

## EN BANC

[ G.R. No. 213446, July 03, 2018 ]

**CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE); JUDICIARY EMPLOYEES ASSOCIATION OF THE PHILIPPINES (JUDEA-PHILS); SANDIGANBAYAN EMPLOYEES ASSOCIATION (SEA); SANDIGAN NG MGA EMPLEYADONG NAGKAKAISA SA ADHIKAIN NG DEMOKRATIKONG ORGANISASYON (S.E.N.A.D.O.); ASSOCIATION OF COURT OF APPEALS EMPLOYEES (ACAE); DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES-DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (SWEAP-DSWD); DEPARTMENT OF TRADE AND INDUSTRY EMPLOYEES UNION (DTI-EU); KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG METRO MANILA DEVELOPMENT AUTHORITY (KKK-MMDA); WATER SYSTEM EMPLOYEES RESPONSE (WATER); CONSOLIDATED UNION OF EMPLOYEES OF THE NATIONAL HOUSING AUTHORITIES (CUE-NHA); AND KAPISANAN NG MGA MANGGAGAWA AT KAWANI NG QUEZON CITY (KASAMA KA-QC), PETITIONERS, V. COMMISSIONER, BUREAU OF INTERNAL REVENUE AND THE SECRETARY, DEPARTMENT OF FINANCE, RESPONDENTS.**

**NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS OF THE DEPARTMENT OF AGRICULTURE (NAFEDA), REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT ROMAN M. SANCHEZ, DEPARTMENT OF AGRICULTURE EMPLOYEES ASSOCIATION OFFICE OF THE SECRETARY (DAEA-OSEC), REPRESENTED BY ITS ACTING PRESIDENT ROWENA GENETE, NATIONAL AGRICULTURAL AND FISHERIES COUNCIL EMPLOYEES ASSOCIATION (NAFCEA), REPRESENTED BY ITS PRESIDENT SOLIDAD B. BERNARDO, COMMISSION ON ELECTIONS EMPLOYEES UNION (COMELEC EU), REPRESENTED BY ITS PRESIDENT MARK CHRISTOPHER D. RAMIREZ, MINES AND GEOSCIENCES BUREAU EMPLOYEES ASSOCIATION CENTRAL OFFICE (MGBEA CO), REPRESENTED BY ITS PRESIDENT MAYBELLYN A. ZEPEDA, LIVESTOCK DEVELOPMENT COUNCIL EMPLOYEES ASSOCIATION (LDCEA), REPRESENTED BY ITS PRESIDENT JOVITA M. GONZALES, ASSOCIATION OF CONCERNED EMPLOYEES OF PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (ACE OF PFDA), REPRESENTED BY ITS PRESIDENT ROSARIO DEBLOIS, INTERVENORS.**

[G.R. No. 213658, July 3, 2018]

**JUDGE ARMANDO A. YANGA, IN HIS PERSONAL CAPACITY AND  
IN HIS CAPACITY AS PRESIDENT OF THE RTC JUDGES  
ASSOCIATION OF MANILA, AND MA. CRISTINA CARMELA I.  
JAPZON, IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS  
PRESIDENT OF THE PHILIPPINE ASSOCIATION OF COURT  
EMPLOYEES-MANILA CHAPTER, PETITIONERS, V. HON.  
COMMISSIONER KIM S. JACINTO-HENARES, IN HER CAPACITY  
AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,  
RESPONDENT.**

**THE MEMBERS OF THE ASSOCIATION OF REGIONAL TRIAL  
COURT JUDGES IN ILOILO CITY, INTERVENORS.**

**D E C I S I O N**

**CAGUIOA, J:**

G.R. Nos. 213446 and 213658 are petitions for Certiorari, Prohibition and/or Mandamus under Rule 65 of the Rules of Court, with Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, uniformly seeking to: (a) issue a Temporary Restraining Order to enjoin the implementation of Revenue Memorandum Order (RMO) No. 23- 2014 dated June 20, 2014 issued by the Commissioner of Internal Revenue (CIR); and (b) declare null, void and unconstitutional paragraphs A, B, C, and D of Section III, and Sections IV, VI and VII of RMO No. 23-2014. The petition in G.R. No. 213446 also prays for the issuance of a Writ of Mandamus to compel respondents to upgrade the P30,000.00 non-taxable ceiling of the 13<sup>th</sup> month pay and other benefits for the concerned officials and employees of the government.

**The Antecedents**

On June 20, 2014, respondent CIR issued the assailed RMO No. 23-2014, in furtherance of Revenue Memorandum Circular (RMC) No. 23-2012 dated February 14, 2012 on the "*Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof*," in order to clarify and consolidate the responsibilities of the public sector to withhold taxes on its transactions as a customer (on its purchases of goods and services) and as an employer (on compensation paid to its officials and employees) under the National Internal Revenue Code (NIRC or Tax Code) of 1997, as amended, and other special laws.

**The Petitions**

**G.R. No. 213446**

On August 6, 2014, petitioners Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), *et al.*, organizations/unions of government employees from the Sandiganbayan, Senate of the Philippines, Court of Appeals, Department of Agrarian Reform, Department of Social Welfare and Development, Department of Trade and Industry, Metro Manila Development Authority, National Housing Authority and local government of Quezon City, filed a Petition for Prohibition and Mandamus,<sup>[1]</sup> imputing grave abuse of discretion on the

part of respondent CIR in issuing RMO No. 23-2014. According to petitioners, RMO No. 23-2014 classified as taxable compensation, the following allowances, bonuses, compensation for services granted to government employees, which they alleged to be considered by law as non-taxable fringe and *de minimis* benefits, to wit:

#### I. Legislative Fringe Benefits

- a. Anniversary Bonus
- b. Additional Food Subsidy
- c. 13th Month Pay
- d. Food Subsidy
- e. Cash Gift
- f. Cost of Living Assistance
- g. Efficiency Incentive Bonus
- h. Financial Relief Assistance
- i. Grocery Allowance
- j. Hospitalization
- k. Inflationary Assistance Allowance
- l. Longevity Service Pay
- m. Medical Allowance
- n. Mid-Year Eco. Assistance
- o. Productivity Incentive Benefit
- p. Transition Allowance
- q. Uniform Allowance

#### II. Judiciary Benefits

- a. Additional Compensation Income
- b. Extraordinary & Miscellaneous Expenses
- c. Monthly Special Allowance
- d. Additional Cost of Living Allowance (from Judiciary Development Fund)
- e. Productivity Incentive Benefit
- f. Grocery Allowance
- g. Clothing Allowance
- h. Emergency Economic Assistance
- i. Year-End Bonus (13<sup>th</sup> Month Pay)
- j. Cash Gift
- k. Loyalty Cash Award (Milestone Bonus)
- l. Christmas Allowance m. Anniversary Bonus<sup>[2]</sup>

Petitioners further assert that the imposition of withholding tax on these allowances, bonuses and benefits, which have been allotted by the Government to its employees free of tax for a long time, violates the prohibition on non-diminution of benefits under Article 100 of the Labor Code;<sup>[3]</sup> and infringes upon the fiscal autonomy of the Legislature, Judiciary, Constitutional Commissions and Office of the Ombudsman granted by the Constitution.<sup>[4]</sup>

Petitioners also claim that RMO No. 23-2014 (1) constitutes a usurpation of legislative power and diminishes the delegated power of local government units inasmuch as it defines new offenses and prescribes penalty therefor, particularly upon local government officials;<sup>[5]</sup> and (2) violates the equal protection clause of

the Constitution as it discriminates against government officials and employees by imposing fringe benefit tax upon their allowances and benefits, as opposed to the allowances and benefits of employees of the private sector, the fringe benefit tax of which is borne and paid by their employers.<sup>[6]</sup>

Further, the petition also prays for the issuance of a writ of mandamus ordering respondent CIR to perform its duty under Section 32(B)(7)(e)(iv) of the NIRC of 1997, as amended, to upgrade the ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government, including petitioners.<sup>[7]</sup>

### **G.R. No. 213658**

On August 19, 2014, petitioners Armando A. Yanga, President of the Regional Trial Court (RTC) Judges Association of Manila, and Ma. Cristina Carmela I. Japzon, President of the Philippine Association of Court Employees – Manila Chapter, filed a Petition for Certiorari and Prohibition<sup>[8]</sup> as duly authorized representatives of said associations, seeking to nullify RMO No. 23-2014 on the following grounds: (1) respondent CIR is bereft of any authority to issue the assailed RMO. The NIRC of 1997, as amended, expressly vests to the Secretary of Finance the authority to promulgate all needful rules and regulations for the effective enforcement of tax provisions;<sup>[9]</sup> and (2) respondent CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of RMO No. 23-2014 when it subjected to withholding tax benefits and allowances of court employees which are tax-exempt such as: (a) Special Allowance for Judiciary (SAJ) under Republic Act (RA) No. 9227 and additional cost of living allowance (AdCOLA) granted under Presidential Decree (PD) No. 1949 which are considered as non-taxable fringe benefits under Section 33(A) of the NIRC of 1997, as amended; (b) cash gift, loyalty awards, uniform and clothing allowance and additional compensation (ADCOM) granted to court employees which are considered *de minimis* under Section 33(C)(4) of the same Code; (c) allowances and benefits granted by the Judiciary which are not taxable pursuant to Section 32(7)(E) of the NIRC of 1997, as amended; and (d) expenses for the Judiciary provided under Commission on Audit (COA) Circular 2012-001.<sup>[10]</sup>

Petitioners further assert that RMO No. 23-2014 violates their right to due process of law because while it is ostensibly denominated as a mere revenue issuance, it is an illegal and unwarranted legislative action which sharply increased the tax burden of officials and employees of the Judiciary without the benefit of being heard.<sup>[11]</sup>

On October 21, 2014, the Court resolved to consolidate the foregoing cases.<sup>[12]</sup>

Respondents, through the Office of the Solicitor General (OSG), filed their Consolidated Comment<sup>[13]</sup> on December 23, 2014. They argue that the petitions are barred by the doctrine of hierarchy of courts and petitioners failed to present any special and important reasons or exceptional and compelling circumstance to justify direct recourse to this Court.<sup>[14]</sup>

Maintaining that RMO No. 23-2014 was validly issued in accordance with the power of the CIR to make rulings and opinion in connection with the implementation of internal revenue laws, respondents aver that unlike Revenue Regulations (RRs), RMOs do not require the approval or signature of the Secretary of Finance, as these

merely provide directives or instructions in the implementation of stated policies, goals, objectives, plans and programs of the Bureau.<sup>[15]</sup> According to them, RMO No. 23-2014 is in fact a mere reiteration of the Tax Code and previous RMOs, and can be traced back to RR No. 01-87 dated April 2, 1987 implementing Executive Order No. 651 which was promulgated by then Secretary of Finance Jaime V. Ongpin upon recommendation of then CIR Bienvenido A. Tan, Jr. Thus, the CIR never usurped the power and authority of the legislature in the issuance of the assailed RMO.<sup>[16]</sup> Also, contrary to petitioners' assertion, the due process requirements of hearing and publication are not applicable to RMO No. 23-2014.<sup>[17]</sup>

Respondents further argue that petitioners' claim that RMO No. 23-2014 is unconstitutional has no leg to stand on. They explain that the constitutional guarantee of fiscal autonomy to Judiciary and Constitutional Commissions does not include exemption from payment of taxes, which is the lifeblood of the nation.<sup>[18]</sup> They also aver that RMO No. 23-2014 never intended to diminish the powers of local government units. It merely reiterates the obligation of the government as an employer to withhold taxes, which has long been provided by the Tax Code.<sup>[19]</sup>

Moreover, respondents assert that the allowances and benefits enumerated in Section III A, B, C, and D, are not fringe benefits which are exempt from taxation under Section 33 of the Tax Code, nor *de minimis* benefits excluded from employees' taxable basic salary. They explain that the SAJ under RA No. 9227 and AdCOLA under PD No. 1949 are additional allowances which form part of the employee's basic salary; thus, subject to withholding taxes.<sup>[20]</sup>

Respondents also claim that RMO No. 23-2014 does not violate petitioners' right to equal protection of laws as it covers all employees and officials of the government. It does not create a new category of taxable income nor make taxable those which are not taxable but merely reflect those incomes which are deemed taxable under existing laws.<sup>[21]</sup>

Lastly, respondents aver that mandamus will not lie to compel respondents to increase the ceiling for tax exemptions because the Tax Code does not impose a mandatory duty on the part of respondents to do the same.<sup>[22]</sup>

### **The Petitions-in-Intervention**

Meanwhile, on September 11, 2014, the National Federation of Employees Associations of the Department of Agriculture (NAFEDA) *et al.*, duly registered union/association of employees of the Department of Agriculture, National Agricultural and Fisheries Council, Commission on Elections, Mines and Geosciences Bureau, and Philippine Fisheries Development Authority, claiming similar interest as petitioners in G.R. No. 213446, filed a Petition-in-Intervention<sup>[23]</sup> seeking the nullification of items III, VI and VII of RMO No. 23-2014 based on the following grounds: (1) that respondent CIR acted with grave abuse of discretion and usurped the power of the Legislature in issuing RMO No. 23-2014 which imposes additional taxes on government employees and prescribes penalties for government official's failure to withhold and remit the same;<sup>[24]</sup> (2) that RMO No. 23-2014 violates the equal protection clause because the Commission on Human Rights (CHR) was not included among the constitutional commissions covered by the issuance and the ADCOM of employees of the Judiciary was subjected to withholding tax but those