REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MARIA CARMELA LOCSIN, ET AL., Petitioner,	CTA Case No. 9094
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 02 2019 11:14 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Aggrieved, both petitioners and respondent challenge the Decision[1] dated February 4, 2019 disposing the present case as follows:

> **WHEREFORE**, the Petition for Review dated July 14, 2015 is **PARTIALLY GRANTED**.
>
> Respondent is hereby **ORDERED TO REFUND or TO ISSUE TAX CREDIT CERTIFICATE** in the total amount of P33,704,567.53, broken down, as follows:

NAME OF PETITIONER	Income Tax Paid For 2012
Ma. Carmela Locsin	3,022,590.18
Nerissa Loria	213,578.84
Krista Camille Lozada	490,048.48
Maria Isabelita Lozano	315,708.90
Heidee Lozari	703,092.43
Maria Criselda Lumba	148,453.68
Leah Jean Luna	177,330.16

[1] Id. at pp. 602-630.

Ma. Solita Mabaquiao	515,525.34
Marianne Macabingkil	163,459.79
Emerlinda Macalintal	162,336.80
Geovanna Maceda-Papa	36,856.67
Ritchelle Ann Madrigal	178,814.24
Maria Angela Malihan	100,872.84
Maureen Mamayson	234,414.86
Imelda Mampusti	299,155.00
Ma. Theresa Manahan	366,266.84
Ma. Rowena Manalansan	214,246.15
Nemrod Manalo	700,279.56
Buena Marie Manansala	224,483.44
Elnora Mangampat	371,725.82
Joelito Manigo	321,969.67
Madeline Manrique	251,495.00
Marirose Mapua	227,511.80
Roselyn Marantal	*223,379.24*[2]
Liza Marasigan	253,091.09
Maritess Marcelino	166,027.00
Ruzette Mariano	176,142.51
Victoria Fe Mariano	594,514.68
Girard Pacifico Marin	452,387.38
Ma. Isabel Martin	152,005.48
Eloise Valerie Martinez	232,457.37
Balbina Grace Matullano	233,521.19
Ma Lyn Theresa Medina[3]	
Joselito Mendez	704,088.68
Rachelle Mendinueto	156,118.83
Teresa Mendoza	451,398.60
Vivian Meneses	231,234.07
Kathrina Millan	135,160.40
Marichu Milward	305,446.00
Alvin Morales	611,181.80
Allison Grace Miravite	82,540.82
Marie Jessamine Mitra	264,959.94
Modesto Modesto	1,100,851.83
Caren Joy Mongcupa	170,322.70
Michael John Monreal	214,907.25
Jemellee Monzuela	269,538.10
Sara Mei Mora	294,866.40
Jackie Moreno	123,046.33
Wesam Mostadi	109,600.09
Edgardo Nacpil	557,670.42
Aldalyn Nada-Bere	473,213.38
Gilda Nanquil	372,471.94
Socorro Narvasa	261,758.68
Laarni Nasi	164,759.79
Jennifer Navarro	313,075.04
Ma. Agnes Navera	418,010.08
Suzanne Nazal	296,098.52
Belen Kim Ngwe	267,482.75
Maria Oliva Nuestro	566,741.61
Ma. Carmela Nuñez	335,374.03
Lawrence Obias	129,515.90
May Oblefias	143,912.67
Athena Ocampo	267,524.61
Laura Ocampo	291,221.19

[2] Exhibit "P-5-11", docket, vol. 1, p. 318.
[3] Exhibit "P-12-1", Annual Income Tax Return for 2012 was denied admission for failure to present originals for comparison.

Joseph Ochoada	362,461.97
Marjorie Oliver	249,237.62
Ronald Mark Omana	215,062.18
Carol Onchangco	317,652.68
Dino Tante Ordonez	211,287.83
Maria Cynthia Orendain	629,320.00
Josephine Orense	301,729.90
Christina Orquiola	437,127.60
Maria Rosa Ortega	503,836.18
Lea Maria Ortiz	337,273.24
Cecille Pacheco	270,798.47
Madelyn Paclibar	221,760.19
Ruperto Padilla	552,920.28
Rino Paez	98,102.00
Maria Teresa Pagkalinawan	288,724.85
Zenaida Pangan	251,860.21
Corazon Panganiban	564,160.00
Aileen Pangalinan	209,744.01
Maria Virginia Panis	145,297.69
Socorro Panis	823,129.20
Melissa Pascua	363,318.57
Pia Angelica Pascual	167,019.52
Wilhelmina Paz	955,070.05
Santiago Raymond Pe-Aguirre	332,078.92
Ma. Agnes Pedro	153,650.18
Michelle Penalosa	155,411.54
Cecilia Peralta	143,091.88
Paulita Perez de Tagle	173,804.34
Roslyn Perez	271,525.06
Donabelle Pineda	202,487.10
Ma Eloisa Pineda	262,236.49
Mitzi Gay Piol	210,035.91
Dario Ponciano	305,319.80
Lilibeth Poot	447,970.83
Mario Antonio Portugal	82,557.14
Grace Potente	327,102.08
Elenita Pura	152,567.14
TOTAL	**33,704,567.53**

SO ORDERED.

In their Motion for Partial Reconsideration dated February 27, 2019[4], petitioners claim that contrary to the finding of the Court, Ma. Lyn Theresa Medina was able to substantiate her 2012 income tax payment of ₱239,795.69 by presenting the BIR Revenue Official Receipt (OR) 2012 01672201. Admittedly, she presented and formally offered only a photo copy of her 2012 Annual Income Tax Return (AITR) reflecting such payment. However, in her Motion for Partial Reconsideration, she attached the original of the denied 2012 AITR. In view thereof, an additional amount of

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[4] Docket, pp. 631-646.

₱239,795.69, representing the alleged 2012 income taxes paid by Ma. Lyn Theresa Medina should be refunded.

Petitioners insist that they are excused from paying income taxes by virtue of the general tax-exemption provisions in Article 56(2) of the ADB Charter. While they concede that the Philippine Government[5] reserved its right to tax Filipino citizens hired at the ADB, however, such reservation needs a specific statute to be effective. *Sans* any legislation expressly conferring respondent the authority to tax them, they remain to be tax-exempt individuals.

For petitioner, the following incidents demonstrate the true intent of the ADB Charter to relieve them of Philippine income taxes: a) long-standing practice not taxing such individuals spanning more than four (4) decades; b) Opinion of Regional Director Antonio Ortega confirming their tax-exempt status; c) Executive Order (EO) No. 161, allegedly stating to respect privileges of the ADB; and d) Member Countries[6] of the ADB enacted their respective enabling laws to tax salaries and emoluments of employees/staff of the said international organization. In closing, petitioners state that they are as well entitled to refund the income taxes they paid on TY 2013.

Despite directive, respondent failed to file comment/opposition to petitioner's Motion for Partial Reconsideration.[7]

In his *Motion for Reconsideration[8] dated March 5, 2019 with Supplement[9] thereto dated March 6, 2019,* respondent finds erroneous the prospective application RMC No. 31-2013. According to him, the imposition of taxes on income realized by petitioners covering TY 2012 is warranted since the government's right to impose income taxes is not dependent on the efficacy of RMC No. 31-2013, which

[5] As attested to by the then Philippine Senate and former President Ferdinand E. Marcos per Senate Resolution No. 6 dated March 16, 1966.
[6] Petitioners enumerated the list of ADB member-countries observing tax-exemption privileges of their nationals by legislative fiat after ratifying the ADB Charter, as follows: Canada, Australia, India, Papua New Guinea, and Singapore. See petitioners' Motion for Partial Reconsideration, pp. 9-11.
[7] Records verification report dated April 5, 2019.
[8] Ibid. at pp. 647-652.
[9] Id. at 654-658.

merely clarifies existing revenue laws. He points out that petitioners' income tax liability arose from Sections 23 and 24 of the Tax Code which were already in effect in 1998, or way before the realization of their compensation income in TYs 2012 and 2013. In other words, the compensation received by petitioners from ADB in 2012 and 2013 are subject to Philippine income taxes.

Reliance by petitioners on the general tax-exempt provision of the ADB Charter is also misplaced. Respondent explains that such absolution from income taxes under the foregoing international agreement only applies if the Philippine Government did not reserve its taxing power on the Filipino ADB Employees. Given that the Philippine government explicitly retained the right to its citizens by virtue of Senate Resolution No. 06, the general tax-exempt privileges accorded by the ADB Charter finds no application on petitioners.

Finally, respondent asserts that the alleged long-standing practice of not taxing petitioners will not ripen into a valid right as the alleged customs are repugnant to with the provisions of the NIRC, as amended. Since there is no legal impediment to collect the income taxes against petitioners, respondent concludes that their refund claim for TYs 2012 and 2013 must be rejected.

In the comment/opposition, petitioners reiterated that the reservation of taxing power by the Philippine government to be effective, there must first be a legislation to that effect which is wanting in the present case. Hence, the general tax-exemption privileges conferred to by the ADB Charter equally applies to them.

They insist that their income tax-exempt status as regards their compensation income was enjoyed by them for more than four (4) decades, hence, it may not be taken away by respondent through RMC No. 31-2013. Besides, the issuance is neither a law nor a treaty, hence, may not be a valid source of respondent's taxing power. Moreover, the RTC-Mandaluyong invalidated such circular, thereby upholding their income tax-exempt privileges. Petitioners conclude that the income taxes collected by respondent for

TY 2013, similar to TY 2012, should also be returned to them.

THE RULING OF THE COURT

Petitioners' Motion for Partial Reconsideration and respondent's Motion for Reconsideration are denied.

On whether petitioner Ma. Lyn Theresa Medina is entitled to the refund of income taxes she allegedly paid on TY 2012, the Court rules in the negative.

It has been held that [s]ince tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[10]

Very clearly indicated in the revenue official receipt issued in favor of petitioner Ma. Lyn Theresa Medina, that the income tax payment in the sum of ₱239,735.69 was for TY 2013.[11] With the unexplained irreconcilable discrepancy between the taxable periods covered by the AITR for TY 2012 and the revenue official receipt and *sans* official receipt accurately reflecting petitioner Ma. Lyn Theresa Medina's payment of income taxes for TY 2012, her refund claim must be disallowed.

Anent the remaining matters raised by both petitioners and respondent, suffice it to say that they were exhaustively discussed and passed upon by the Court in the impugned Decision of February 4, 2019. To repeat, Sections 23 and 24 of the National Internal Revenue Code (NIRC), as amended imposes taxes on the compensation income derived from sources within or outside the Philippines realized by resident citizens such as petitioners. The general tax-exempt provisions under the ADB Charter may not be applied to them as the Philippine government retained its right to tax its citizens working at the said international organization. Nevertheless, since retroactivity of revenue circulars is

[10] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.
[11] Docket, p. 646.

proscribed under Section 246 of the same Code, RMC No. 31-2013 should operate prospectively and may not be applied to their income realized in TY 2012, or prior to its effectivity. Thus, save for petitioner Ma. Lyn Theresa Medina, the 2012 income taxes paid by the other petitioners must be returned to them. However, refund of 2013 income taxes paid should be rejected.

WHEREFORE, petitioner's *Motion for Partial Reconsideration* dated February 27, 2019 and respondent's *Motion for Reconsideration* dated March 5, 2019 with *Supplement* thereto dated March 6, 2019 are **DENIED**. The impugned Decision of February 4, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice