REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

MARIA AMPARO M. DATO,
MARIAN L. LAGMAY,
VERGEL K. LATAY,
SHEILA MARIE F. MARIANO,
ARLENE P. PORRAS,
ARLENE B. CHAVEZ,
Petitioners,

CTA Case No. 9321

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, J.J.

- versus -

HONORABLE KIM S. JACINTO-HENARES, in her capacity as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 0 2 2019
10:02 a.m.

x - x

DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on March 31, 2016 by Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Sheila Marie F. Mariano, Arlene P. Porras and Arlene B. Chavez, against the Hon. Kim S. Jacinto-Henares, in her capacity as the Commissioner of Internal Revenue, praying for the refund of their alleged income tax payments for the taxable year 2013, as follows:

Taxable Year 2013		
Name of Employee	*Payment Date*	*Amount of Payment*
Maria Amparo M. Dato	9 July 2014	₱612,904.00
Marian L. Lagmay	1 April 2014	₱157,731.00
Vergel K. Latay	10 July 2014	₱479,581.00
Sheila Marie F. Mariano	3 April 2014	₱104,440.00
Arlene P. Porras	15 April 2014	₱463,954.00
Arlene B. Chavez	14 July 2014	₱491,523.00

Petitioners likewise pray that they be awarded legal interest on each claim of refund from the time of filing of this petition.

THE FACTS

Petitioners, Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Sheila Marie F. Mariano, Arlene P. Porras and Arlene B. Chavez, are current and former employees of the Asian Development Bank (ADB), an international organization, with principal office at 6 ADB Avenue, Mandaluyong City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue, with principal office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013.[3] This administrative issuance provides, *inter alia*, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.[4]

In compliance with the said RMC, petitioners filed their *Income Tax Returns* (ITRs)[5] and paid income taxes for taxable year 2013.[6]

Some of petitioners' colleagues at the ADB filed before the Regional Trial Court of Mandaluyong City a *Petition* to have RMC No. 31-2013 nullified. The case was docketed as Civil Case No. MC14-8775, entitled: *"Erwin Salaveria and Portia Gonzales v. Commissioner of Internal Revenue"*.[7]

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[1] The Parties, *Petition for Review*, vis-à-vis Par. 2, *Answer*, Docket – Vol. I, pp. 11 and 86.

[2] Par. I.1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 819.

[3] SUBJECT: 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

[4] Pars. 3 and 4, *Petition for Review*, vis-à-vis Par. 4, *Answer*, Docket – Vol. I, pp. 12 and 86.

[5] Exhibits "P-1", "P-7", "P-9", "P-11", "P-13", "P-16", Docket – Vol. III, pp. 957 to 960, 1010 to 1013, 1015 to 1018, 1020 to 1023, and 1025 to 1028.

[6] Q8/A8, and Q9/A9, Exhibit "P-19"; Q8/A8, and Q9/A9, Exhibit "P-20"; Q8/A8, and Q9/A9, Exhibit "P-21"; Q8/A8, and Q9/A9, Exhibit "P-22"; Q8/A8, and Q6/A6, Exhibit "P-23"; and Q8/A8, and Q9/A9, Exhibit "P-24"; Docket – Vol. III, pp. 1041, 1103, 1167, 1231, 1295 to 1296, and 1368, respectively.

[7] Q18/A18, Exhibit "P-19"; Q18/A18, Exhibit "P-20"; Q21/21, Exhibit "P-21"; Q18/A18, Exhibit "P-22"; Q19/A19, Exhibit "P-23"; and Q18/A18, Exhibit "P-24"; Docket – Vol. III, pp. 1042, 1104, 1168, 1232, 1297, and 1369, respectively.

On September 30, 2014, the Regional Trial Court of Mandaluyong City – Branch 213 (RTC – Branch 213) issued a Decision,[8] declaring Section 2(d)(1) of RMC No. 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary.

Upon learning of the said Decision, petitioners individually filed an *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the BIR.[9] For petitioner Arlene B. Chavez, the said form was filed on March 30, 2016, and for the rest of petitioners, the same was lodged on March 17, 2016.[10] Petitioners likewise filed an administrative claim with the BIR on March 17, 2016.[11]

Respondent appealed the said RTC Decision to the Court of Appeals (docketed as CA-G.R. No. CV No. 104374), but the same was dismissed by the said court in its Resolution dated July 3, 2015,[12] on the ground that the appeal should have been raised by way of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure before the Supreme Court.

On March 31, 2016, petitioners filed the instant *Petition for Review.*[13]

Respondent filed her *Answer* on July 20, 2016,[14] contending, *inter alia*, that RMC No. 31-2013 is only a restatement of what is provided in the law; that it is valid because it is a mere clarification of existing policies embodied in the law. The alleged Decision of RTC – Branch 213 must allegedly be proven in Court and that assuming *arguendo* that the said decision is proven in Court, RTC – Branch 213 has no jurisdiction in taking cognizance of the case. As petitioners are Filipino citizens and employees of the ADB, then there is no doubt that they are liable for income tax on the compensation income they earned on account of such employment; and that petitioners

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[8] Exhibit "P-3", Docket – Vol. III, pp. 964 to 996.
[9] Q22/A22, Exhibit "P-19"; Q22/A22, Exhibit "P-20"; Q25/25, Exhibit "P-21"; Q22/A22, Exhibit "P-22"; Q23/A23, Exhibit "P-23"; and Q22/A22, Exhibit "P-24"; Docket – Vol. III, pp. 1043, 1105, 1169, 1233, 1297, and 1370, respectively
[10] Exhibits "P-5", "P-8", "P-10", "P-12", "P-15", "P-17", Docket – Vol. III, pp. 1003, 1014, 1019, 1024, 1033, and 1037.
[11] Exhibit "P-4", Docket – Vol. III, pp. 997 to 1002.
[12] Exhibit "P-6", Docket – Vol. III, pp. 1004 to 1009.
[13] Docket – Vol. I, pp. 10 to 24.
[14] Docket – Vol. I, pp. 86 to 96.

must prove that their income is not taxable or exempt from income tax.

The pre-trial conference was initially set on November 17, 2016.[15] However, upon respondent's motion,[16] the same was reset to March 2, 2017.[17] But the pre-trial conference was again rescheduled, first, to May 18, 2017 by the Court,[18] and thereafter to June 22, 2017.[19] On said date, the parties' counsels agreed, *inter alia*, to confer with each other to formulate a Joint Stipulation of Facts and Issues. Moreover, at the same conference, respondent's counsel manifested that she will not present any evidence.[20]

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on July 7, 2017.[21] In the Resolution dated July 31, 2017,[22] the Court noted that there is a discrepancy in the issue as stated in the said JSFI, and as a consequence, the parties' counsels were directed by the Court to clarify the noted discrepancy. In the *Compliance* filed by the parties on August 10, 2017,[23] the noted discrepancy was addressed. Thus, in the Resolution dated August 25, 2017,[24] the Court approved the JSFI. Thereafter, the Court issued the Pre-Trial Order dated September 26, 2017.[25]

During trial, petitioners presented themselves as witnesses, Maria Amparo M. Dato,[26] Marian L. Lagmay, Vergel K. Latay, Shiela Marie F. Mariano,[27] Arlene B. Chaves and Arlene B. Porras.[28] Subsequently, petitioners filed their *Formal Offer Of Exhibits* on May 18, 2018,[29] formally offering Exhibits "P-1" to "P-24", inclusive of sub-

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[15] Resolution dated August 1, 2016, Docket – Vol. I, pp. 99 to 100.
[16] *Motion for Resetting of Pre-Trial Conference*, Docket – Vol. I, pp. 101 to 103.
[17] Order dated November 14, 2016, Docket – Vol. I, p. 104.
[18] Notice of Resetting dated February 22, 2017, Docket – Vol. II, p. 778.
[19] Minutes of the hearing held on May 18, 2017, Docket – Vol. II, pp. 789 to 790.
[20] Minutes of the hearing held on June 22, 2017, Docket – Vol. II, pp. 801 to 803; Order dated June 22, 2017, Docket – Vol. II, pp. 807 to 809.
[21] Docket – Vol. II, pp. 819 to 826.
[22] Docket – Vol. II, pp. 846 to 847.
[23] Docket – Vol. II, pp. 848 to 852.
[24] Docket – Vol. II, pp. 856 to 857.
[25] Docket – Vol. II, pp. 880 to 888.
[26] Order dated January 16, 2018, Docket – Vol. II, pp. 908 to 909.
[27] Minutes of the Hearing held on, and Order dated March 18, 2019, Docket – Vol. II, pp. 927 to 931.
[28] Order dated May 3, 2019, Docket – Vol. II, pp. 934 to 935
[29] Docket – Vol. III, pp. 940 to 955.

markings, which the Court admitted in the Resolution dated September 3, 2018.[30]

As directed by the Court, *Respondent's Memorandum* was filed on May 29, 2018;[31] while the *Memorandum For The Petitioners* was filed on October 11, 2018.[32]

The instant case was deemed submitted for decision, per this Court's Resolution dated October 22, 2018.[33]

Hence, this Decision.

THE ISSUE

The parties presented the following issue[34] for this Court's resolution, to wit:

> "WHETHER OR NOT PETITIONERS ARE ENTITLED TO CLAIM REFUND FOR INCOME TAXES PAID IN TAXABLE YEAR 2013 AS FOLLOWS:

Name of Employee	Amount of payment[35]
Maria Amparo M. Dato	612,904.00
Marian L. Lagmay	157,731.00
Vergel K. Latay	479,581.00
Sheila Marie F. Mariano	104,440.00
Arlene P. Porras	463,954.00
Arlene B. Chavez	491,523.00 "

Petitioners' arguments:

Petitioners argue that the Philippines, including respondent, pursuant to the doctrine of *pacta sunt servanda*, is bound to comply with its obligations under the RP-ADB Agreement.

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[30] Docket – Vol. III, pp. 1469 to 1470.
[31] Docket – Vol. III, pp. 1431 to 1453.
[32] Docket – Vol. III, pp. 1472 to 1501.
[33] Docket – Vol. III, p. 1504.
[34] JSFI, Docket – Vol. II, p. 820.
[35] These are the amounts as corrected. Refer to this Court's Resolution dated July 31, 2017, Petitioner's Compliance filed on August 10, 2017, and this Court's Resolution dated August 25, 2017, Docket – Vol. II, pp. 846 to 857.

Moreover, petitioners claim that Section 2(d)(1) of RMC No. 31-2013 is a nullity having been declared unconstitutional by the RTC - Branch 213. According to petitioners, an RMC issued by the BIR cannot in any way amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international agreement.

Petitioners further assert that Section 2(d)(1) of RMC No. 31-2013 is unconstitutional; and that it violates the doctrine of separation of powers and the rule on the origin of revenue bills.

Respondent's counter-arguments:

Respondent counter-argues that the petitioners are not entitled to the refund of their income tax payments for taxable year 2013 for failure on their part to substantiate their claim for refund.

According to respondent, the RTC decision in the Civil Case No. MC14-8775, declaring Section 2(d)(1) of RMC No. 31-2013 as void, is not a binding precedent. Allegedly, resident citizens who are officers and employees of ADB are subject to income tax on salaries and emoluments they receive from ADB; and that taxation of salaries and emoluments paid by ADB to its officers and employees, who are resident citizens, is not anchored on the retroactive application of RMC 31-2013.

Finally, respondent contends that petitioners failed to prove compliance with documentary and legal requirements under Section 229 of the 1997 NIRC as amended as to be entitled to refund income taxes paid for taxable year 2013.

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

There was no violation of the doctrine of* pacta sunt servanda *in this case.

Petitioners contends that without any act from Congress specifically authorizing the exercise of the Government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand.

Indeed, 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.[36] A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.[37]

However, in this case, We see no violation of the doctrine of *pacta sunt servanda.*

Article 56 of the ADB Charter[38], to which the Philippines is a signatory, provides, in part, as follows:

> "Article 56
>
> EXEMPTION FROM TAXATION
>
> xxx xxx xxx
>
> 2. **No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank**, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member." *(Emphasis supplied)*

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[36] *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013.

[37] *Id.*

[38] Formally known as the *"AGREEMENT ESTABLISHING THE ASIAN DEVELOPMENT BANK"*

Having the foregoing provisions as a sole basis, it can be said that the salaries and emoluments paid by the ADB to its directors, alternates, officers or employees, including experts performing missions for ADB, are exempt from income tax. However, the above-stated ADB Charter is not the only Agreement that the Philippine Government has entered into, insofar as the taxation of the said salaries and emoluments paid by the ADB, is concerned.

On December 22, 1966, the Philippine Government has likewise entered into, with the ADB, the *"Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank"* (RP-ADB Agreement) — which should be equally binding, and be given force and effect, as that of the ADB Charter.

Section 45(b) of the RP-ADB Agreement reads as follows:

> "Section 45
>
> **Officers and staff of the Bank,** including for the purposes of this Article experts and consultants performing missions for the Bank, **shall enjoy the following privileges and immunities**:
>
> xxx xxx xxx
>
> (b) **Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank <u>subject to the power of the Government to tax its nationals</u>**;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, while it may be true that officers and staff of the ADB are granted exemption from taxation with respect to salaries and emoluments paid by the said Bank under the RP-ADB Agreement, the same is subject to the qualification that the Philippine Government may exercise its power to tax over ADB officers and employees, who are citizens or nationals of the Philippines.

In any event, petitioners have not shown that the Philippine Government has not fulfilled its treaty obligations under the above-stated international agreements, or was in bad faith in the performance of such obligations.

In fact, it must be noted that Section 32(B) of the NIRC of 1997 recognizes the treaty obligations entered into by the Government which grants income tax exemptions, to wit:

> "SEC. 32. *Gross Income.* –
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income.* – **The following items shall not be included in gross income and <u>shall be exempt from taxation</u> under this Title**:
>
> xxx xxx xxx
>
> **(5) *Income Exempt under Treaty.* – Income of any kind, <u>to the extent required by any treaty obligation</u> binding upon the Government of the Philippines.**" *(Emphases and underscoring supplied)*

Nevertheless, it must be pointed out that the Philippine Government has long exercised its power to tax its citizens or nationals, which necessarily includes ADB officers and employees, who are such.

Relative thereto, the following provisions of the NIRC of 1997, as amended by Republic Act (RA) No. 9504 (the law in effect for the periods of the refund claims), are the legislation for the imposition of income tax <u>on Philippine nationals or citizens</u>, to wit:

> "SEC. 23. *General Principles of Income Taxation in the Philippines.* — Except when otherwise provided in this Code:
>
> **(A) A <u>citizen of the Philippines</u> residing therein is taxable <u>on all income derived from sources within and without the Philippines</u>**;" *(Emphasis and underscoring supplied)*
>
> "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 <u>by every individual citizen of the Philippines</u> residing therein**;

xxx 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 ₱10,000............................	5%
Over ₱10,000 but not over ₱30,000......	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000......	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000.....	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000...	₱22,500+25% of the excess over ₱140,000
Over ₱250,000 but not over ₱500,000...	₱50,000+30% of the excess over ₱250,000
Over ₱500,000...............................	₱125,000+32% of the excess over ₱500,000

xxx xxx xxx." *(Emphases and underscoring supplied)*

"SEC. 31. *Taxable Income Defined.* — **The term 'taxable income' means the pertinent items of gross income specified in this Code**, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws." *(Emphasis supplied)*

rn

"SEC. 32. *Gross Income.* –

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

(1) **<u>Compensation for services</u> in whatever form paid, including, but not limited to** fees, **<u>salaries</u>, wages**, commissions, and similar items;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, the compensation for services, which includes salaries, of **Philippine nationals or citizens** are subject to income tax at the rates stated under Section 24(A)(1)(a) of the NIRC of 1997, as amended.

Correspondingly, notwithstanding the income tax exemption given under Article 56(2) of the ADB Charter and Section 45(b) of the RP-ADB Agreement, the salaries and emoluments paid by the ADB to its directors, alternates, officers or employees, experts or consultants, who are Philippine nationals or citizens are subject to income tax under prevailing Philippine laws.

Such being the case, for the instant claims for refund to prosper, it must be shown that petitioners, albeit ADB employees, are ***<u>not</u>*** Philippine nationals or citizens.

Section 2(d)(1) of RMC No. 31-2013 is not unconstitutional. It merely implemented or reiterated what the law states.

In arguing that Section 2(d)(1) of RMC No. 31-2013 is unconstitutional, petitioners contend that an RMC cannot, in any way, amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international agreement; and that the said provision violates the doctrine of separation of powers and the rule on the origin of revenue bills.

We disagree.

Section 2(d)(1) of RMC No. 31-2013 did not amend or alter the RP-ADB Agreement.

For easy reference, We reproduce herein pertinent portions of RMC No. 31-2013, including Section 2(d)(1) thereof, *viz*:

> "SECTION 1. BACKGROUND.—
>
> xxx xxx xxx
>
> Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:
>
> > 'SECTION 23. General Principles of Income Taxation in the Philippines.— Except when otherwise provided in this Code:
> >
> > (A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
> >
> > xxx
> >
> > (D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; 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 Philippine 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').

This Circular is being issued to evoke compliance by Philippine nationals and individual aliens who are liable to Philippine income tax under the provisions of the Tax Code and who were not given exemption under the terms of duly recognized international agreements or other Philippine laws.

SECTION 2. TAX TREATMENT OF COMPENSATION INCOME

The tax treatment of Philippine nationals and alien individuals on compensation income **received by them from** foreign governments/embassies and missions and **international organizations shall be as follows**:

xxx xxx xxx

(d) **Those Employed by Organizations Covered by Separate International Agreements** or Specific Provisions of Law-

1. Asian Development Bank (ADB)

Section 45(b), Article XII of the **Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank** provides:

'ARTICLE XII

xxx

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**;" Underscoring supplied

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

A careful reading of the foregoing would reveal that respondent merely exercised her power to interpret the pertinent provisions of the NIRC of 1997 in relation to the RP-ADB Agreement. Parenthetically, respondent's power to interpret the provisions of the NIRC of 1997 is anchored on Section 4 thereof, which provides as follows:

"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." *(Emphasis supplied)*

The foregoing provision confers upon respondent both: (a) the power to interpret tax laws in the exercise of her quasi-legislative function; and (b) the power to decide tax cases in the exercise of her quasi-judicial function.

Revenue rulings and issuances that implement or interpret tax laws are classified and described, *inter alia*, as RMCs.[39] RMCs are considered administrative *rulings* which are issued from time to time by the respondent.[40]

Based on the above-cited provisions of RMC No. 31-2013, respondent, in effect, concluded that while the RP-ADB Agreement grants income tax exemption on the salaries and emoluments of officers and staff of ADB, as well as to experts and consultants performing missions therefor, such income tax exemption does not extend to ADB's officers and staff, who are Philippine nationals.

Such being the case, contrary to the contention of petitioners, respondent did not, via the issuance of RMC No. 31-2013, supersede, revise or amend the said international agreement. In fact, the said RMC is consistent with what the law enunciates, as earlier shown. As such, like any other administrative issuance, RMC No. 31-2013 has the force and effect of law. It benefits from the same presumption of validity and constitutionality enjoyed by statutes.[41]

Indubitably, the State's inherent power to tax is vested <u>exclusively</u> in the Legislature.[42] The Supreme Court has since ruled that the power to tax includes the power to grant tax exemptions.[43] Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.[44]

To be clear, the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, was not made by respondent via the promulgation of RMC No. 31-2013. Rather, the tax imposition was made by the Legislature pursuant to the earlier quoted Sections 23(A), 24(A)(1)(a) and (2), 31, and 32(A)(1), of the NIRC of 1997, as amended, in relation to Section 45(b) of the RP-

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[39] Section 1(g), Revenue Administrative Order No. 001-12 dated April 2, 2012.

[40] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999; and *Asia International Auctioneers, Inc., et al. vs. Hon. Guillermo L. Parayno, et al.*, G.R. No.163445, December 18, 2007.

[41] Refer to *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

[42] *Film Development Council of the Philippines vs. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

[43] Refer to <u>*Quezon City, et.al., vs ABS-CBN Broadcasting Corporation*</u>, G.R. No. 166408, October 6, 2008.

[44] *Secretary of Finance Cesar B. Purisima, et al. vs. Representative Carmelo F. Lazatin, et al.*, G.R. No. 210588, November 29, 2016.

ADB Agreement. Thus, the contention of petitioners that there was a violation of the doctrine of separation of powers and the rule on the origin of revenue bills is clearly without basis.

Furthermore, since Section 2(d)(1) of RMC No. 31-2013 merely implemented the law, it was error for the RTC - Branch 213 to have declared the said provision as unconstitutional in its Decision dated September 30, 2014. Nonetheless, not only is the said Decision erroneous, the same is likewise void for being rendered without jurisdiction.

RTC – Branch 213 is without jurisdiction to take cognizance of Civil Case No. MC14-8775.

Petitioners heavily rely on the Decision of the RTC - Branch 213,[45] declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional, for having been issued without legal basis, in excess of authority, and/or without due process of law.

They also invoke the Resolution dated July 3, 2015 of the Court of Appeals,[46] dismissing respondent's appeal to the said Decision, to support the instant claim for tax refund.

Their reliance on the said Decision and Resolution, however, is untenable.

In *Banco De Oro, et al. vs. Rizal Commercial Banking Corporation*,[47] the Supreme Court, in no uncertain terms, ruled as follows:

> "Republic Act No. 9282,[48] a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over

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[45] Exhibit "P-3", Docket – Vol. III, pp. 964 to 996.
[46] Exhibit "P-6", Docket – Vol. III, pp. 1004 to 1009.
[47] G.R. No. 198756, August 16, 2016.
[48] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> actions questioning the constitutionality or validity of tax or regulations. Except for local taxes, 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 issuance (revenue orders, <u>revenue memorandum circulars</u>, 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 <u>the validity of these issuances</u> clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, <u>subject to prior review by the Secretary of Finance</u>, as required under Republic Act No. 8424.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the power to review the validity or constitutionality of RMCs issued by the Commissioner of Internal Revenue is initially lodged with the Secretary of Finance. Thereafter, it is this Court which has an exclusive appellate jurisdiction to determine the validity or constitutionality of the said administrative issuances.

Correspondingly, RTC - Branch 213 of Mandaluyong City is without jurisdiction to decide on the validity or constitutionality of Section 2(d)(1) of RMC No. 31-2013, and therefore, its Decision dated September 30, 2014 is a nullity.

Apropos, a judgment rendered without jurisdiction is a void judgment.[49] In the same vein, the Court of Appeals' Resolution dated July 3, 2015, cannot have a persuasive effect on the resolution of the instant case, simply because it is not consistent with the jurisdictional requirements of the law. After all, petitioners can neither properly nor successfully rely on the decisions of the Court of Appeals. This is so because the said Court and this Court are now of the same level,

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[49] *Imperial, et al. vs. Armes, et al. etseq.*, G.R. Nos. 178842 and 195509, January 30, 2017.

pursuant to RA No. 9282, and decisions of the former are thus no longer superior to nor reversive of those of this Court.[50] Moreover, the said Resolution cannot be treated as a binding precedent. This is simply because only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[51]

Petitioners are not entitled to the refund of income taxes paid for taxable year 2013.

Section 229 of the NIRC of 1997 provides as follows:

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

Section 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority,[52] or upon property not subject to taxation or by some officer having no authority to levy

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[50] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

[51] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

[52] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 161997, October 25, 2005, citing Black's Law Dictionary, 8th Ed., pp. 1496-1497.

the tax, or one which is some other similar respect is illegal.[53] In other words, for taxes to be refunded, it must be shown to have been erroneously or illegally collected. However, as already shown in the disquisitions made herein, this Court cannot conclude that there were erroneously or illegally collected income taxes.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[54]

Petitioners failed to establish that they are not Philippine citizens or nationals, so as to entitle them to the tax exemption granted under Section 45(b) of the RP-ADB Agreement. Correspondingly, the income tax imposition on Philippine citizens or nationals under Section 24(A)(1)(a) and (2) of the NIRC of 1997, as amended, must be applied to them. Such being the case, petitioners' claim for refund must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[53] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

[54] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice