

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

**IRISH FE N. AGUILAR,
MAJELLA R. CANZON, HELEN
B. CRUDA, MARIA AMPARO
M. DATO, & RUTH C.
MANGROBANG,**
Petitioners,

- versus -

**HONORABLE LILIA CATRIS
GUILLERMO, in her capacity
as COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

CTA EB NO. 2692
(CTA Case No. 9629)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

Promulgated:

FEB 07 2024

x ----- x
4:20 p.m.

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by petitioners Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, and Ruth C. Mangrobang on September 22, 2022, assailing the Decision² dated September 30, 2021 (assailed Decision) and the Resolution³ dated August 18, 2022 (assailed Resolution), both rendered by this Court's Third Division (Court in Division) in CTA Case No. 9629 entitled "*Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, Marian L. Lagmay, Ruth C. Mangrobang v. Honorable Caesar R. Dulay in his capacity as Commissioner of Internal Revenue.*"

The dispositive portion of the assailed Decision and Resolution read as follows:

¹ *En Banc (EB)* docket, pp. 1-42.

² *EB* docket, pp. 53-75.

³ *EB* docket, pp. 78-83.

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Assailed Decision dated September 30, 2021:

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

SO ORDERED.

Assailed Resolution dated August 18, 2022:

WHEREFORE, in view of the foregoing considerations, petitioners' *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Petitioners pray that the above Decision and Resolution be reversed and set aside and that a new one be issued ordering respondent to refund the income tax payments made by petitioners for taxable year 2014 in the aggregate amount of ₱2,491,044.36.

THE PARTIES

The petitioners, Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, and Ruth C. Mangrobang, are current and former employees of the Asian Development Bank (ADB), an international organization with principal office at 6 ADB Avenue, Mandaluyong City.⁴

The respondent, Honorable Lilia Catris Guillermo, is the Commissioner of the Bureau of Internal Revenue (BIR), impleaded in her official capacity. Said position was formerly held by Honorable Caesar R. Dulay, whose name appears as respondent in the previous pleadings of this case before the Court in Division. Respondent holds office at the BIR National Office, Diliman, Quezon City, where notices, orders, and other court processes may be served.⁵

THE FACTS AND THE PROCEEDINGS

The facts,⁶ as found by the Court in Division, remain undisputed, to wit:

⁴ *The Parties, Petition for Review*, p. 2.

⁵ *Id.*

⁶ *Assailed Decision, EB docket*, pp. 54-58.



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

Pursuant to RMC No. 31-2013, petitioners filed their *Annual Income Tax Returns* and paid their corresponding income taxes for taxable year 2014 in installments as follows:

Name	Payment Date	Amount Paid	Total
Irish Fe N. Aguilar	April 5, 2015	P224,155.00	P448,155.00
	July 13, 2015	P224,000.00	
Majella R. Canzon	April 15, 2015	P311,424.00	P622,848
	July 14, 2015	P311,424.00	
Helen B. Cruda	April 13, 2015	P331,021.28	P561,571.36
	July 10, 2015	P230,550.08	
Maria Amparo M. Dato	April 15, 2015	P334,832.00	P669,664.00
	July 13, 2015	P334,832.00	
Ruth C. Mangrobang	April 14, 2015	P96,403.00	P188,806.00
	July 13, 2015	P92,403.00	

On September 30, 2014, the Regional Trial Court (RTC)-Branch 213 of Mandaluyong issued a Decision in Civil Case No. MC14-8775, nullifying Section 2 (d) (1) of RMC No. 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary.

The BIR then appealed the said Decision to the Court of Appeals. Sometime in July 2015, the Court of Appeals dismissed BIR's appeal for being improperly elevated.

On the basis thereof, on July 7, 2017, petitioners submitted a *letter* with the subject "*Claim for Refund*" with the Revenue District Office (RDO) No. 41 of the BIR, seeking the refund of the income tax payments for taxable year 2014. On the same date, petitioners filed their respective Application for Tax Credits/Refunds (BIR Form No. 1914), covering the same refund claim.

Thereafter, on July 10, 2017, petitioners filed the instant Petition for Review.

Respondent filed his *Answer* on September 22, 2017, contending, *inter alia*, the following:

- (1) Petitioners are Filipino citizens and employees of the ADB, hence, there is no doubt that they are liable for income tax on the compensation income;

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- (2) Pursuant to the ADB Headquarters Agreement entered into by the Philippines in 1956, the "reservation" thereon, simply intimated that the only effect is that the income of ADB is exempt from tax by virtue thereof, but not the income derived by the Filipinos from ADB;
- (3) RMC No. 31-2013 is only a clarification of existing policies already in the Philippine Law and that it is clear that the exemption is still subject to the power of the Government to tax its nationals, including petitioners;
- (4) The Decision of RTC Branch 213 is void as the power to rule on the validity of revenue issuances administered by the BIR are within the jurisdiction of this Court, and not the regular courts; and
- (5) Granting without admitting that RTC Branch 213 has jurisdiction over the validity of RMC No. 31-2013, its decision has yet to become final as it was appealed to the Supreme Court.

After the pre-trial conference on February 6, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on February 21, 2018. Thereafter the Court issued a *Pre-Trial Order* on March 15, 2018.

During trial, petitioners testified by way of *Judicial Affidavits* to support the material allegations in the instant Petition.

On October 23, 2019, petitioners filed their *Formal Offer of Exhibits*. On November 4, 2019, respondent submitted his *Comment/Manifestation (On Petitioners' Formal Offer of Exhibits)*, wherein respondent's counsel, *inter alia*, manifested that he will no longer be presenting his witness and evidence for this case. The Court admitted all of petitioners' exhibits in the Resolution dated November 28, 2019.

On January 10, 2020, respondent filed his *Memorandum* while the *Memorandum for the Petitioners* was filed on January 16, 2020.

On January 28, 2020, petitioners filed a *Motion for Leave of Court to File the Attached Reply-Memorandum* for the Petitioners, praying that leave be granted to petitioners to file the *Reply-Memorandum for the Petitioners* attached thereto. As respondent failed to file his comment on petitioners' *Motion for Leave*, the Court issued the Resolution dated October 5, 2020, granting the said *Motion*, and admitting the *Reply-Memorandum for the Petitioners* into the records of the case. Furthermore, in

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the same Resolution, this case was deemed submitted for decision.

On September 30, 2021, the Court in Division rendered the assailed Decision denying petitioners' claim for refund of allegedly erroneously paid income tax in 2014. The Court in Division explained that the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, is not based on Revenue Memorandum Circular (RMC) No. 31-2013 but on pertinent provisions of the National Internal Revenue Code (NIRC) of 1997 (a legislative enactment) in relation to Section 45(b) of the Republic of the Philippines – Asian Development Bank (RP-ADB) Agreement. According to the Court in Division, while Section 45(b) of the RP-ADB Agreement grants tax exemption on the salaries and emoluments paid by ADB to its officers and staff, it qualifies that the Philippine government has the power to tax ADB's officers and staff, who are Philippine nationals or citizens. Hence, considering Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997, as amended – the law in force for taxable year 2014 – vis-à-vis Section 45(b) of the RP-ADB Agreement, it cannot be said that through the issuance of RMC No. 31-2013, Commissioner Jacinto-Henares superseded, revised or amended the said international agreement, in imposing income tax on the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens. The Court in Division added that even without the issuance of RMC No. 31-2013, the taxability of the said salaries and emoluments stands, pursuant to the said provisions of the NIRC of 1997, as amended, and the RP-ADB Agreement.

Not convinced with the decision, petitioners moved for reconsideration,⁷ which was denied in the equally assailed Resolution of August 18, 2022.

Still unconvinced, petitioners elevated their case before the Court's *En Banc* via the present *Petition for Review* filed on September 22, 2022.

On November 4, 2022, the Court *En Banc* issued a Resolution⁸ directing respondent to file her Comment to petitioners' *Petition for Review* within ten (10) days from notice.

⁷ Division docket, Vol. 2, pp. 860-888.

⁸ *EB* docket, pp. 211-212.

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Despite the opportunity granted, respondent failed to file her Comment. Thus, on February 9, 2023, the instant *Petition for Review* was submitted for decision.⁹

Hence, this Decision.

THE ISSUES

Petitioners submit the following grounds for the allowance of their *Petition for Review*:¹⁰

- A. THE HONORABLE COURT IN DIVISION ERRED IN EXERCISING APPELLATE JURISDICTION OVER THE DECISION OF THE REGIONAL TRIAL COURT AND HOLDING THAT SECTION 2(D)(1) OF REVENUE MEMORANDUM CIRCULAR (RMC) 31-2013 IS IN ACCORD WITH THE ADB CHARTER AND THE PROVISIONS OF THE 1997 NIRC, AS AMENDED.

- B. THE HONORABLE COURT IN DIVISION ERRED WHEN IT RULED THAT IN ISSUING REVENUE MEMORANDUM CIRCULAR (RMC) NO. 31-2013, THEN COMMISSIONER OF INTERNAL REVENUE VALIDLY EXERCISED ITS AUTHORITY TO INTERPRET TAX LAWS.

- C. THE HONORABLE COURT IN DIVISION DECIDED IN A WAY NOT IN ACCORD WITH THE LAW AND APPLICABLE JURISPRUDENCE IN HOLDING THAT THE 1997 NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES (“THE NIRC of 1997”) IS THE OPERATIVE ACT WHICH IMPOSED TAXABILITY ON THE INCOME OF PHILIPPINE NATIONALS WORKING IN THE ASIAN DEVELOPMENT BANK (“ADB”), CONSIDERING THAT:
 - 1. THE NIRC OF 1997 IS IN ITSELF INSUFFICIENT TO MODIFY, AMEND OR REPEAL THE ADB CHARTER AS IT IS MERELY A GENERAL LAW WHICH DEALS ONLY WITH THE GENERAL TAXABILITY OF FILIPINO CITIZENS IN ADB;

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

⁹ *EB* docket, pp. 215-216.

¹⁰ *EB* docket, pp. 6-8.

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- D. THE HONORABLE COURT IN DIVISION ERRED WHEN IT RULED THAT THE PETITIONERS ARE NOT ENTITLED TO THEIR CLAIM FOR REFUND.

Petitioners' Arguments:

First, petitioners maintain that the Court in Division, being a court of special jurisdiction, can take cognizance only of matters clearly within its jurisdiction, specifically those enumerated under Republic Act (RA) No. 1125,¹¹ as amended by RA No. 9282. According to petitioners, a perusal of Section 7 of RA No. 1125, as amended by RA No. 9282, as well as Section 3(a), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), would show that the Court in Division has no jurisdiction to rule on the validity and constitutionality of the subject RMC No. 31-2013.

Petitioners add that in the case of *Smart Communications, Inc. v. National Telecommunications Commission*,¹² the Supreme Court observed that if what is being assailed is the validity or constitutionality of a rule or regulation issued by an administrative agency in the performance of its quasi-legislative functions, the Regional Trial Court (RTC) has jurisdiction to pass upon the same. Further, and as provided for under Batas Pambansa (BP) Blg. 129,¹³ the exclusive appellate jurisdiction over RTC decisions is vested with the Court of Appeals. Hence, petitioners submit that the Court of Tax Appeals (CTA) does not have jurisdiction to rule on the validity of RMC No. 31-2013, much less review the RTC's decision.

Petitioners likewise reiterate that the instant case is a claim for refund. Allegedly, they never raised the RTC's decision on appeal. They merely ask for the Court in Division to exercise its appellate jurisdiction on the inaction of the BIR on their claim for refund. The Court in Division should not have ruled on the validity or invalidity of the same. Hence, considering the absence of authority of the Court in Division to review the decision of the RTC regarding the validity of the subject RMC No. 31-2013, petitioners assert that the RTC's Decision should stand.

¹¹ An Act Creating the Court of Tax Appeals.

¹² G.R. No. 179579, February 1, 2012.

¹³ Otherwise known as "The Judiciary Reorganization Act of 1980," as amended.

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Petitioners likewise disagree with the Court in Division's ruling that the pronouncement in *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*¹⁴ was overturned in the case of *Banco De Oro, et al., v. Republic of the Philippines, et al. (Banco De Oro)*.¹⁵ According to petitioners, nowhere in the *Banco De Oro* case did the Supreme Court state that the CTA has jurisdiction over the validity and constitutionality of the RMC.

Second, petitioners submit that respondent may only interpret, not supersede, revise, and amend a domestic law, more so, international agreements entered into by the Philippines through the Chief Executive with the concurrence of the Senate.

According to petitioners, the ADB Charter did not impose taxes on ADB employees who are Philippine nationals. The State merely reserved its right to impose taxes on the aforesaid subjects. Thus, for petitioners, there must be a positive act of the State manifesting its intention to levy taxes on ADB employees who are Filipino citizens. Petitioners added that the state could only do this positive act through Congress by enacting a law that categorically and unequivocally states the imposition of the proper tax.

In the instant case, petitioners claim that the legislative branch of the government has not enacted any statute withdrawing the tax-exempt status of ADB employees and granting the Philippines government the authority to exercise its right to tax Filipino ADB employees.

For petitioners, respondent may not, in the guise of issuing guidelines through revenue memorandum circulars, impose tax on tax-exempt individuals as withdrawal of tax-exempt status and/or tax imposition is an exercise of legislative power which belongs to Congress. To allow the BIR, through respondent, to exercise the power to impose tax is not only violative of the rule on the origin of revenue bills but also an encroachment on the power of the legislative branch of the government. Thus, petitioners submit that respondent, in issuing RMC No. 31-2013, exceeded her authority without taking into account the express reservation of the State's exercise of tax power in the ratification of the ADB Charter.


¹⁴ G.R. No. 207843. July 15, 2015.

¹⁵ G.R. No. 198756, August 6, 2016.

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Third, petitioners maintain that the Court in Division erred in holding that the NIRC of 1997 is the operative act that imposed taxability on the income of Philippine nationals working in ADB. According to petitioners, the NIRC of 1997 is insufficient to modify, amend, or repeal the ADB Charter as it is merely a general law that deals only with the general taxability of Filipino citizens, without particular mention of the taxability of Filipino citizens working in ADB. Petitioners emphasize that the NIRC of 1997, which took effect on January 1, 1997 (*sic*), is to be construed as a general law because of its universal application, while the ADB Charter, which partakes the nature of a treaty or an international agreement, is a special law as it pertains explicitly and exclusively applies to ADB employees. Hence, the ADB Charter, a special law ratified in 1966, is to be taken as an exception to the general rule laid down in the NIRC of 1997 as to the taxability of Philippine nationals.

Petitioners also assert that the tax exemption provision in the ADB Charter must stand in the absence of a special law explicitly granting the government the authority to exercise its right to tax and addressing the taxability of Philippine nationals working in ADB. According to petitioners, the NIRC of 1997 could not have expressly enabled the enforcement of the reservation clauses found in Senate Resolution No. 6 and ADB Charter, to the effect of withdrawing the tax exemption of Philippine nationals working in ADB, considering that the same failed to expressly mention therein that the government is now exercising its right to tax its nationals under the ADB Charter.

Hence, for petitioners, the NIRC of 1997 is not an operative act that could subject the Philippine nationals working in ADB to taxation. It follows that RMC No. 31-2013 cannot be a valid administrative circular.

Finally, petitioners submit that the Court in Division erred when it ruled that petitioners are not entitled to their claim for refund. According to petitioners, they are entitled to a tax refund pursuant to Section 229 of the NIRC of 1997, as amended, as they have satisfied all the requisites/conditions laid down under the said provision of the Code.



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THE COURT EN BANC’S RULING

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the RRCTA states:

SEC. 3. *Who may appeal; period to file petition. — xxx*

xxx

xxx

xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. [*Emphasis supplied*]

Records show that petitioners, through their counsel, received the assailed Resolution on September 7, 2022.¹⁶ Thus, petitioners had fifteen (15) days from September 7, 2022 or until September 22, 2022, to file their *Petition for Review* before the Court *En Banc*.

Evidently, the filing of the present *Petition for Review* on September 22, 2022 was on time. Hence, the Court *En Banc* has jurisdiction to take cognizance of the present *Petition*.

Now, on the merits.

After a careful review of petitioners’ arguments and the records of the case, the Court *En Banc* finds no reason to reverse or modify the assailed Decision and Resolution of the Court in

¹⁶ *Notice of Resolution*, Division docket – Vol. 2, p. 898.

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Division. The Court in Division had thoroughly and exhaustively resolved the arguments raised in the present *Petition*, which are mere rehash or restatement of petitioners' arguments in their *Petition for Review, Memorandum, and Motion for Reconsideration (of the Decision dated 30 September 2021)* filed in CTA Case No. 9629. Nonetheless, petitioners' arguments shall be discussed briefly to reinforce the ruling of the Court in Division.

The Court in Division did not exercise appellate jurisdiction over the Decision of the RTC - Branch 213 of Mandaluyong.

The Court in Division is correct in holding that petitioners cannot invoke the Decision of the RTC - Branch 213 of Mandaluyong declaring Section 2(d)(1) of RMC No. 31-2013 unconstitutional.

At the outset, it must be emphasized that contrary to petitioners' protestation, the CTA has the legal competence to pass upon the validity of a revenue issuance when it is invoked or cited as a basis for seeking a tax refund. In the *Banco De Oro* case, the Supreme Court *En Banc* categorically ruled that the CTA has jurisdiction to hear matters relating to the propriety of the BIR's revenue issuances when invoked by the taxpayer in assailing an assessment or in claiming a refund, such as in the present case, *viz.*:

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or **claiming a refund.** It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended. [*Emphasis supplied*]

The aforesaid doctrinal precept was echoed in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*,¹⁷ where the Final Arbiter ruled that its pronouncement in the *Banco De Oro* case is the standing rule on

¹⁷ G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018.

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the matter - that the CTA has jurisdiction to determine the validity or constitutionality of a particular tax regulation, ruling, or issuance.

In the instant case, the Court in Division merely exercised its jurisdiction to determine the validity or invalidity of Section 2(d)(1) of RMC No. 31-2013, considering that petitioners' claim for refund of their payment of income tax was anchored on the alleged invalidity of the said RMC.

We quote with approval the Court in Division's disquisition on the matter,¹⁸ *viz.*:

It bears pointing out that the *Petron* case invoked by petitioners had already been overturned by the Supreme Court *En Banc* in the case of *Banco De Oro, et al., v. Republic of the Philippines, et al.*, (*Banco De Oro* case) wherein the High Court finally settled the issue of jurisdiction of the CTA on questions pertaining to the validity or constitutionality of tax laws, regulations, and revenue issuances (*i.e.*, revenue orders, revenue memorandum circulars, or rulings). Notably, this overturned the previous doctrine in *British American Tobacco v. Camacho*, which held that such jurisdiction lies with the regular courts, and not the CTA.

In the *Banco De Oro* case, the Supreme Court, in no uncertain terms, ruled as follows:

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund.

It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

¹⁸ Assailed Resolution, *EB* docket, pp. 78-83.

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Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. (*Emphasis and Underscoring Added*)



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Based on the foregoing jurisprudential pronouncements, **it is clear that this Court has jurisdiction to determine the constitutionality or validity of administrative issuances**, among others, such as RMCs issued by respondent even when it is raised by the taxpayer as a defense in claiming a refund such as the instant case. Hence, this Court has the power to rule on the validity of RMC No. 31-2013. [*Emphasis supplied*]

Undoubtedly, the CTA has the legal competence to pass upon the validity of a revenue issuance when it is invoked or cited as a basis in seeking a tax refund, as obtained in the instant case, to wit:

In the instant case, petitioners rely heavily on the Decision of the RTC- Branch 213 of Mandaluyong City, declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional, for having been issued without legal basis, in excess of authority, and/or without due process of law. They also argue that this Court can take judicial notice of the said Decision.

Petitioners also invoke the Resolution dated July 3, 2015 of the Court of Appeals, dismissing respondent's appeal on the said Decision, to support the instant claims for tax refund.

According to petitioners, this Court should recognize, honor, or be bound by the RTC's Decision, declaring the unconstitutionality of Section 2 (d) (1) of RMC No. 31-2013, and Court of Appeals' Resolution, dismissing respondent's appeal on the said Decision, as bases for declaring that they are entitled to the tax refund being sought.

This, however, We cannot do because the said Decision and Resolution are not binding precedents, especially so, as will be shown momentarily, the income taxes paid are not erroneous nor illegal. As a corollary, it must be emphasized that only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.

Moreover, petitioners can neither properly nor successfully rely on the decision of the Court of Appeals. This is so because the latter Court and this Court are now of the same level, pursuant to Section 1 of Republic Act (RA) No. 1125, as amended by RA No. 9282; and decisions of the Court of Appeals are thus no longer superior to, nor reversible of, those rendered by this Court. As such, it is with more reason that this Court cannot be bound by a decision of an RTC, which is inferior to this Court. [*Emphasis supplied*]

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Clear as a day that petitioners anchor their claim for refund on the invalidity of Section 2(d)(1) of RMC No. 31-2013 as declared in the RTC Decision. However, as the Court in Division correctly pointed out, the RTC Decision is not a binding precedent and only decisions of the Supreme Court constitute binding precedents. As such, the Court in Division proceeded to determine the validity of the subject RMC, which is within its competence to do so.

Anent petitioners' claim that the Court in Division exercised appellate jurisdiction over the RTC Decision declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional, the same is without any factual and legal basis.

As discussed above, the Court in Division merely exercised its jurisdiction to determine the validity or invalidity of Section 2(d)(1) of RMC No. 31-2013, considering that petitioners' claim for refund of their payment of income tax was anchored on the alleged invalidity of the said RMC. While the Court in Division took a different view from the RTC Decision relied upon by petitioners, this does not mean that the Court in Division already exercised jurisdiction over the said RTC Decision. As the records show, nothing in the assailed Decision suggests that the RTC Decision is being reversed or modified. The Court in Division stated that it is not bound by the RTC Decision in refutation of petitioners' insistence to honor the same.

The Court in Division did not err when it ruled that in issuing RMC No. 31-2013, then Commissioner Kim S. Jacinto-Henares merely exercised her power to interpret tax laws.

Petitioners claim that since the effectivity dates of the ADB Charter and the Agreement between the ADB and the Government of the Republic of the Philippines regarding the headquarters of the ADB, there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the Philippine government on Filipino ADB employees, except until the issuance of RMC No. 31-2013.



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According to petitioners, the BIR, through its Commissioner, may only interpret tax laws but not impose taxes. To allow the BIR, through its Commissioner, to exercise the power to impose tax is not only violative of the rule on the origin of revenue bills but also an encroachment on the power of the Legislative Branch of the government. Thus, petitioners claim that respondent, in issuing RMC No. 31-2013, exceeded her authority without considering the express reservation of the State’s exercise of tax power in the ratification of the ADB Charter.

The Court *En Banc* is not convinced.

As eloquently explained by the Court in Division, *We* quote:

To stress, Section 2(d)(1) of RMC No. 31-2013 did not amend or alter the Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (RP-ADB Agreement).

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

"SECTION 1. BACKGROUND. —

xxx xxx xxx

Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:

'SECTION 23. General Principles of Income Taxation in the Philippines. — Except when otherwise provided in this Code:

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;

xxx xxx xxx

(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; x x x'

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As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.

The tax consequence of compensation income received by those employed by foreign governments/embassies/diplomatic missions situated in the Philippine hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. **It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended ('Tax Code').**

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

SECTION 2. TAX TREATMENT OF COMPENSATION INCOME

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

xxx

xxx

xxx



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(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." (*Emphases added*)

A careful reading of the foregoing would reveal that then Commissioner Kim S. Jacinto-Henares, in her capacity as the Commissioner of Internal Revenue, merely exercised her power then to interpret the pertinent provisions of the NIRC of 1997 in relation to the RP-ADB Agreement. Specifically, based on the cited provisions, she, in effect, concluded that while the RP-ADB Agreement grants income taxation on the salaries and emoluments of officers and staff of ADB, as well as to experts and consultants performing missions therefor, such income taxation does not extend to ADB's officers and staff, who are Philippine nationals.



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Such being the case, contrary to the contention of petitioners, the issuance of RMC No. 31-2013 by then Commissioner Jacinto-Henares, did not supersede, revise or amend the said international agreement. *[Emphasis supplied]*

It is well to note that in a similar case¹⁹ involving one of the petitioners, Irish Fe N. Aguilar, the Court *En Banc* ruled that RMC No. 31-2013 merely reiterates the general principles laid down in Section 23(A) of the Tax Code, as amended, and implements Sections 24(A)(1)(a), 31 and 32 of the Tax Code, as amended, all of which have been in effect since 1 January 1998. Simply stated, the taxability of petitioner's income²⁰ is not dependent on the validity or invalidity of RMC No. 31-2013. Instead, her income as a resident citizen from all sources, including her income from ADB, is subject to Philippine income tax pursuant to Section 23(A) and Sections 24(A)(1)(a), 31 and 32 of the Tax Code, as amended.

The Court in Division did not err in declaring that the NIRC of 1997, as amended, is the operative act that imposed taxability on the income of Philippine Nationals working in ADB.

Petitioners argue that the NIRC of 1997, as amended, in itself, is insufficient to modify, amend, or repeal the ADB Charter as it is merely a general law that deals only with the general taxability of Filipino citizens, without particular mention of the taxability of Filipino citizens in ADB. Petitioners emphasize that the NIRC of 1997, as amended, which took effect on January 1, 1997 (*sic*), is to be construed as a general law because of its universal application, while the ADB Charter, which partakes the nature of a treaty or an international agreement, is a special law as it specifically pertains and exclusively applies to ADB employees. For petitioners, the ADB Charter, a special law ratified in 1966, is to be taken as an exception to the general rule laid down in the NIRC of 1997 regarding the taxability of Philippine nationals working in ADB.

¹⁹ *Irish Fe N. Aguilar v. Commissioner of Internal Revenue*, CTA *EB* Case No. 2652 (CTA Case No. 9867), October 2, 2023.

²⁰ Referring to petitioner Irish Fe N. Aguilar.

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Petitioners also argue that the tax exemption provision in the ADB Charter must stand in the absence of a special law explicitly granting the government the authority to exercise its right to tax and specifically addressing the taxability of Philippine nationals working in ADB. According to petitioners, the NIRC of 1997 could not have expressly enabled the enforcement of the reservation clauses found in Senate Resolution No. 6 and ADB Charter, to the effect of withdrawing the tax exemption of Philippine nationals working in ADB, considering that the same failed to expressly mention therein that the government is now exercising its right to tax its nationals under the ADB Charter.

Thus, petitioners concluded that the NIRC of 1997, as amended, not being an operative act that could subject the Philippine nationals working in ADB to taxation, it follows, therefore, that RMC No. 31-2013 cannot be a valid administrative circular.

The Court *En Banc* is not persuaded.

The Court *En Banc* agrees with the Court in Division in concluding that a scrutiny of the relevant treaty and legislative issuances show that Congress indeed intended to tax the salaries and emoluments received by Philippine nationals working in ADB and that they are covered by the provisions of the NIRC of 1997, as amended. Thus, there is no need to enact a law to subject their income to tax.

The ADB Charter executed on December 5, 1965, relied upon by petitioners in claiming tax exemption, states:

"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**

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political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member." [*Emphasis supplied*]

Indeed, the ADB Charter provides a tax exemption provision concerning the salaries and emoluments paid by ADB to its officers and employees, but the same ADB Charter also clarifies that the tax exemption does not apply where the member country retains the right to tax the salaries and emoluments paid by ADB to their citizens or nationals in the instrument of ratification or acceptance.

The ADB Charter was ratified and confirmed by the Philippine Government with a reservation through Senate Resolution No. 6 dated March 16, 1966, *viz.*:

"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 Philippine Government made the aforesaid ratification and confirmation under Article 56(2) of the ADB Charter. Note the categorical *proviso* that the ratification and confirmation of the ADB Charter are "*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.*" **Nothing in Senate Resolution No. 6 would suggest, even remotely, that the Philippine Government has granted tax exemption to its citizens or nationals regarding salaries and emoluments paid by ADB.** Had the Philippine Government intended to exempt from income tax the salaries or emoluments that its citizens or nationals would derive from ADB, full ratification of the ADB Charter could have been made without any declaration as to the retention of its right to tax its citizens or nationals.²¹

²¹ *Edzen Jogie Garcia vs. Commissioner of Internal Revenue*. CTA Case No. 9075, February 9, 2017.

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On the other hand, the RP-ADB Agreement, signed on December 22, 1966, pertinently provides:

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

xxx

xxx

xxx

Section 45.

Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

(a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;

(b) **Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals**; [*Emphasis supplied*]

The RP-ADB Agreement recognizes the tax exemption privilege of ADB officers and employees, but it also declares in no uncertain terms that the same is **subject to the power of the Government to tax its nationals**.²²

The NIRC of 1997, a *subsequent* legislation that took effect on January 1, 1998, leaves no room for doubt that Filipino ADB employees are subject to tax on income derived from all sources within and without the Philippines.

Under Sections 23(A) and 24(A)(1) of the NIRC of 1997, as amended, resident citizens are taxed on their income derived from **all sources** within and without the Philippines, *viz.*:

"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**";

²² *Id.*



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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*]

While a resident citizen is taxable on all income derived from all sources within and without the Philippines, Section 32 of the NIRC of 1997, as amended, exempts from income taxation, income exempt under a treaty, *viz.*:

SEC. 32. Gross Income. —

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

xxx

xxx

xxx

(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

(1) Life Insurance. — x x x

xxx

xxx

xxx

(5) *Income Exempt under Treaty.* — **Income of any kind to the extent required by a treaty obligation binding upon the Government of the Philippines.** [*Emphasis supplied*]

Applying Section 32(B) of the NIRC of 1997 to the instant case, only those incomes that are clearly covered by the tax exemption granted in Section 45(b) of the RP-ADB Agreement must be recognized by the Philippine Government. Any income beyond the scope of the said granted tax exemption must already be subject to income taxation, specifically, the salaries and

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emoluments of officers and staff of ADB who are Philippine nationals or citizens.

Considering the foregoing, the Court *En Banc* is one with the Court in Division in holding that:

Without doubt, the State's inherent power to tax is vested exclusively in the Legislature. The Supreme Court has since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

In this case, however, the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, is not based on RMC No. 31-2013 issued by then Commissioner Jacinto-Henares. Rather, the tax imposition is based on pertinent provisions of the NIRC of 1997 (a legislative enactment), in relation to Section 45(b) of the RP-ADB Agreement. Thus, the contentions of petitioners that there was a violation of the doctrine of separation of powers and the rule on the origin of revenue bills are clearly untenable.

It bears stressing that Section 1 of RMC No. 31-2013 clearly pointed out that all of a resident citizen's income is subject to tax, pursuant to Section 23(A) of the NIRC of 1997, to wit:

"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;"
(Emphasis added)

In addition, and in relation to the above provision, Sections 24, 31 and 32(A)(1) of the NIRC of 1997, as amended by RA No. 9504, read:

"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:**

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(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;**

xxx

xxx

xxx

(2) **Rates of Tax on Taxable Income of Individuals. — The tax shall be computed in accordance with and at the rates established in the following schedule:**

Not over P10,000....	5%
Over P10,000 but not over P30,000....	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000....	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000....	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,000...	P22,500+25% of the excess over P140,000
Over P250,000 but not over P500,000...	P50,000+30% of the excess over P250,000
Over P500,000....	P125,000+32% of the excess over P500,000

xxx

xxx

xxx." (Emphases

added)

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

"SEC. 32. *Gross Income.* —

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

(1) **Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages**, commissions, and similar items;" (Emphases added)

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Based on the foregoing provisions, it is clear that the compensation income of a Philippine national or a citizen of the Philippines, who are residing therein, from all sources within and without the Philippines, is subject to income tax.

Such being the case, there is no need for a separate legislation to tax the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens, since the latter individuals are already covered by the above-quoted provisions of the NIRC of 1997.

We cannot agree with the reliance of petitioners on the supposed "Reservation" under Section 45(b) of the RP-ADB Agreement, *i.e.*, on the phrase "*subject to the power of Government to tax its nationals*," and their resulting contention that without any act from Congress specifically authorizing the exercise of the Government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand. This is simply because a specific congressional act is unnecessary and superfluous, since the power to tax Philippine nationals or citizens, as above shown, are already being exercised under Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997.

Apropos, it must be stressed that the Philippine Government have long exercised the said power to tax its own citizen, not only at the time the subject income tax was collected, but also at the time the RP-ADB Agreement was entered into, in the year 1966, and also thereafter, even up to the present time.

At the time the RP-ADB Agreement was entered into by the Philippine Government, *i.e.*, on December 22, 1966, the law then in force was the NIRC of 1939. This law had the following provisions to the effect of imposing tax on the income of Philippine nationals or citizens, to wit:

"SECTION 21. **Rates of Tax on Citizens**
or Residents. — **There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year from all sources by every individual a citizen or resident of the Philippines, a tax equal to the sum of the following: xxx xxx xxx.**"
(*Emphasis and underscoring added*)

"SECTION 28. *Meaning of Net Income.* — **'Net income' means the gross income computed under section 29 less the deductions allowed by section 30.**" (*Emphasis added*)

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"SECTION 29. *Gross Income.* — (a) *General Definition.* — **'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, x x x,** and income derived from any source whatever." (*Emphasis added*)

Even the NIRC of 1977, the tax code after the NIRC of 1939, had the following taxing provisions on the income of Philippine nationals or citizens, to wit:

"SECTION 21. *Rates of tax on citizens or Residents.* — A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or alien residing in the Philippines determined in accordance with the following schedule: xxx
xxx xxx." (*Emphasis and underscoring added*)

"SECTION 28. *Meaning of net income.* — **'Net income' means the gross income computed under section twenty-nine,** less the deductions allowed by section thirty." (*Emphasis added*)

"SECTION 29. *Gross Income.* — (a) *General Definition.* — **'Gross income' includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, x x x,** and income derived from any source whatever." (*Emphasis added*)

In view of the foregoing, it cannot be denied that the Philippine Legislature has exercised, and have been exercising, its power to tax the income of Philippine nationals or citizens, at the time the RP-ADB Agreement, up to the present time. Thus, We find no basis in declaring that, at any one time, salaries and emoluments of ADB's officers and staff, who are Philippine nationals or citizens, were ever exempted from income tax.

Furthermore, in arguing that officers and staff of ADB, who are Philippine nationals or citizens, are exempt from income taxation, petitioners cannot find solace on Section 45 (b) of the RP-ADB Agreement. In fact, it is very clear that while the said provision grants tax exemption on the salaries and emoluments paid by the ADB to its officers and staff, it qualifies that the Philippine government has the power to tax ADB's officers and staff, who are Philippine nationals or citizens. Said Section 45 (b) of the RP-ADB Agreement reads:

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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;**" (*Emphases and underscoring added*)

Considering the above-quoted Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997 — the law in force for taxable year 2014 — vis-à-vis the foregoing provision of the RP-ADB Agreement, it cannot be said that through the issuance of RMC No. 31-2013, Commissioner Jacinto-Henares superseded, revised or amended the said international agreement, in imposing income tax on the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens. **As a corollary, even without the issuance of RMC No. 31-2013, the taxability of the said salaries and emoluments stands, pursuant to the said provisions of the NIRC of 1997 and the RP-ADB Agreement.** [*Emphasis supplied*]

The Court in Division did not err in holding that petitioners are not entitled to their claim for refund.

Section 229 of the NIRC of 1997, as amended, provides as follows:

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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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."

Based on the foregoing provision, the recovery of erroneously or illegally collected taxes is allowed. An "erroneous or illegal tax" is defined as one levied without statutory authority,²³ or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal.²⁴ In other words, for taxes to be refunded, they must be shown to have been erroneously or illegally collected.

As the Court in Division correctly found, petitioners failed to establish the factual and legal bases of their claim for a refund. Specifically, petitioners failed to show that they are *not* Philippine nationals or citizens to be entitled to the tax exemption granted under Section 45(b) of the RP-ADB Agreement. Thus, petitioners' claim for refund must perforce fail.

In closing, it is well to emphasize that tax refunds are construed strictly against the taxpayers.²⁵ Any claim for refund takes 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.²⁶

WHEREFORE, premises considered, the instant *Petition for Review* filed by petitioners Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, and Ruth C. Mangrobang on September 22, 2022, is **DENIED** for lack of merit. The Decision dated September 30, 2021 and Resolution dated August 18, 2022 rendered by the Court's Third Division in CTA Case No. 9629 are **AFFIRMED**.



²³ *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 161997, October 25, 2005, citing Black's Law Dictionary, 8th Ed., pp. 1496-1497.

²⁴ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

²⁵ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

²⁶ *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001.

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SO ORDERED.

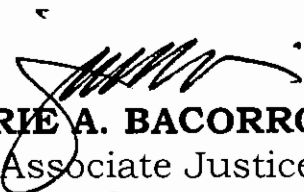

LANEE S. CUI-DAVID
Associate Justice

We Concur:

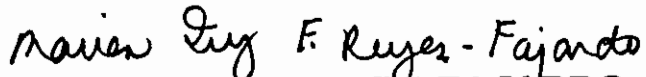

ROMAN G. DEL ROSARIO
Presiding Justice


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


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

DECISION

CTA *EB* No. 2692 (CTA Case No. 9629)


Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, & Ruth C. Mangrobang v. Honorable Lilia Catris Guillermo, in her capacity as Commissioner of Internal Revenue

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice

MR