REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VERGEL K. LATAY, SHIELA MARIE F. MARIANO, ARLENE P. PORRAS, and ARLENE B. CHAVEZ, Petitioners,	**CTA EB NO. 2253** (CTA Case No. 9321)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
	Promulgated: JUN 3 0 2021 4:20pm
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks to reverse and set aside the Decision[1] dated October 2, 2019 and the Resolution[2] dated February 14, 2020, respectively, of the CTA Third (3rd) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

1 Penned by Associate Justice Erlinda P. Uy, with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro concurring, Division Docket, pp. 1507-1526.
2 Division Docket, pp.1560-1562.

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

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, premises considered, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The following are the facts as found by the Court in Division:

"Petitioners, Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Sheila [sic] 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.

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.

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013. 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.

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

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."*

3 See Note 1, p. 1525.
4 See Note 2, p. 1562.

On September 30, 2014, the Regional Trial Court of Mandaluyong City-Branch 213 (RTC-Branch 213) issued a Decision, 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. 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. Petitioners likewise filed an administrative claim with the BIR on March 17, 2016.

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, 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*.

Respondent filed her *Answer* on July 20, 2016, 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 must prove that their income is not taxable or exempt from income tax.

The pre-trial conference was initially set on November 17, 2016. However, upon respondent's motion, the same was reset to March 2, 2017. But the pre-trial conference was again rescheduled, first, to May 18, 2017 by the Court, and thereafter to June 22, 2017. 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.

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on July 7, 2017. In the Resolution dated July 31, 2017, 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, the noted discrepancy was addressed. Thus, in the Resolution dated August 25, 2017, the Court approved the JSFI. Thereafter, the Court issued the Pre-Trial Order dated September 26, 2017.

During trial, petitioners presented themselves as witnesses, Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Shiela Marie F. Mariano, Arlene B. Chaves and Arlene B. Porras. Subsequently, petitioners filed their *Formal Offer of Exhibits* on May 18, 2018, formally offering Exhibits 'P-1' to 'P-24', inclusive of sub-markings, which the Court admitted in the Resolution dated September 3, 2018.

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

The instant case was deemed submitted for decision, per this Court's Resolution dated October 22, 2018."[5]

On October 2, 2019 and February 14, 2020, the Court in Division issued the assailed Decision and Resolution, respectively.

On March 12, 2020, petitioners filed the instant Petition for Review.[6]

On July 23, 2020, respondent filed his Comment.[7]

On August 17, 2020, petitioners filed through registered mail their Motion to Admit Attached Reply.[8]

On October 5, 2020,[9] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

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[5] See Note 1, pp. 1508-1511.
[6] Court *En Banc* Docket, pp. 1-27.
[7] Court *En Banc* Docket, pp. 147-152.
[8] Court *En Banc* Docket, pp. 171-186.
[9] Resolution, Court *En Banc* Docket, pp. 190-191.

THE ISSUES

Petitioners raised the following issues to be resolved by the Court En Banc:

"A.

THE HONORABLE COURT IN DIVISION HAS NO JURISDICTION TO RULE ON THE VALIDITY OF THE RMC, THUS, IT ERRED IN DECLARING THAT SECTION 2(D)(1) OF RMC NO. 31-2013 IS NOT UNCONSTITUTIONAL AND THAT THE DECISION OF RTC BRANCH 213 OF MANDALUYONG CITY IS A JUDGMENT RENDERED WITHOUT JURISDICTION.

B.

THE HONORABLE COURT IN DIVISION ERRED WHEN IT RULED THAT SECTION 2(D)(1) OF REVENUE MEMORANDUM CIRCULAR (RMC) 31-2013 IS NOT VIOLATIVE OF THE DOCTRINE OF PACTA SUNT SERVANDA.

C.

THE HONORABLE COURT IN DIVISION ERRED IN HOLDING THAT THE 1997 NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES ('THE NIRC OF 1997') IS THE OPERATIVE ACT WHICH IMPOSED TAXABILITY ON THE INCOME OF PHILIPPINE NATIONALS WORKING IN THE ASIAN DEVELOPMENT BANK ('ADB'), CONSIDERING THAT:

1. THE NIRC OF 1997 IS IN ITSELF INSUFFICIENT TO MODIFY, AMEND OR REPEAL THE ADB CHARTER AS IT IS MERELY A GENERAL LAW WHICH DEALS ONLY WITH THE GENERAL TAXABILITY OF FILIPINO CITIZENS, WITHOUT PARTICULAR MENTION OF THE TAXABILITY OF FILIPINO CITIZENS IN ADB;

2. THE TAX EXEMPTION PROVISION IN THE ADB CHAPTER MUST STAND, IN THE ABSENCE OF A SPECIAL LAW SPECIFICALLY GRANTING THE GOVERNMENT THE AUTHORITY TO EXERCISE ITS RIGHT TO TAX, AS WELL AS, SPECIFICALLY ADDRESSING THE TAXABILITY OF PHILIPPINE NATIONALS WORKING IN THE ADB."

THE RULING

The Court *En Banc* denies the instant Petition.

The CTA has jurisdiction to rule on the validity of RMC No. 31-2013

Petitioners argue that the CTA in Division can take cognizance only of matters that are clearly within its jurisdiction, specifically those enumerated under Republic Act (RA) No. 1125, as amended by RA No. 9282. Outside of those enumeration, petitioners posit that the CTA in Division has no jurisdiction.

However, this issue has already been squarely addressed by the Supreme Court in the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue.*[10] The case is instructive as to what matters may be adjudicated by this Court in cases falling within its exclusive appellate jurisdiction, thus:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:
>
> xxx xxx xxx
>
> > On the strength of the above constitutional provisions, it can be fairly interpreted that **<u>the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction</u> on the part of RTC in issuing an interlocutory order <u>in cases falling within the exclusive appellate jurisdiction of the tax court</u>. It, thus, follows that <u>the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases</u>.**
>
> xxx xxx xxx
>
> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila*

[10] G.R. No. 210987, November 24, 2014.

> diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**"[11]

Under the above-quoted jurisprudence, this Court has the power of *certiorari* in cases within its appellate jurisdiction. The Supreme Court then concludes that this Court can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

While the *Philam* case involves an assessment, this Court may apply the above-quoted doctrine to cases that involve claims for refund, as in this case, the same being within its exclusive appellate jurisdiction. Hence, the CTA in Division is correct when it determined the validity of RMC No. 31-2013.

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

On this score, petitioners argue that the imposition of income tax on Filipinos working in ADB, without any act from the Congress specifically authorizing the exercise of the government's right to tax its nationals, constitutes a violation of the legally binding obligation of the Philippines under the ADB Charter.

Petitioners likewise argue that: (1) the 1997 National Internal Revenue Code (NIRC) is merely a general law that cannot modify, amend or repeal the ADB Charter; and (2) In the absence of a special law imposing tax on nationals, the tax exemption provision under the ADB Charter must stand.

The Court *En Banc* disagrees. *ye*

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[11] *Id.*, citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.

On December 4, 1965, the "Agreement Establishing the Asian Development Bank" 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, 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." (*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,[12] is the law that enables 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 outside the Philippines under Sections 23(A), 24(A)(1)(a), 31 and 32, 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), (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;"

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TITLE II
TAX ON INCOME

CHAPTER V
COMPUTATION OF TAXABLE INCOME fr

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

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.

CHAPTER VI
COMPUTATION OF GROSS INCOME

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) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;

(2) Gross income derived from the conduct of trade or business or the exercise of a profession;

(3) Gains derived from dealings in property;

(4) Interests;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Annuities;

(9) Prizes and winnings;

(10) Pensions; and

(11) Partner's distributive share from the net income of the general professional partnership." (*Underscoring supplied*)

Based on the foregoing, petitioners' argument that a special law should be passed to specifically tax our nationals is unmeritorious. The clear import of the ADB Charter shows the intent of the government to tax our nationals and as such, the enactment of a special law to tax the same subjects would be superfluous. Meanwhile, the subsequent passage of the 1997 NIRC confirmed the intent of the government to impose taxes on Filipinos working in ADB.

In fact, even prior to the 1966 Agreement between the ADB and the Government of the Republic of the Philippines, the Philippine government has been exercising its sovereign right to tax its citizens or nationals.

Specifically, income tax was levied, assessed, collected, and paid annually upon the entire net income of citizen and resident of the Philippines, pursuant to Sections 21, 28 and 29 of the 1939 NIRC.[13]

Moreover, it is the Court *En Banc*'s view that the Philippine government, in entering upon the 1966 Agreement and giving the privilege of tax exemption on salaries emolument paid by ADB to its employees, did *not* relinquish its power of taxation over its own citizens and nationals.

In the same vein, pursuant to Sections 21, 28 and 29 of the 1977 NIRC,[14] income tax was imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines.

Thereafter, pursuant to Sections 23(A), 24(A), 31 and 32 of the 1997 NIRC, as amended, all income of a resident citizen is subject to tax (derived from all sources within and without the Philippines).

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[13] "SEC. 21. Rates of tax on citizens or Residents. — A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines determined in accordance with the following schedule: xxx

xxx xxx xxx

SEC. 28. Meaning of net income. — 'Net income' means the gross income computed under section twenty-nine, less the deductions allowed by section thirty.

SEC. 29. Gross Income. — (a) General Definition. — 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, sales, or dealings in property, whetber real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or the transactions of any business carried on for gain or profit, or gains, profits, and income derived from any source whatever."

[14] "SEC. 21. Rates of tax on citizens or Residents. — A tax is herehy imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines determined in accordance with the following schedule: xxx

xxx xxx xxx

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Consequently, the Court *En Banc* in the recent case of *Commissioner of Internal Revenue v. Rowena Vicente, et al.*[15] affirmed the position that notwithstanding the alleged reliance on various confirmations and affirmations of various revenue officials that the income of Filipino citizens from ADB was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the fact remains that the Philippine government in giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did *not* relinquish its power of taxation over its own citizens. Thus, the income tax paid in 2012 is not in excess of what is due and the payment and collection of said tax was neither erroneous nor illegal insofar as it is anchored on a statutory authority. Thus:

> "Thus, despite the alleged reliance on various confirmations and affirmations of various revenue officials that the income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the fact remains that Philippine government in giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals, <u>that amount of tax paid in taxable year 2012 is not in excess on what is due; that the payment and collection of taxes for taxable year 2012 was subject to statutory authority and is neither erroneous nor illegal. 'Render to Caesar what is Caesar's'. In sum, claim for refund must perforce fail</u>.
>
> Taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power." (*Underscoring supplied; citations omitted*)

Taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.[16] Any claim for refund take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the

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[15] CTA EB Case Nos. 1717 & 1718 (CTA Case No. 9096), August 8, 2019.
[16] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[17]

Considering the foregoing, the Court *En Banc* finds the instant Petition for Review devoid of merit. Hence, the denial of the same is in order.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VERGEL K. LATAY, SHIELA MARIE F. MARIANO, ARLENE P. PORRAS, and ARLENE B. CHAVEZ, *Petitioners,*	**CTA EB No. 2253** *(CTA Case No. 9321)*
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 30 2021 4:20 PM

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the ponencia's finding that petitioners' claim for refund of income taxes paid for taxable year 2013 should be denied on the ground that the income they received from Asian Development Bank (ADB) is taxable **pursuant to existing provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB**.

I wish to stress that resident citizens or nationals of the Philippines who are working with the ADB are taxable on their income from all sources, including those income derived from ADB. To my mind, the taxability of the income they receive from ADB is not dependent on the validity or invalidity of Revenue Memorandum Circular (RMC) No. 31-2013. Irrespective of the existence of RMC No. 31-2013, the obligation of resident citizens or nationals to pay income tax on salaries and emoluments paid to them by ADB **commenced on the taxable year that they were employed by ADB**.

The issuance of RMC No. 31-2013 does not have the effect of modifying any rule or regulation promulgated by the Commissioner of Internal Revenue (CIR) as **there is nothing on record which would show that the CIR had, in the past, issued rules or regulations exempting from income tax the income derived by resident citizens or nationals of the Philippines who are employees of ADB**. On this point, I submit that Section 246 of the NIRC of 1997, as amended, on the non-retroactivity of rulings, does not find any application in resolving these cases. As aforestated, employees of ADB who are resident citizens or Philippines nationals are subject to income tax on salaries and emoluments they receive from ADB beginning on the date of their employment therein.

While it may be true that since the ratification of the ADB Charter in 1966, or for almost fifty (50) years, ADB employees have never been subjected by the BIR to income tax until the issuance of RMC 31-2013 on April 12, 2013, suffice it to say that the failure of the BIR to collect income tax from ADB employees who are resident citizens or Philippine nationals does not *per se* justify the non-implementation of existing legislations nor result in the absurd construction that pertinent tax laws are deemed repealed.

While non-payment of taxes cannot be considered as custom, yet, even if so - - Article 11 of the Civil Code provides that "[c]ustoms which are contrary to law, public order or public policy shall not be countenanced."

Thus, the alleged long-standing practice of the BIR of not subjecting to income tax the salaries and emoluments derived by resident citizens from their employment with ADB is not sufficient to exempt them from payment of said tax.

Moreover, it is my view that the Regional Trial Court (RTC) Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. The aforesaid RTC Decision in Civil Case No. MC14-8775 appears to be jurisdictionally infirm insofar as it declared that Section 2(d)(1) of Revenue Memorandum Circular 31-2013 is a nullity. In ***The Philippine American Life and General Insurance Company vs. Commissioner of Internal Revenue,***[1] the Supreme Court was categorical in saying that **the Court of Tax**

[1] G.R. No. 210987, November24, 2014.

Appeals is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars. Needless to say, this Court may not be deprived of its power to review the validity of a claim for tax refund - - falling as it is within its exclusive appellate jurisdiction - - simply on the basis of the existence of the RTC Decision in Civil Case No. MC14-8775.

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice