

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

Second Division

LICEL CALDERON, ET.AL.,
Petitioners,

CTA CASE No. 9090

-versus-

Members:

CASTANEDA, JR.
CASANOVA,
MANAHAN, JJ.

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

MAR 27 2018

10:50 am [Signature]

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DECISION

MANAHAN, J.:

This is a Petition for Review¹ filed on July 13, 2015 by several Filipino employees of the Asian Development Bank (ADB), praying for the refund of their alleged erroneously and illegally paid income tax in the aggregate amount of Forty-Five Million Seven Hundred Seventy-Two Thousand Six Hundred Sixty Pesos and 30/100 (P45,772,660.30) for taxable years 2012 and 2013.

PARTIES

Petitioner Licel Calderon and her co-petitioners are all Filipino employees of ADB, whose office is located at 6 ADB Ave., Mandaluyong City.² *am*

¹ Docket, vol. 1, pp. 14-32

² Par. 2, Petition for Review, docket, vol. 1, p. 17

The Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws and who has 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 the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013 entitled "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." It provides, among others, that officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. Section 2(d)(1) of RMC No. 31-2013 states:

"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 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:

XXX

XXX

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." (Emphasis supplied)

Since the said RMC was given retroactive effect, Filipino employees of the ADB were ordered to declare and pay income taxes for 2012 onwards. Petitioners paid the following amounts as their income taxes for taxable years 2012 and 2013:³

PETITIONER	INCOME TAX PAID		TOTAL
	2012	2013	
Licel Calderon	P 106,983.60	P -	P 106,983.60
Juliet Calingo	257,387.59		257,387.59
Shiela Dorothy Callet	162,123.74		162,123.74
Carmela Canare	291,317.16	296,699.00	588,016.16
Agnes Canillas	312,322.78	323,998.00	636,320.78
Ma. Laarni Canonizado	283,655.90		283,655.90
Rebecca Canoy	265,860.82		265,860.82
Odessa Canto	510,958.43	591,182.00	1,102,140.43
Cecilia Caparas	469,399.70		469,399.70
Eileen Capilit	391,412.78		391,412.78
Ma. Virginita Capulong	736,184.07		736,184.07
Ninebeth Carandang	1,352,151.95	557,003.00	1,909,154.95
Mary Grace Caranto	176,830.16		176,830.16
Helen Carnecer	189,066.29		189,066.29
Cynthia Carreon	494,824.75		494,824.75
Xandro Joaquin Castañeda	446,705.44		446,705.44
Lea Ann Castro	149,859.92		149,859.92
Ma. Fatima Cheryl Catacutan	410,737.43		410,737.43
Sylvia Catapang	393,584.09	377,768.00	771,352.09
Ana Cervantes	482,286.57		482,286.57
Laurie Ann Cervantes	212,527.00		212,527.00
Ma. Rowena Cham	500,193.73	522,407.00	1,022,600.73
Mary Anne Chaneco	149,764.00		149,764.00
Azalea Chanyongco	157,268.20		157,268.20

³ Par. 13, Petition for Review, docket, vol. 1, pp. 24-26

Candy Chao	319,245.04	211,473.00	530,718.04
Patricia Tuazon Ching	400,276.59	407,773.00	808,049.59
Geraldine Chu	377,315.80	395,135.00	772,450.80
Maila Cinco	176,026.81		176,026.81
Marileth Co	262,409.93	300,938.00	563,347.93
Christine Dianne Cobarrubias	135,723.89		135,723.89
Ma. Loreca Cobilla	340,859.03		340,859.03
Jerry Colasito	102,030.41		102,030.41
Paulita Comia	323,348.72	344,025.00	667,373.72
Camille Contreras	316,431.20	316,820.00	633,251.20
Nedilla Correa	246,678.15	256,600.00	503,278.15
Josefa Maria Coscolluela	451,792.08	456,754.00	908,546.08
Melanie Covar	249,082.64	264,465.00	513,547.64
Mary France Creus	142,696.07	153,440.00	296,136.07
Marisol Crisostomo	225,270.82		225,270.82
Claribella Cruz	147,102.69		147,102.69
Fermirelyn Cruz	126,963.83	49,237.52	176,201.35
Gene Oliver Cruz	267,498.26	268,775.00	536,273.26
Grace Cruz	194,644.00	194,645.00	389,289.00
Jerome Cruz	79,902.19		79,902.19
Kristine Cruz	344,026.01	340,180.00	684,206.01
Ma. Lenina Tanya Cruz	384,729.75		384,729.75
Margaret Rose Cruz	198,313.46		198,313.46
Mary Grace Kristine Cruz	150,200.69		150,200.69
Mary Jane Cruz	337,721.94	350,108.00	687,829.94
Shiela Cruz	58,301.12		58,301.12
Ligaya Cuevas-Arce	275,744.81	139,867.00	415,611.81
Tadeo Culla	391,339.12	390,065.00	781,404.12
Ramon Dacio	267,508.39		267,508.39
Lailaine Danao	400,129.00		400,129.00
Marie Remilyn Dandan	144,848.51	150,141.00	294,989.51
Marie Lullete Daria	219,583.10		219,583.10
Shiela Ann David-De Castro	134,895.30		134,895.30
Janeth De Belen	263,434.29		263,434.29
Juan Armando De Borja	152,850.27	154,855.00	307,705.27
Elena De Castro	474,379.69		474,379.69
Maria Bernadette De Castro	289,018.79	291,187.00	580,205.79
Modesta De Castro	546,954.24		546,954.24
Arnel De Gracia	410,836.51	420,264.00	831,100.51
Charmaine Ruth De Guzman	21,146.56	131,662.00	152,808.56
Ma. Cielo De Guzman	248,223.22	252,317.00	500,540.22
Maria Guia De Guzman	297,685.52		297,685.52
Mia Gracia De Guzman	206,763.12	211,904.00	418,667.12
Jennifer De Jesus	160,743.96		160,743.96
Rosarie Celine De Leon	269,234.11	333,970.00	603,204.11
Mary Jane De Ocampo	142,966.09		142,966.09
Eduardo De Veyra	444,331.31	441,761.00	886,092.31
Marisol Del Rosario	367,207.23	390,009.00	757,216.23
Marlo Del Rosario	349,205.66		349,205.66
Hazel Joy Dela Cruz	408,774.32	411,220.00	819,994.32
Ramoncito Dela Cruz	662,924.86	662,862.00	1,325,786.86
Shiela Dela Cruz	41,022.67	120,369.00	161,391.67
Fernando Dela Fuente	166,343.91	203,000.50	369,344.41
Marcela Leonila Dela Merced	353,031.94		353,031.94
Excelsa Dela Santa	300,315.14	300,315.14	600,630.28

Ma. Melissa Dela Torre	446,192.17		446,192.17
Lamberto Delgado Jr.	246,244.52	243,708.00	489,952.52
Czareana Dello	156,570.63		156,570.63
Ma. Cristina Delos Santos	306,109.10	331,066.00	637,175.10
Merdinia Deguilla	110,477.00		110,447.00
Lyrach Tatiana Devanadera	131,722.89	176,392.00	308,114.89
Vladimer Diamonon	274,345.99	277,855.00	552,200.99
Maria Carmen Diaz	222,777.79	128,333.34	351,111.13
Vanessa Dimaano	493,570.64		493,570.64
Linda Dimayuga	503,900.28		503,900.28
Ma. Juana Dimayuga	541,724.84	537,420.00	1,079,144.84
Irene Dionisio	301,997.28	295,710.00	597,707.28
Michael Diza	171,137.42		171,137.42
Aivy Katherine Dizon	226,536.82		226,536.82
Madeline Dizon	285,420.28	284,046.00	569,466.80
Liza Jane Domingo	216,677.34		216,677.34
Michelle Domingo	464,154.91		464,154.91
Julius Cesar Duque	273,741.04	278,049.00	551,790.04
Maria Josephine Duque-Comia	610,668.83	319,036.00	929,704.83
Jessica Ebio	302,453.45		302,453.45
Ma. Helen Eborá	222,211.23		222,211.23
Irma Ebreo	361,234.49	372,543.00	733,777.49
TOTAL	P30,543,307.80	P15,229,352.50	P45,772,660.30

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

On September 30, 2014, the RTC promulgated a decision in Civil Case No. MC14-8775 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 due to absence of legislation and/or regulation to the contrary. A Motion for Reconsideration was filed by respondent but was denied on January 9, 2015.

Respondent appealed the lower court decision to the Court of Appeals, docketed as CA-G.R. CV No. 104374, which dismissed it via Resolution dated July 3, 2015. The Court of Appeals ruled that the proper appeal would have been to file a petition with the Supreme Court via Rule 45 of the Rules of Court. Respondent filed a Motion for Reconsideration, but it was also denied by the Court of Appeals.

Respondent then elevated the case before the Supreme Court by filing a Petition for Review on Certiorari. The case is still awaiting resolution by the High Tribunal.*cm*

Armed with a favorable RTC ruling, petitioners filed their respective administrative claims for refund of income tax with the BIR on June 11, 2015⁴ and on June 22, 2015⁵.

Due to the inaction of respondent on the refund claims, petitioner was prompted to file the present Petition for Review before this Court on July 13, 2015.

Respondent then filed his Answer⁶ on September 28, 2015.

The pre-trial conference was initially scheduled on November 12, 2015,⁷ but was subsequently cancelled and reset to December 10, 2015⁸. Thus, petitioners filed their Pre-Trial Brief⁹ on November 6, 2015; while respondent submitted his Pre-Trial Brief¹⁰ on December 3, 2015.

After presenting their witnesses, petitioners filed their Formal Offer of Evidence (for the Petitioners)¹¹ on October 17, 2016, consisting of Exhibits "P-1" to "P-17", inclusive of sub-markings.

In a Resolution¹² issued on December 12, 2016, the Court admitted all the formally offered exhibits as petitioner's evidence, except for Exhibit "P-2" for failure to submit the original document for comparison and Exhibit "P-7-2-a" for failure to submit the duly marked exhibit.

On December 12, 2016¹³ a Resolution to petitioners' FOE was issued admitting all except Exhibits "P-2" for failure to submit the original for comparison and "P-7-2-a" for failure to submit the duly marked exhibit.

On the other hand, respondent, through counsel, manifested that he will no longer be presenting evidence.¹⁴ 

⁴ Annex "A", Petition for Review, docket, vol. 1, pp. 134-144

⁵ Annex "B", Petition for Review, docket, vol. 1, pp. 145-155

⁶ Docket, vol. 1, pp. 208-221

⁷ Docket, vol. 1, pp. 222-223

⁸ Order, docket, vol. 1, p. 233

⁹ Docket, vol. 1, pp. 224-229

¹⁰ Docket, vol. 1, pp. 236-238

¹¹ Docket, vol. 2, pp. 631-666

¹² Docket, vol. 2, pp. 814-816

¹³ Docket, vol. 2, pp. 814-816

¹⁴ Order, docket, vol. 2, p. 820

The Court declared the instant case submitted for decision on April 12, 2017, after the filing of the Memorandum for the Petitioners with Manifestation¹⁵ on March 6, 2017 and the filing of respondent's Memorandum¹⁶ on April 7, 2017.¹⁷

ISSUES

The parties submitted the following issues for the Court's resolution:¹⁸

1. Whether or not the claim for refund and the Petition for Review were filed within the two-year prescriptive period provided under Section 229 of the NIRC; and
2. Whether or not petitioners are entitled to their claim for refund of income taxes paid in taxable years 2012 and 2013 alleged to be erroneously and/or illegally paid.

Petitioners' Arguments

On the jurisdictional issue and the timeliness of the filing of the claims for refund, petitioners presented a table with details of the dates of payment of each employee to prove that both the administrative and judicial claims were filed within the two year period pursuant to Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).

As regards the substantive issue of the claim, petitioners hold the theory that Philippine nationals employed by ADB are exempt from income tax on the compensation they received on the basis of categorical provisions contained in the ADB Charter. And being in the nature of a treaty, the Philippine Senate concurred in the ratification of the ADB Charter through Senate Resolution No. 6 dated March 16, 1966. On this basis, petitioners point out that since 1966 or for almost forty seven (47) years now, Filipino employees of ADB have been enjoying this tax exempt privilege without being assessed by the Bureau of Internal Revenue (BIR). *am*

¹⁵ Docket, vol. 2, pp. 821-835

¹⁶ Docket, vol. 2, pp. 839-859

¹⁷ Resolution, docket, vol. 2, p. 860

¹⁸ Issues, Joint Stipulation of Facts and Issues, docket, vol. 1, pp. 289-290

Thus, proceeding from this legal argument, petitioners maintain that the income tax payments made for taxable years 2012 and 2013 were erroneously and illegally collected by the government qualifying such payments as proper subjects of refund.

In addition, petitioners challenge the legality of the provisions of Revenue Memorandum Circular (RMC) No. 31-2013 which served as the focal point of the then Commissioner's authority to demand income tax payments from the *compensation* received by Filipino employees of the ADB. They cite the decision of the Regional Trial Court (RTC) in the case of *Erwin Salaveria and Portia Gonzales vs. Commissioner of Internal Revenue*¹⁹ which ruled that Section 2 (d) (1) of RMC 31-2013 is void for having been issued without legal basis, in excess of authority and without due process of law. In petitioners' minds, this is tantamount to the affirmation by the RTC of the tax exempt status of the compensation received by Filipino employees of the ADB.

In their Memorandum, petitioners manifested that they have no objection if the resolution of the issues in this case is deferred until after the Supreme Court resolves the appeal in G.R. No. 222214 following the aforesaid decision of the Court of Appeals.

Respondent's Counter-Arguments

Respondent asserts that this Court has no jurisdiction on the instant petition for their failure to file the claim for refund within the two-year prescriptive period pursuant to Section 229 of the NIRC of 1997.

Further, respondent raised the defense that the assailed decision of RTC Branch 213 of Mandaluyong City, from which petitioners based their claims for refund, is void. Respondent alleges that the power to rule on the validity of revenue issuances administered by the BIR is within the jurisdiction of this Court and not the regular courts.

On the substantive aspect of the claims for refund, respondent proffers the following legal arguments:

1. Petitioners are all Philippine citizens and residents of the Philippines and as such are subject to Philippine income tax law; 

¹⁹ Civil Case No. MC14-8775, September 30, 2014.

5. No refund shall be given resulting from avilment of incentives granted pursuant to special laws for which no actual payment was made.

RULING OF THE COURT

Pertinent to the resolution of the issue on the timely filing of the administrative and judicial claims for refund is Section 229 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

"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." (*Emphasis supplied*)

Based on the afore-quoted provision, the claim for refund must be filed with the Commissioner of Internal Revenue and the Court of Tax Appeals within the two-year prescriptive period from the date of payment of tax.

Below is the table detailing the significant dates relative to petitioners' respective income tax payments:

Name of Employee	Date of Full Payment of Income Tax		Last day to file refund claim		Date of filing of Admin. Claim	Date of filing of Judicial Claim
	2012	2013	2012	2013		
Licel Calderon	July 15, 2013 ²¹		July 15, 2015		June 11, 2015	July 13, 2015 

²¹ Exhibit "P-6-11", docket, vol. 1, p. 345

Juliet Calingo	July 15, 2013 ²²		July 15, 2015		June 11, 2015	July 13, 2015
Shiela Dorothy Callet	July 15, 2013 ²³		July 15, 2015		June 11, 2015	July 13, 2015
Carmela Canare	July 15, 2013 ²⁴	April 14, 2014 ²⁵	July 15, 2015	April 14, 2016	June 11, 2015	July 13, 2015
Agnes Canillas	July 15, 2013 ²⁶	April 14, 2014; July 11, 2014 ²⁷	July 15, 2015	July 11, 2016	June 11, 2015	July 13, 2015
Ma. Laarni Canonizado	July 15, 2013 ²⁸		July 15, 2015		June 11, 2015	July 13, 2015
Rebecca Canoy	July 15, 2013 ²⁹		July 15, 2015		June 11, 2015	July 13, 2015
Odessa Canto	July 15, 2013 ³⁰	April 15, 2014 ³¹ and July 14, 2014 ³²	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Cecilia Caparas	July 15, 2013 ³³ , September 2, 2013 ³⁴		July 15, 2015		June 11, 2015	July 13, 2015
Eileen Capilit	July 15, 2013 ³⁵		July 15, 2015		June 11, 2015	July 13, 2015
Ma. Virginita Capulong	July 15, 2013 ³⁶		July 15, 2015		June 11, 2015	July 13, 2015
Ninebeth Carandang	July 15, 2013 ³⁷ , August 30, 2013 ³⁸	April 15, 2014 ³⁹	July 15, 2015	April 15, 2016	June 11, 2015	July 13, 2015
Mary Grace Caranto	July 15, 2013 ⁴⁰		July 15, 2015		June 11, 2015	July 13, 2015
Helen Carnecer	July 15, 2013 ⁴¹		July 15, 2015		June 11, 2015	July 13, 2015
Cythia Carreon	July 15, 2013 ⁴²		July 15, 2015		June 11, 2015	July 13, 2015
Xandro Joaquin Castañeda	July 15, 2013 ⁴³		July 15, 2015		June 11, 2015	July 13, 2015
Leah Ann Castro	July 15, 2013 ⁴⁴		July 15, 2015		June 11, 2015	July 13, 2015
Ma. Fatima Cheryl Catacutan	July 15, 2013 ⁴⁵		July 15, 2015		June 11, 2015	July 13, 2015
Sylvia Catapang	July 15, 2013 ⁴⁶	April 14, 2014 and July 11, 2014 ⁴⁷	July 15, 2015	July 11, 2016	June 11, 2015	July 13, 2015
Ana Cervantes	July 15, 2013 ⁴⁸		July 15, 2015		June 11, 2015	July 13, 2015
Laurie Ann Cervantes	July 15, 2013 ⁴⁹		July 15, 2015		June 11, 2015	July 13, 2015

- ²² Exhibit "P-6-1", docket, vol. 1, p. 345
²³ Exhibit "P-6-33", docket, vol. 1, p. 346
²⁴ Exhibit "P-6-12", docket, vol. 1, p. 345
²⁵ Exhibit "P-5-1", docket, vol. 1, p. 339
²⁶ Exhibit "P-6-2", docket, vol. 1, p. 345
²⁷ Exhibit "P-5-2", docket, vol. 1, p. 339
²⁸ Exhibit "P-6-3", docket, vol. 1, p. 345
²⁹ Exhibit "P-6-29", docket, vol. 1, p. 346
³⁰ Exhibit "P-6-40", docket, vol. 1, p. 346
³¹ Exhibit "P-5-30", docket, vol. 1, p. 343
³² Exhibit "P-5-31", docket, vol. 1, p. 343
³³ Exhibit "P-6-13", docket, vol. 1, p. 345
³⁴ Exhibit "P-5-3", docket, vol. 1, p. 340
³⁵ Exhibit "P-6-43", docket, vol. 1, p. 346
³⁶ Exhibit "P-6-4", docket, vol. 1, p. 345
³⁷ Exhibit "P-6-14", docket, vol. 1, p. 345
³⁸ Exhibit "P-5-5", docket, vol. 1, p. 340
³⁹ Exhibit "P-5-4", docket, vol. 1, p. 340
⁴⁰ Exhibit "P-6-15", docket, vol. 1, p. 345
⁴¹ Exhibit "P-6-34", docket, vol. 1, p. 346
⁴² Exhibit "P-6-16", docket, vol. 1, p. 345
⁴³ Exhibit "P-6-30", docket, vol. 1, p. 346
⁴⁴ Exhibit "P-6-17", docket, vol. 1, p. 345
⁴⁵ Exhibit "P-6-44", docket, vol. 1, p. 346
⁴⁶ Exhibit "P-6-27", docket, vol. 1, p. 346
⁴⁷ Exhibit "P-5-27", docket, vol. 1, p. 343
⁴⁸ Exhibit "P-6-39", docket, vol. 1, p. 346
⁴⁹ Exhibit "P-6-5", docket, vol. 1, p. 345

Ma. Rowena Cham	July 15, 2013 ⁵⁰	March 21, 2014 ⁵¹ and July 14, 2014 ⁵²	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Mary Anne Chaneco	July 15, 2013 ⁵³		July 15, 2015		June 11, 2015	July 13, 2015
Azaleah Chanyongco	July 15, 2013 ⁵⁴		July 15, 2015		June 11, 2015	July 13, 2015
Candy Chao	July 15, 2013 ⁵⁵	April 14, 2014 ⁵⁶	July 15, 2015	April 14, 2016	June 11, 2015	July 13, 2015
Patricia Tuazon Ching	July 15, 2013 ⁵⁷ ; April 12, 2013 ⁵⁸	April 10, 2014 ⁵⁹ and July 14, 2014 ⁶⁰	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Geraldine Chu	July 15, 2013 ⁶¹	April 10, 2014 and July 11, 2014 ⁶²	July 15, 2015	July 11, 2016	June 11, 2015	July 13, 2015
Maila Cinco	July 15, 2013 ⁶³		July 15, 2015		June 11, 2015	July 13, 2015
Marileth Co	July 15, 2013 ⁶⁴	April 2, 2014 ⁶⁵	July 15, 2015	April 2, 2016	June 11, 2015	July 13, 2015
Christine Dianne Cobarrubias	July 15, 2013 ⁶⁶		July 15, 2015		June 11, 2015	July 13, 2015
Ma. Loreca Cobilla	July 15, 2013 ⁶⁷		July 15, 2015		June 11, 2015	July 13, 2015
Jerry Colasito	July 15, 2013 ⁶⁸		July 15, 2015		June 11, 2015	July 13, 2015
Paulita Comia	July 15, 2013 ⁶⁹	April 15, 2014; July 10, 2014 ⁷⁰	July 15, 2015	July 10, 2016	June 11, 2015	July 13, 2015
Camille Contreras	July 15, 2013 ⁷¹	April 14, 2014 ⁷² ; July 14, 2014 ⁷³	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Nedilla Correa	July 15, 2013 ⁷⁴	March 6, 2014 ⁷⁵	July 15, 2015	March 6, 2016	June 11, 2015	July 13, 2015
Josefa Maria Coscolluela	July 15, 2013 ⁷⁶	April 14, 2014; July 8, 2014 ⁷⁷	July 15, 2015	July 8, 2016	June 11, 2015	July 13, 2015
Melanie Covar	July 12, 2013 ⁷⁸	April 11, 2014 ⁷⁹ ; July 15, 2014 ⁸⁰	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015

- ⁵⁰ Exhibit "P-10", docket, vol. 1, p. 358
⁵¹ Exhibit "P-6-31", docket, vol. 1, p. 346
⁵² Exhibit "P-5-6", docket, vol. 1, p. 340
⁵³ Exhibit "P-6-18", docket, vol. 1, p. 345
⁵⁴ Exhibit "P-6-19", docket, vol. 1, p. 345
⁵⁵ Exhibit "P-6-45", docket, vol. 1, p. 346
⁵⁶ Exhibit "P-5-22", docket, vol. 1, p. 342
⁵⁷ Exhibit "P-6-46", docket, vol. 1, p. 346
⁵⁸ Exhibit "P-5-26", docket, vol. 1, p. 343
⁵⁹ Exhibit "P-5-25", docket, vol. 1, p. 343
⁶⁰ Exhibit "P-5-26", docket, vol. 1, p. 343
⁶¹ Exhibit "P-6-20", docket, vol. 1, p. 345
⁶² Exhibit "P-5-7", docket, vol. 1, p. 340
⁶³ Exhibit "P-8", docket, vol. 1, p. 352
⁶⁴ Exhibit "P-6-38", docket, vol. 1, p. 346
⁶⁵ Exhibit "P-5-28", docket, vol. 1, p. 343
⁶⁶ Exhibit "P-6-21", docket, vol. 1, p. 345
⁶⁷ Exhibit "P-5-8", docket, vol. 1, p. 340
⁶⁸ Exhibit "P-6-42", docket, vol. 1, p. 346
⁶⁹ Exhibit "P-6-6", docket, vol. 1, p. 345
⁷⁰ Exhibit "P-5-9", docket, vol. 1, p. 340
⁷¹ Exhibit "P-6-35", docket, vol. 1, p. 346
⁷² Exhibit "P-5-10", docket, vol. 1, p. 341
⁷³ Exhibit "P-5-11", docket, vol. 1, p. 341
⁷⁴ Exhibit "P-6-22", docket, vol. 1, p. 345
⁷⁵ Exhibit "P-5-12", docket, vol. 1, p. 341
⁷⁶ Exhibit "P-6-28", docket, vol. 1, p. 346
⁷⁷ Exhibit "P-5-29", docket, vol. 1, p. 343
⁷⁸ Exhibit "P-11", docket, vol. 1, p. 361
⁷⁹ Exhibit "P-5-23", docket, vol. 1, p. 342
⁸⁰ Exhibit "P-5-24", docket, vol. 1, p. 343

Mary France Creus	July 15, 2013 ⁸¹	March 21, 2014 ⁸²	July 15, 2015	March 21, 2016	June 11, 2015	July 13, 2015
Marisol Crisostomo	July 15, 2013 ⁸³		July 15, 2015		June 11, 2015	July 13, 2015
Claribella Cruz	July 15, 2013 ⁸⁴		July 15, 2015		June 11, 2015	July 13, 2015
Fermirelyn Cruz	July 15, 2013 ⁸⁵	April 8, 2014 ⁸⁶	July 15, 2015	April 8, 2016	June 11, 2015	July 13, 2015
Gene Oliver Cruz	July 15, 2013 ⁸⁷	April 8, 2014 ⁸⁸	July 15, 2015	April 8, 2016	June 11, 2015	July 13, 2015
Grace Cruz	July 15, 2013 ⁸⁹	April 15, 2014 ⁹⁰ ; July 15, 2014 ⁹¹	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015
Jerome Cruz	July 15, 2013 ⁹²		July 15, 2015		June 11, 2015	July 13, 2015
Kristine Cruz	July 15, 2013 ⁹³	April 10, 2014; June 25, 2014 ⁹⁴	July 15, 2015	June 25, 2016	June 11, 2015	July 13, 2015
Ma. Lenina Tanya Cruz	July 15, 2013 ⁹⁵		July 15, 2015		June 11, 2015	July 13, 2015
Margaret Rose Cruz	July 15, 2013 ⁹⁶		July 15, 2015		June 11, 2015	July 13, 2015
Mary Grace Kristine Cruz	July 15, 2013 ⁹⁷		July 15, 2015		June 11, 2015	July 13, 2015
Mary Jane Cruz	July 15, 2013 ⁹⁸	April 15, 2014 ⁹⁹ ; July 15, 2014 ¹⁰⁰	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015
Shiela Cruz	July 15, 2015 ¹⁰¹		July 15, 2015		June 11, 2015	July 13, 2015
Ligaya Cuevas-Arce	July 15, 2013 ¹⁰²	April 14, 2014 ¹⁰³	July 15, 2015	April 14, 2016	June 11, 2015	July 13, 2015
Tadeo Culla	July 15, 2013 ¹⁰⁴	April 4, 2014; July 4, 2014 ¹⁰⁵	July 15, 2015	July 4, 2016	June 11, 2015	July 13, 2015
Ramon Dacio	July 15, 2013 ¹⁰⁶		July 15, 2015		June 11, 2015	July 13, 2015
Lailanie Danao	July 15, 2013 ¹⁰⁷		July 15, 2015		June 11, 2015	July 13, 2015
Marie Remilyn Dandan	July 15, 2013 ¹⁰⁸	April 15, 2014; June 30, 2014 ¹⁰⁹	July 15, 2015	June 30, 2016	June 11, 2015	July 13, 2015
Marie Lullete Daria	July 15, 2013 ¹¹⁰		July 15, 2015		June 11, 2015	July 13, 2015
Shiela Anne David-Castro	July 15, 2013 ¹¹¹		July 15, 2015		June 11, 2015	July 13, 2015

- 81 Exhibit "P-6-23", docket, vol. 1, p. 346
82 Exhibit "P-6-32", docket, vol. 1, p. 346
83 Exhibit "P-6-7", docket, vol. 1, p. 345
84 Exhibit "P-6-8", docket, vol. 1, p. 345
85 Exhibit "P-5-13", docket, vol. 1, p. 341
86 Exhibit "P-5-14", docket, vol. 1, p. 341
87 Exhibit "P-6-36", docket, vol. 1, p. 346
88 Exhibit "P-5-19", docket, vol. 1, p. 342
89 Exhibit "P-5-15", docket, vol. 1, p. 341
90 Exhibit "P-5-15", docket, vol. 1, p. 341
91 Exhibit "P-5-20", docket, vol. 1, p. 342
92 Exhibit "P-6-47", docket, vol. 1, p. 346
93 Exhibit "P-6-24", docket, vol. 1, p. 346
94 Exhibit "P-5-16", docket, vol. 1, p. 341
95 Exhibit "P-6-9", docket, vol. 1, p. 345
96 Exhibit "P-7-2", docket, vol. 1, p. 350
97 Exhibit "P-6-25", docket, vol. 1, p. 346
98 Exhibit "P-6-10", docket, vol. 1, p. 345
99 Exhibit "P-5-17", docket, vol. 1, p. 342
100 Exhibit "P-5-18", docket, vol. 1, p. 342
101 Exhibit "P-6-26", docket, vol. 1, p. 346
102 Exhibit "P-6-41", docket, vol. 1, p. 346
103 Exhibit "P-5-32", docket, vol. 1, p. 344
104 Exhibit "P-6-37", docket, vol. 1, p. 346
105 Exhibit "P-5-21", docket, vol. 1, p. 342
106 Exhibit "P-4-1", docket, vol. 1, p. 337
107 Exhibit "P-4-2", docket, vol. 1, p. 337
108 Exhibit "P-4-3", docket, vol. 1, p. 337
109 Exhibit "P-3-1", docket, vol. 1, p. 330
110 Exhibit "P-4-4", docket, vol. 1, p. 337
111 Exhibit "P-4-5", docket, vol. 1, p. 337

Janeth De Belen	July 15, 2013 ¹¹²		July 15, 2015		June 11, 2015	July 13, 2015
Juan Armando De Borja	July 15, 2013 ¹¹³	April 15, 2014 ¹¹⁴	July 15, 2015	April 15, 2016	June 11, 2015	July 13, 2015
Elena De Castro	July 15, 2013 ¹¹⁵		July 15, 2015		June 11, 2015	July 13, 2015
Maria Bernadette De Castro	July 15, 2013 ¹¹⁶	April 10, 2014 ¹¹⁷ ; July 14, 2014 ¹¹⁸	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Modesta De Castro	July 15, 2013 ¹¹⁹		July 15, 2015		June 11, 2015	July 13, 2015
Arnel De Gracia	July 15, 2013 ¹²⁰	April 15, 2014; July 15, 2014 ¹²¹			June 11, 2015	July 13, 2015
Charmaine Ruth De Guzman	July 15, 2013 ¹²²	March 27, 2014 ¹²³	July 15, 2015	March 27, 2016	June 11, 2015	July 13, 2015
Ma. Cielo De Guzman	July 15, 2013 ¹²⁴	April 7, 2014 ¹²⁵	July 15, 2015	April 7, 2016	June 11, 2015	July 13, 2015
Maria Guia De Guzman	July 15, 2013 ¹²⁶		July 15, 2015		June 11, 2015	July 13, 2015
Mia Gracia De Guzman	July 15, 2013 ¹²⁷	April 11, 2014 ¹²⁸	July 15, 2015	April 11, 2016	June 11, 2015	July 13, 2015
Jennifer De Jesus	July 15, 2013 ¹²⁹		July 15, 2015		June 11, 2015	July 13, 2015
Rosarie Celine De Leon	July 15, 2013 ¹³⁰	April 10, 2014 ¹³¹	July 15, 2015	April 10, 2016	June 11, 2015	July 13, 2015
Mary Jane De Ocampo	July 15, 2013 ¹³²		July 15, 2015		June 11, 2015	July 13, 2015
Eduardo De Veyra	July 15, 2013 ¹³³	April 11, 2014 ¹³⁴	July 15, 2015	April 11, 2016	June 11, 2015	July 13, 2015
Marisol Del Rosario	July 15, 2013 ¹³⁵	April 10, 2014; July 11, 2014 ¹³⁶	July 15, 2015	July 11, 2016	June 11, 2015	July 13, 2015
Marlo Del Rosario	July 15, 2013 ¹³⁷		July 15, 2015		June 11, 2015	July 13, 2015
Hazel Joy Dela Cruz	July 15, 2013 ¹³⁸	March 21, 2014 ¹³⁹	July 15, 2015	March 21, 2016	June 11, 2015	July 13, 2015
Ramoncito Dela Cruz	July 15, 2013 ¹⁴⁰	April 10, 2014 ¹⁴¹ ; July 15, 2014 ¹⁴²	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015

- ¹¹² Exhibit "P-7-1", docket, vol. 1, p. 347
¹¹³ Exhibit "P-4-6", docket, vol. 1, p. 337
¹¹⁴ Exhibit "P-3-2", docket, vol. 1, p. 330
¹¹⁵ Exhibit "P-4-7", docket, vol. 1, p. 337
¹¹⁶ Exhibit "P-4-8", docket, vol. 1, p. 337
¹¹⁷ Exhibit "P-3-3", docket, vol. 1, p. 330
¹¹⁸ Exhibit "P-3-4", docket, vol. 1, p. 330
¹¹⁹ Exhibit "P-4-9", docket, vol. 1, p. 337
¹²⁰ Exhibit "P-4-10", docket, vol. 1, p. 337
¹²¹ Exhibit "P-3-5", docket, vol. 1, p. 330
¹²² Exhibit "P-4-11", docket, vol. 1, p. 337
¹²³ Exhibit "P-3-6", docket, vol. 1, p. 330
¹²⁴ Exhibit "P-4-12", docket, vol. 1, p. 337
¹²⁵ Exhibit "P-3-7", docket, vol. 1, p. 331
¹²⁶ Exhibit "P-4-14", docket, vol. 1, p. 337
¹²⁷ Exhibit "P-4-13", docket, vol. 1, p. 337
¹²⁸ Exhibit "P-3-8", docket, vol. 1, p. 331
¹²⁹ Exhibit "P-4-15", docket, vol. 1, p. 337
¹³⁰ Exhibit "P-4-16", docket, vol. 1, p. 337
¹³¹ Exhibit "P-3-9", docket, vol. 1, p. 331
¹³² Exhibit "P-4-17", docket, vol. 1, p. 337
¹³³ Exhibit "P-4-18", docket, vol. 1, p. 337
¹³⁴ Exhibit "P-3-10", docket, vol. 1, p. 331
¹³⁵ Exhibit "P-4-19", docket, vol. 1, p. 337
¹³⁶ Exhibit "P-3-11", docket, vol. 1, p. 331
¹³⁷ Exhibit "P-4-20", docket, vol. 1, p. 337
¹³⁸ Exhibit "P-4-21", docket, vol. 1, p. 337
¹³⁹ Exhibit "P-4-48", docket, vol. 1, p. 338
¹⁴⁰ Exhibit "P-4-22", docket, vol. 1, p. 337
¹⁴¹ Exhibit "P-3-12", docket, vol. 1, p. 332
¹⁴² Exhibit "P-3-13", docket, vol. 1, p. 332

Shiela Dela Cruz	July 15, 2013 ¹⁴³	April 14, 2014 ¹⁴⁴	July 15, 2015	April 14, 2016	June 11, 2015	July 13, 2015
Fernando Dela Fuente	July 15, 2013 ¹⁴⁵	April 10, 2014 ¹⁴⁶	July 15, 2015	April 10, 2016	June 11, 2015	July 13, 2015
Marcela Leonila Dela Merced	July 15, 2013 ¹⁴⁷		July 15, 2015		June 11, 2015	July 13, 2015
Exelsa Dela Santa	July 15, 2013 ¹⁴⁸	April 14, 2014; July 15, 2014 ¹⁴⁹	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015
Ma. Melissa Dela Torre	July 15, 2013 ¹⁵⁰		July 15, 2015		June 11, 2015	July 13, 2015
Lamberto Delgado Jr.	July 15, 2013 ¹⁵¹	April 8, 2014 ¹⁵²	July 15, 2015	April 8, 2016	June 11, 2015	July 13, 2015
Czareana Delio	July 15, 2013 ¹⁵³		July 15, 2015		June 11, 2015	July 13, 2015
Ma. Cristina Delos Santos	July 15, 2013 ¹⁵⁴	April 10, 2014; July 9, 2014 ¹⁵⁵	July 15, 2015	July 9, 2016	June 11, 2015	July 13, 2015
Merdinia Deguilla	July 15, 2013 ¹⁵⁶		July 15, 2015		June 11, 2015	July 13, 2015
Lyrh Tatiana Devanadera	July 15, 2013 ¹⁵⁷	April 10, 2014 ¹⁵⁸	July 15, 2015	April 10, 2016	June 11, 2015	July 13, 2015
Vladimer Diamonon	July 15, 2013 ¹⁵⁹	March 21, 2014 ¹⁶⁰	July 15, 2015	March 21, 2016	June 11, 2015	July 13, 2015
Maria Carmen Diaz	July 15, 2013 ¹⁶¹	March 18, 2014 ¹⁶²	July 15, 2015	March 18, 2016	June 11, 2015	July 13, 2015
Vanessa Dimaano	July 15, 2013 ¹⁶³		July 15, 2015		June 11, 2015	July 13, 2015
Linda Dimayuga	July 15, 2013 ¹⁶⁴		July 15, 2015		June 11, 2015	July 13, 2015
Ma. Juana Dimayuga	July 15, 2013 ¹⁶⁵	April 14, 2014 ¹⁶⁶ ; July 14, 2014 ¹⁶⁷	July 15, 2015	July 14, 2016	June 11, 2015	July 13, 2015
Irene Dionisio	July 15, 2013 ¹⁶⁸	April 14, 2014; July 15, 2014 ¹⁶⁹	July 15, 2015	July 15, 2016	June 11, 2015	July 13, 2015
Michael Diza	July 15, 2013 ¹⁷⁰		July 15, 2015		June 11, 2015	July 13, 2015
Aivy Katherine Dizon	July 15, 2013 ¹⁷¹		July 15, 2015		June 11, 2015	July 13, 2015
Madeline Dizon	July 15, 2013 ¹⁷²	April 14, 2014 ¹⁷³	July 15, 2015	April 14, 2016	June 11, 2015	July 13, 2015

¹⁴³ Exhibit "P-4-23", docket, vol. 1, p. 337
¹⁴⁴ Exhibit "P-3-14", docket, vol. 1, p. 332
¹⁴⁵ Exhibit "P-4-24", docket, vol. 1, p. 337
¹⁴⁶ Exhibit "P-3-15", docket, vol. 1, p. 332
¹⁴⁷ Exhibit "P-9", docket, vol. 1, p. 355
¹⁴⁸ Exhibit "P-4-25", docket, vol. 1, p. 337
¹⁴⁹ Exhibit "P-3-16", docket, vol. 1, p. 332
¹⁵⁰ Exhibit "P-4-26", docket, vol. 1, p. 337
¹⁵¹ Exhibit "P-4-27", docket, vol. 1, p. 337
¹⁵² Exhibit "P-3-17", docket, vol. 1, p. 332
¹⁵³ Exhibit "P-4-28", docket, vol. 1, p. 337
¹⁵⁴ Exhibit "P-4-29", docket, vol. 1, p. 337
¹⁵⁵ Exhibit "P-3-18", docket, vol. 1, p. 333
¹⁵⁶ Exhibit "P-4-30", docket, vol. 1, p. 337
¹⁵⁷ Exhibit "P-4-31", docket, vol. 1, p. 337
¹⁵⁸ Exhibit "P-3-19", docket, vol. 1, p. 333
¹⁵⁹ Exhibit "P-4-32", docket, vol. 1, p. 337
¹⁶⁰ Exhibit "P-4-49", docket, vol. 1, p. 338
¹⁶¹ Exhibit "P-4-33", docket, vol. 1, p. 337
¹⁶² Exhibit "P-3-20", docket, vol. 1, p. 333
¹⁶³ Exhibit "P-4-34", docket, vol. 1, p. 338
¹⁶⁴ Exhibit "P-4-35", docket, vol. 1, p. 338
¹⁶⁵ Exhibit "P-4-36", docket, vol. 1, p. 338
¹⁶⁶ Exhibit "P-3-21", docket, vol. 1, p. 333
¹⁶⁷ Exhibit "P-3-22", docket, vol. 1, p. 333
¹⁶⁸ Exhibit "P-4-37", docket, vol. 1, p. 338
¹⁶⁹ Exhibit "P-3-23", docket, vol. 1, p. 333
¹⁷⁰ Exhibit "P-4-38", docket, vol. 1, p. 338
¹⁷¹ Exhibit "P-4-39", docket, vol. 1, p. 338
¹⁷² Exhibit "P-4-40", docket, vol. 1, p. 338
¹⁷³ Exhibit "P-3-24", docket, vol. 1, p. 333

Liza Anne Domingo	July 15, 2013 ¹⁷⁴		July 15, 2015		June 11, 2015	July 13, 2015
Michelle Domingo	July 15, 2013 ¹⁷⁵		July 15, 2015		June 11, 2015	July 13, 2015
Julius Cesar Duque	July 15, 2013 ¹⁷⁶	April 7, 2014 ¹⁷⁷ ; July 7, 2014 ¹⁷⁸	July 15, 2015	July 7, 2016	June 11, 2015	July 13, 2015
Maria Josephine Duque-Cornia	July 15, 2013 ¹⁷⁹	April 15, 2014 ¹⁸⁰	July 15, 2015	April 15, 2016	June 11, 2015	July 13, 2015
Jessica Ebio	July 15, 2013 ¹⁸¹		July 15, 2015		June 22, 2015	July 13, 2015
Ma. Helen Eborá	July 15, 2013 ¹⁸²		July 15, 2015		June 22, 2015	July 13, 2015
Irma Ebreo	July 15, 2013 ¹⁸³	March 21, 2014 ¹⁸⁴	July 15, 2015	March 21, 2016	June 22, 2015	July 13, 2015

Applying the aforequoted provisions of law and the foregoing table, this Court finds that petitioners have established that they were able to file both their administrative and judicial claims for refund for 2012 and 2013 within the two-year period.

We now proceed to the main issues of this case.

Petitioners rely heavily on Chapter VIII, Article 56 (2) of the ADB Charter as the basis of the non-imposition of income tax on their compensation as ADB employees and we quote:

“ CHAPTER VIII

Article 56.

(2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the 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)

The above proviso in the ADB Charter has in effect been “carved in stone” as it has been the practice for several decades of the ADB not to withhold tax on the compensation of the people covered by the aforequoted Section 56 (including Filipino employees) which practice *en*

¹⁷⁴ Exhibit “P-4-41”, docket, vol. 1, p. 338

¹⁷⁵ Exhibit “P-4-42”, docket, vol. 1, p. 338

¹⁷⁶ Exhibit “P-4-44”, docket, vol. 1, p. 338

¹⁷⁷ Exhibit “P-3-25”, docket, vol. 1, p. 334

¹⁷⁸ Exhibit “P-3-26”, docket, vol. 1, p. 334

¹⁷⁹ Exhibit “P-4-43”, docket, vol. 1, p. 338

¹⁸⁰ Exhibit “P-3-27”, docket, vol. 1, p. 334

¹⁸¹ Exhibit “P-4-45”, docket, vol. 1, p. 338

¹⁸² Exhibit “P-4-46”, docket, vol. 1, p. 338

¹⁸³ Exhibit “P-4-47”, docket, vol. 1, p. 338

¹⁸⁴ Exhibit “P-4-50”, docket, vol. 1, p. 338

was claimed to have been disturbed only by the issuance of RMC 31-2013 dated April 12, 2013, the relevant portions of which were quoted earlier.

The ADB Charter and the ADB Headquarters Agreement" both partake the nature of a treaty or an international agreement¹⁸⁵.

As an international agreement, it forms part of the law of the land in accordance with Section 2, Article II of the 1987 Constitution which reads as follows:

ARTICLE II **Declaration of Principles**

Section 2. The Philippines renounces war as an instrument of national policy, ***adopts the generally accepted principles of international law as part of the law of the land*** and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations." (emphasis supplied)

This constitutional principle adheres to the basic tenet of international law of *pacta sunt servanda* or international comity which demands the performance in good faith of treaty obligations as aptly defined in the case of *Deutsche Bank AG Manila Branch v. CIR*¹⁸⁶, and we quote:

"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."

The instant case, however, clearly indicates that the issue at bar is not a controversy suggestive of whether our country should observe its commitments under an international agreement but rather centers on its coverage of the privileges and the interpretation which may or *am*

¹⁸⁵ Memorandum Circular issued by the Office of the President on May 31, 1994 and signed by President Fidel Ramos which in part provides, thus,:

"The Charter and the Headquarters Agreement, which are *international treaties* executed by the Executive Branch of the Government of the Republic of the Philippines and ratified by the Senate of the Republic of the Philippines, are incorporated as part of the law of the Republic of the Philippines." (italics ours).

¹⁸⁶ G.R. No.188550 promulgated on August 19, 2013.

may not include tax exemption of Filipino employees of the ADB on their compensation income.

The very same provisions, both of the ADB Charter and the ADB Headquarters Agreement, relied upon by the petitioners are the same ones that would produce the bases of this Court's denial of their petition. An examination of the entirety of Section 56 (2), Chapter VIII of the ADB Charter clearly contains an exception to the tax exempt privilege accorded by this Agreement to the covered ADB personnel as encapsulated by the clause "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."

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 prerogative in taxing its citizens i.e. Philippine 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".¹⁸⁷ (italics ours)

However, unlike the municipal laws of a member country, treaties or international agreements are not enacted by the Legislative branch of the government but instead ratified by the Philippine Senate as what was done in the case of the ADB Charter. Under the 1935 Philippine Constitution which was the prevailing Constitution in 1966, it is the President of the Philippines, as head of State who ratifies the treaty while the Philippine Senate concurs with the President's ratification.¹⁸⁸ Then as now, in strict constitutional legalese, ratification of treaties is made by the President while concurrence is done by two thirds of all the members of the Senate.¹⁸⁹ Such ratification and concurrence are the operative acts that endow the ADB Charter with the character of a law.

¹⁸⁷ Philip Morris Inc. vs. Court of Appeals, G.R. No. 91332 dated July 16, 1993.

¹⁸⁸Article VII, Section 10 of the 1935 Philippine Constitution:

"The President shall have the power, with the concurrence of two thirds of all the members of the Senate to make treaties xxx xxx. ". "

¹⁸⁹ Article VII, Section 21 of the 1987 Constitution. " No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

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.¹⁹⁰

In our analysis of the taxability of the compensation received by Filipino employees of the ADB, we go no further than the statements contained in the ADB Charter and the presidential ratification which followed where then President Ferdinand Marcos declared that the Philippine government "retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals of the Philippines." This Court finds that this particular statement overrules and clarifies any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB and upholds the applicability of national laws on taxation insofar as their compensations are concerned.

Under our national tax laws, Philippine citizens are taxable on their income derived from both inside and outside the country.

Section 23 of the 1997 National Internal Revenue Code (NIRC) specifically provides as follows:

"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."

Section 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."

¹⁹⁰ Pharmaceutical & Health Care Assn. of the Philippines vs. Health /secretary Duque, et. Al. , G.R. No. 173034 dated October 19, 2007.

We cannot take cognizance of the declarations made by the RTC in its decision in the case entitled "*Erwin Salaveria and Portia Gonzales vs. Commissioner of Internal Revenue*", which declared void the provisions of RMC No. 31-2013 issued on April 12, 2013 for being issued without legal basis. Decisions of lower courts are not binding precedents as succinctly enunciated by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*¹⁹¹, viz:

"Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system".

We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord with the ADB Charter and the subsequent ratification made by the President of the Philippines.

The contention of the petitioners that the exclusion of Filipino employees from the tax- exempt provisions of the ADB Charter would entail an enactment of an enabling law to put this into effect is bereft of merit as it is clear that the Philippines had already enacted its own Tax Code at the time of the ratification of the ADB Charter imposing the types and rates of tax of citizens of the Philippines. The word "reservation" in the aforementioned ratification therefore is to be construed as an excepting clause to the tax exemptions found in the treaty establishing the ADB.

In the case of *PHAP vs. Duque*¹⁹², 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 

¹⁹¹ G.R. No. 197525 dated June 4, 2014.

¹⁹² G.R. No. 173034 dated October 9, 2007.

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. (emphasis supplied)

By the same token, both the ADB Charter and the ADB Headquarters Agreement became valid and effective and had the force and effect of a municipal law upon the concurrence of the Senate as prescribed by the Constitution. Such process no longer necessitated a local legislation for it to take effect as the concurrence of the Senate was sufficient to transform the treaty as part of the "domestic law" of the land.

There should be no question then that the tax exemption on the compensation income of the Filipino employees of the ADB are subject to tax and that respondent Commissioner of Internal Revenue did not abuse his discretion in issuing the controverted RMC No. 31-2013.

However, this Court finds that the clarificatory nature of the provisions of RMC 31-2013 issued on April 12, 2013, should apply prospectively and should not affect the tax exempt privilege availed of by the Filipino ADB employees in 2012 (prior to the issuance of RMC 31-2013).

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.

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. *am*

However despite these clear wordings on its effectivity, respondent still proceeded to collect income tax payments from petitioner starting 2012.

Seen against the backdrop of confirmations and affirmations of various revenue officials that their income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the principles of fair play and substantial justice dictate that its provisions should apply to claims starting only from 2013 and onwards.

For emphasis, we provide below the various pronouncements of revenue officials with regard to the taxability of the income tax payments of ADB personnel, to wit:

1. In BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, in response to a query on the taxability of the compensation income of ADB personnel, stated as follows:

"Such being the case, Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank xxx xxx are subject to the preferential tax of 15% of their gross compensation income."

2. In a Letter Opinion dated January 29, 2001, 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.
3. 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 opined that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

The ADB as employer as well as the concerned employees should not be faulted on the apparently confirmatory but inconsistent opinions of senior officials of the BIR. It was only by the issuance of RMC 31-2013 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:

xxx

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

More than the lifeblood doctrine, we find that the principles of fundamental fairness and equity behoove us to apply the non-retroactive rule under Section 246 of the Tax Code and we quote:

"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 "(emphasis supplied)

In the case of *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*¹⁹³, 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 

¹⁹³ G.R. No. L-52306 dated October 12, 1981.

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.

xxx xxx xxx

" without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax ."

Further in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.*¹⁹⁴, the Supreme Court enunciated the non-retroactivity principle in this manner:

"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."

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

It bears stressing 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 who relied heavily on the pronouncements/interpretations made by the government officials earlier mentioned. To put it more concretely, the Filipino employees were not ready to incur such huge tax obligations for the past taxable year 2012, neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits, assets if they fail to settle such deficiency income tax assessment.

WHEREFORE, in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED.**

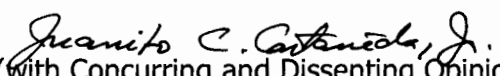
¹⁹⁴ G.R. No. 117982 dated February 6, 1997.

Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of Php30,543,307.80 to be individually allocated based on the tabular summary provided earlier, representing the illegally collected income taxes for taxable year 2012.

As regards the 2013 claim for tax refund/tax credit certificate in the amount of Php15,229,352.50, the same is hereby **DENIED** for lack of legal basis.


CATHERINE T. MANAHAN
Associate Justice

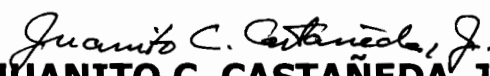
WE CONCUR:


(with Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

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's Division.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

LICEL CALDERON, ET AL.,
Petitioner,

CTA CASE NO. 9090

Members:

-versus-

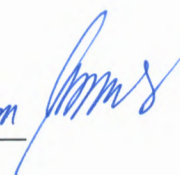
**Castañeda, Jr., Chairperson,
Casanova
Manahan, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

MAR 27 2018

10:20 AM



X-----X

CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., J.:

I concur with the *ponencia* of J. Manahan on the denial of the claim for refund/tax credit of income taxes paid in 2013.

However, with due respect, I am constrained to disagree on the grant of the claim for refund/tax credit of income taxes paid in 2012.

Petitioners argue that the income tax payments made by them were erroneously and/or illegally collected by the respondent for failure of the latter to recognize the tax-exempt status granted to ADB employees.

Petitioners further assert that the Filipino ADB employees are exempt from income tax since the establishment of the ADB. There has been no subsequent or enabling legislation that modified or *ge*

otherwise reinterpreted the ADB Charter provisions on "Exemption from Taxation" and that, in addition, their tax-exempt status has always been observed and practiced.

Contrary to these arguments, Filipino officers and employees of the ADB are, under the law, subject to income tax on salaries and emoluments they receive from the ADB. A plain reading of the pertinent treaty provisions and domestic legislation clearly show the intention of Congress to do so.

The "Agreement Establishing the Asian Development Bank" (ADB Charter) included a provision on tax-exemption and an exception to said privilege, thus:

"Article 56
EXEMPTION FROM TAXATION

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
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*)

On March 16, 1966, in Senate Resolution No. 6, the Philippine Government ratified and confirmed the ADB Charter but categorically included a *reservation* of the Philippine's right to tax the Filipino employees of ADB, to wit:

"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.**" *(Emphasis supplied)*

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) included a similar proviso recognizing the right of the Philippine Government to tax Filipino ADB employees, *viz.*:

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

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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." *(Emphasis supplied)*

Although these provisions grant tax exemption to the salaries and emoluments paid by ADB to its officers and employees, in general, they also contain a proviso wherein a member-country, such as the Philippines, may choose to retain its right to tax the salaries and emoluments paid to its citizens or nationals. If the Philippine Government had really intended to exempt from income tax the salaries or emoluments that its citizens or nationals would earn from ADB, a full ratification of the ADB Charter should have been made, *without reservation.* *gr*

The National Internal Revenue Code of 1997 further underscores the reservation made by the Philippine Government of its right to tax the income derived by its citizens from all sources within and without. Sections 23(A) and 24(A)(1)(a) of the NIRC of 1997, as amended, declare:

"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;

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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;** (*Emphasis supplied*)

The text of Sections 23 and 24 of the NIRC of 1997, as amended, clearly impose a global tax on the income of resident citizens. In the absence of a specific grant of tax-exemption, therefore, the salaries and emoluments received by Filipino ADB employees are subject to income tax. Petitioners' income tax payments for salaries and emoluments received from the ADB for taxable years 2012 and 2013 cannot be considered as erroneously and/or illegally collected by the BIR under Section 229 of the NIRC of 1997, as amended. Such income tax payments cannot, likewise, be refunded under Section 229.

On the argument that the issuance and the *retroactive* application of RMC No. 31-2013 enabled the BIR to illegally and/or erroneously collect income taxes from them, it must be pointed out 

that the taxation of salaries and emoluments of Filipino ADB employees is *not* anchored on the retroactive application of RMC No. 31-2013.

On this score, I must reaffirm the discussion in my Concurring and Dissenting Opinion in *Rowena Vicente et al. v. Commissioner of Internal Revenue*.¹

RMC 31-2013 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 payments of the petitioners in 2012 and 2013.

The preface of RMC 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:

"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: 

¹ CTA Case No. 9096, July 7, 2017.

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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*,² an *assessment* case wherein the revocatory administrative *re*

² G.R. No. L-52306, October 12, 1981, 108 SCRA 148.

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 case at bench, a *refund* of income taxes paid by the taxpayers only in 2012 and 2013, are different from that of *ABS-CBN*. It is submitted that there has been *no violation* of the rules of justice and fair play when petitioners paid the income taxes. It is not in question 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 these payments.

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law*.³ RMC 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 neither issued nor intended to impose additional tax burdens not already found in the law.

Third, 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.⁴ 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.⁵ RMC 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 4⁶ of the 1997 NIRC, as amended. *gr*

³ *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.

⁴ *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.

⁵ *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436.

⁶ "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."

RMC 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.”⁷ Based on this definition, RMC 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.*,⁸ 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 82

⁷ 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.”

⁸ G.R. No. 190837, March 5, 2014, 718 SCRA 160-162.

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 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.*,⁹ the Supreme Court upheld the validity of RMC 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." (underscoring supplied)

Fourth, even assuming there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such failure 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*.¹⁰ *gr*

⁹ G.R. No. 210987, November 24, 2014, 741 SCRA 601.

¹⁰ G.R. No. 125346, November 11, 2014, 739 SCRA 561.

"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.

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 *je*

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:

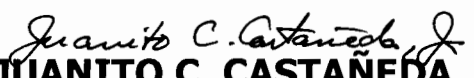
xxx xxx xxx"
(underscoring and emphases supplied; citations omitted)

As a final word, taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.¹¹ 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 taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.¹²

To reiterate, it is my position that resident citizens or nationals of the Philippines who are working with the ADB are taxable on their income from all sources, including those derived from the ADB. The taxability of their income from the ADB is not dependent on RMC No. 31-2013 but on pre-existing provisions of the NIRC of 1997 and the treaties obligations between the Philippine Government and the ADB.

In sum, petitioners' income tax payments on salaries and emoluments received from the ADB for taxable years 2012 and 2013 were not erroneously and/or illegally collected by the BIR. Hence, such income tax payments cannot be refunded.

Accordingly, I vote to **DENY** the instant Petition for Review for lack of merit.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

¹¹ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 417.

¹² *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001, 360 SCRA 583.