax Return for calendar year 2012 and pay the amount of ₱425,245.27. Whereas previously, petitioner's income was not subjected to tax, he now had to come up a substantial amount for an individual in order to settle his income tax liability.

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

Considering that none of the exceptions in Non-Retroactivity Rule exist to bar its application in the instant case, I believe that RMC No. 31-2013 should be applied prospectively in the interest of justice and equity.

In view of the foregoing, I vote to **GRANT** the Petition for Review, **REVERSE** and **SET ASIDE** the assailed Decision dated February 9, 2017 and the assailed Resolution dated June 5, 2017, and **ORDER** respondent Commissioner of Internal Revenue to refund in favor of petitioner Edzen Jogie B. Garcia the amount of Four Hundred Twenty-Five Thousand Two Hundred Forty-Five Pesos and 27/100 (₱425,245.27), representing his erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012.

Ma. Belen R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

EDZEN JOGIE B. GARCIA,
Petitioner,

CTA EB No. 1674
(CTA Case No. 9075)

Members:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 06 2018 3:21 p.m.

x- -x

Concurring and Dissenting Opinion

MANAHAN, J.:

With due respect, I concur with the findings of the *ponencia* as to the taxability of Filipino Asian Development Bank (ADB) employees but dissent to its denial of the claim for the 2012 tax refund of petitioner.

Under Section 2, Article II of the 1987 Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the laws of the land. As such, the Government of the Republic of the Philippines (GRP), as a party to international agreements, binds itself to recognize its commitments thereunder, including tax treaties and to fulfill its obligations under them in good faith[1]. This is the same principle enshrined in the 1935 Constitution, as amended, which is prevailing at the time when said agreement was entered into by the GRP and ADB, *viz*:

---

[1] Cabantac, International Tax Treaty Practice and Ruling (RP-US Tax Treaty), p. 4 (2009).

ARTICLE II
Declaration of Principles

> xxx xxx
>
> Section 3. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation.

As pronounced in *Deutsche Bank AG Manila Branch v. CIR*[2], *viz*:

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

In the case of *PHAP vs. Duque*[3], the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

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

The grant of tax exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's

---
[2] G.R. No. 188550, August 19, 2013.
[3] G.R. No. 173034 dated October 9, 2007.

prerogative in taxing its citizens or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments".[4] (*italics ours*) Thus, there is no further need for an enabling law to exercise the reserved power to tax by the GRP.

To recapitulate, the Philippines entered into and signed two international agreements relevant to the case at hand, namely: the ADB Charter Agreement and the ADB Headquarters Agreement. Both were ratified by the GRP and the Senate of the Philippines with the clear and categorical reservation of its power to tax its citizens and nationals. The accession, therefore, to said international agreements which grant tax exemption to ADB personnel is conditional and not absolute.

Now, how was this reserved power to tax implemented by the respondent?

Tax cannot be imposed without clear and express words for that purpose, thus the necessity for clear guidelines from the BIR

The power to interpret tax laws is vested upon the Commissioner of Internal Revenue (CIR) under Section 4 of the NIRC[5], 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, there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the GRP on the Filipino ADB employees, except until the issuance of RMC No. 31-201. The ADB Filipino employees, petitioner included, were never subjected to withholding tax on their compensation income. Likewise, they did not pay any annual income tax to

---

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

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

the BIR. During this interregnum period (1966 to 2013), the BIR issued three varying guidelines on the taxable status of the ADB Filipino employees[6], 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% on their compensation income.

Then, RMC No. 31-2013 was issued by the respondent 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 petitioner, 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

---

[6] *Rollo*, Annex J, Decision, CTA Case No. 9081, p. 209.

imposed graduated income tax rates. Given said 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 University of the Philippines (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 petitioner 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 which provides that:

> **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;
>
> xxx xxx

(2) *Rates of tax on Taxable Income of Individuals.* – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over P10,000	5%
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,00	P22,500+25% of the excess over P140,000
Over P250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P500,000	P125,000+32% of the excess over P500,000.

The foregoing income tax rates governed the amount of income taxes paid by the petitioner.

Laws shall have no retroactive effect, unless the contrary is provided; and Rules and Regulations on taxation should not be given retroactive application if it will be prejudicial to the taxpayer

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.[7] 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 petitioner's 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:

[7] 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*)

As shown in the factual antecedents of the instant case, petitioner neither committed fraud nor acted in bad faith when he failed to pay his income taxes to the government. To believe that he was 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 him. The contradictory official statements of the BIR sowed confusion to the ADB employer as well as to 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 petitioner 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.[8]

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*[9], the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now the Section 246 of 1997 Tax Code as to respondent'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

[8] Vitug and Acosta, Tax Law And Jurisprudence 31 (2nd edition, 2000).
[9] G.R. No. L-52306, October 12, 1981.

> Commissioner of Internal Revenue *shall not be given retroactive application if the relocation, 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.*[10], 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

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

> 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)*

For all the foregoing, I will **grant** the petition for review.

CATHERINE T. MANAHAN
Associate Justice