

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 1876
INTERNAL REVENUE, (CTA Case No. 9090)
Petitioner,

-versus-

LICEL CALDERON, ET AL.,
Respondents.

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LICEL CALDERON, ET AL., CTA EB No. 1878
Petitioners, (CTA Case No. 9090)

Present:

-versus-

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 12 2020

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RESOLUTION

Fabon-Victorino, J.:

n

On July 2, 2019, the Court rendered a Decision,¹ the *fallo* of which reads:

WHEREFORE, the Petition for Review dated June 7, 2018, filed by the Commissioner of Internal Revenue and the Petition for Review dated June 18, 2018 filed by Licel Calderon, et al., are **DENIED**. The challenged Decision dated March 27, 2018 and Resolution dated May 23, 2018 both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

Both unrelenting, Licel Calderon, et al. (The Filipino ADB Employees) and the Commissioner of Internal Revenue (CIR) separately filed their respective Motions for Partial Reconsideration dated July 19, 2019 and August 27, 2019.

In their Motion for Partial Reconsideration,² the Filipino ADB Employees insist that they are not liable for Philippine income taxes pursuant to general tax-exempt provisions of the Article 56(2) of the Asian Development Bank (ADB) Charter. They claim that the National Internal Revenue Code (NIRC), as amended, is not the enabling law tantamount to a reservation of the Philippine government of its right to impose income taxes. In the absence of a statute specifically taxing them, they remain to be income tax-exempt individuals. As such, the refund of the income taxes collected from them by the BIR for taxable year (TY) 2013 is in order.

Besides, the practice of not taxing Filipino ADB Employees from December 1966 to April 2013 bolsters their position that they are indeed excused from the payment of Philippine income taxes.

The CIR failed to file his comment/opposition to the instant Motion, despite notice.³

In his own Motion for Partial Reconsideration,⁴ the CIR maintains that the Filipino ADB Employees are accountable

¹ *Rollo* (CTA EB No. 1876), pp. 100-119.

² *Ibid.* at pp. 127-130.

³ Records verification report dated October 31, 2019, *id.* at p. 150.



for accrued income taxes covering TYs 2012 and 2013. To undergird his position, he cites Section 23 of the NIRC, as amended, as expounded in Revenue Memorandum Circular (RMC) No. 31-2013 which provides that income taxes are imposed on gains realized by resident citizens derived from sources within or outside the Philippines. With the rendition of services by the Filipino employees to the ADB, their compensation income realized therefrom is subject to Philippine income taxes.

Moreover, his right to impose income taxes is not hinged on the efficacy of RMC No. 31-2013, contrary to the position taken by the Filipino ADB Employees. Rather, their income tax liability stemmed from Sections 23 and 24 of the Tax Code, already in force as early as 1998, or way before the realization of their compensation income in TYs 2012 and 2013. There being no violation of any legal provision in the collection of income taxes on the subject compensation, the subject claim for TYs 2012 and 2013 should be rejected, concludes the CIR.

By way of Opposition,⁵ the Filipino ADB Employees point out that the instant Motion filed by the CIR is procedurally flawed as it was filed out of time. Allegedly, the CIR received a copy of the impugned Decision dated July 2, 2019, on July 8, 2019, thus, he had fifteen (15) days, or until July 23, 2019 to move for the reconsideration of such Decision. Since his Motion challenging the Decision was dated August 27, 2019, thus, filed beyond the prescribed period to assail the same. In view thereof, the CIR is precluded from seeking partial reversal of the impugned Decision.

Clear from the Motion for Partial Reconsideration filed by the Filipino ADB Employees that they merely replicated their previous arguments in their pleadings previously filed with the Court in Division, all of which have been amply discussed and passed upon in the impugned Decision of July 2, 2019, particularly in pages 11 to 17 thereof. To repeat, since the Philippine government reserved its right to impose taxes on Filipinos working at the ADB and that

⁴ Id. at pp. 135-141.

⁵ Comment/Opposition (to the CIR's Motion for Partial Reconsideration) dated October 22, 2019, id at pp. 145-147.



the NIRC, as amended, was already effective and enforced at the time they realized the compensation income from their employment at ADB, the BIR's right to collect taxes thereon was justified being in accordance with Sections 23 and 24 of the NIRC, as amended. As such, no refund on the income taxes they paid for TY 2013 shall be forthcoming in favor of the Filipino ADB Employees.

As to the CIR's Motion for Partial Reconsideration, Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides the instruction, thus:

SECTION 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question. (a)

It cannot be denied that the CIR received the Decision of July 2, 2019 on July 8, 2019.⁶ *A fortiori*, he had until July 23, 2019 to move for reconsideration of such Decision. The CIR, however, belatedly instituted his Motion for Partial Reconsideration on August 27, 2019.⁷ Thus, insofar as the CIR was concerned, the Decision dated July 2, 2019 had already attained immutability and thus, no longer open for further scrutiny by the Court.

The rationale for stern observation of the manners and periods for perfecting appeals was eloquently discussed by the Supreme Court in the case of *Soriano vs. Reyes*,⁸ as follows:

The underlying mandate in the construction of our Rules of Court is that they shall be liberally construed in order to promulgate their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. The jurisprudential caveat, however, is that **the provisions on reglementary periods are strictly applied as they are deemed indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge**

⁶ Notice of Decision, *rollo*, (CTA EB No. 1876) p. 99.

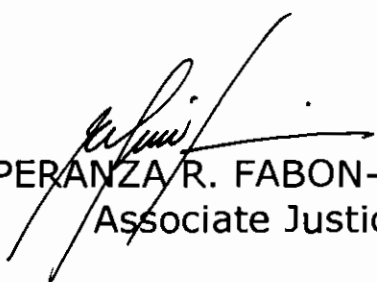
⁷ *Rollo*, p. 135.

⁸ G.R. No. 100525, May 25, 1993.

of judicial business, that strict compliance therewith is mandatory and imperative, and that this stringency applies to the rules on the manner and periods for perfecting appeals. (boldfacing supplied)

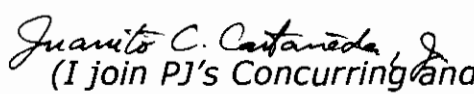
WHEREFORE, the Motion for Partial Reconsideration dated July 19, 2019 filed by Licel Calderon, et al. is **DENIED** for lack of merit. On the other hand, the CIR's Motion for Partial Reconsideration dated August 27, 2019 is **DISMISSED**, for being filed out of time. The impugned Decision dated July 2, 2019 is **AFFIRMED**.

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

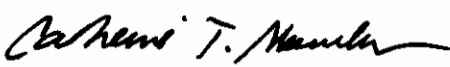

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


(I join PJ's Concurring and
Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

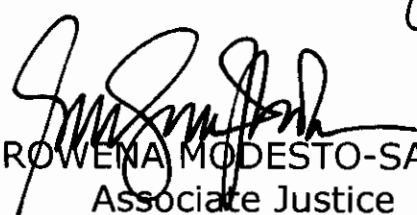

(I join PJ's Concurring and
Dissenting Opinion)
ERLINDA P. UY
Associate Justice


(With due respect, I join PJ's
Concurring and Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
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