REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2400** (CTA Case No. 9566)
- versus -	Present: **DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and,* CUI-DAVID, *JJ.***
MA. JETHRA B. PASCUAL, Respondent.	Promulgated: MAY 05 2022 3:20 pm

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

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1 Filed on 04 January 2021, *Rollo*, pp. 1-14.

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

…

(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.

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). It seeks the reversal of the Court's Third Division's Decision dated 30 June 2020[3] (**assailed Decision**) and Resolution dated 28 October 2020[4] (**assailed Resolution**), respectively, in CTA Case No. 9566 entitled *Ma. Jethra B. Pascual v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is the duly appointed CIR vested with authority among others, to issue refunds of erroneously collected or paid internal revenue taxes.

Respondent Ma. Jethra Pascual (**respondent/Pascual**) is a Filipino citizen, of legal age and resident of 1 Hillside Drive, Blue Ridge A, Quezon City.

FACTS OF THE CASE

Respondent was an employee of Deutsche Bank (**DB**) from 1995 until 17 September 2014 when her employment was officially terminated due to redundancy. At the time of her employment's termination, she was 46 years old then occupying the position of a Managing Director of ICG Sales Philippines. As a result, respondent was given a severance package comprising of the following benefits listed in a Confirmation of Redundancy[5] (**Notice of Termination**) that DB had issued:

> ...
>
> a. Separation pay at the rate of one and a half (1.5) months *per* year of service in accordance with the Bank's current policy;
>
> b. Pro-rated 13th Month pay and 14th Month pay; and,

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3 Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring. Division Docket, Volume IV, pp. 1507-1524.

4 Id., pp. 1558-1563.

5 Exhibit "P-1", id., Volume III, pp. 1154-1155.

c. Other accrued salaries and benefits, which may include Retirement Plan benefits, subject to the applicable vesting period and calculated as *per* the Bank's retirement plan rules.

...

As part of said package, DB gave respondent her separation pay and "retirement pay" among others. A Certification[6] that DB issued shows the total taxable renumerations received by respondent for the year 2014, in accordance with respondent's Certificate of Compensation/Tax Withheld, as follows:

	Gross (Php)	**Taxable (Php)**	**Remarks**
Meal Allowance	33,327.27	33,327.27	Item 54A
Medical Allowance	4,174.05	4,174.05	Item 54A
Retirement Pay	24,818,749.82	24,818,749.82	Item 54A
Restricted Equity Award	7,343,953.93	7,343,953.93	Item 54A
Total		32,200,205.07	Item 54A

Due to respondent's age at the time of her employment's termination, DB viewed respondent's "retirement pay" as subject to an income tax pursuant to Section 32(B)(6)(a) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides:

...

SEC. 32. *Gross Income.* – ...

...

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

...

(6) *Retirement Benefits, Pensions, Gratuities, etc.* –

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the retiring official or employee has been in the service of the same

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[6] Exhibit "P-25", id., p. 1281.

> employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein its (sic) is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.
>
> ...

Aside from her compensation income from DB, respondent also received income from her laundry business and lease of real property to TSGS Mineral Investments, Inc. (**TSGS**). Respondent did not receive any income from her laundry business in 2014 but had received income from TSGS amounting to ₱315,789.48 (from which TSGS withheld taxes in the sum of ₱15,789.48).[7]

For her mixed income, respondent filed her income tax return[8] (**ITR**) to report the income which she had received in 2014 from DB and TSGS on 11 April 2015. After adjustments, respondent's ITR reflected a refundable income tax on the taxes withheld by DB in the amount of ₱7,897,158.00.

On 09 July 2015, respondent filed an Application for Issuances of Tax Credits/Refunds[9] (BIR Form No. 1914) and sent a letter[10] of the same date (Claim for Refund) to the Bureau of Internal Revenue (**BIR**) requesting a refund of the taxes erroneously withheld and remitted by DB.

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7 Exhibit "P-4", id., p. 1160 (not admitted for respondent but part of the records of this case pursuant to the Third Division's Resolution dated 17 June 2019).

8 Exhibit "P-5", id., pp. 1162-1171.

9 Exhibit "P-6", id., p. 1172.

10 Exhibit "P-7", id., p. 1173.

Due to the BIR's inaction on respondent's claim despite her submission of supporting documents that the former requested, respondent filed a Petition for Review[11] with the Court in Division on 07 April 2017. The same was raffled to the Third Division.

PROCEEDINGS BEFORE THE THIRD DIVISION

On 02 May 2017, the Court issued Summons[12] on petitioner. However, the Office of the Solicitor General (**OSG**) filed a "Manifestation and Motion"[13], stating that the case will be handled instead by the BIR. In a Resolution dated 24 May 2017[14], the Third Division granted the motion.

On 19 May 2017, petitioner filed a "Motion for Extension of Time to File Answer"[15] requesting an additional period of thirty (30) days or until 18 June 2017 within which to file an Answer. The Third Division granted the same in a Resolution dated 31 May 2017.[16] However, despite the extension granted, petitioner failed to file the same. Subsequently, respondent filed a "Motion to Declare [Petitioner] in Default and Allow Presentation of Evidence *Ex-Parte*"[17] (**Motion to Declare**) on 07 August 2017. Petitioner was then ordered to file a Comment on the said motion in a Resolution dated 16 August 2017.[18]

On 18 August 2017, petitioner instead filed a "Motion to Admit Answer"[19] with attached Answer (**Motion to Admit Answer**) which respondent opposed in her "Opposition (to the [Petitioner's] Motion to Admit Answer)"[20] filed on 15 September 2017.

On 02 October 2017, the Third Division issued a Resolution[21] which denied petitioner's Motion to Admit Answer and granted respondent's Motion to Declare. The Third Division thus declared

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11 Id., Volume I, pp. 12-31.
12 Id., p. 366.
13 Dated 15 May 2017, id., pp. 367-369.
14 Id., pp. 378-379.
15 Id., pp. 375-376.
16 Id., p. 381.
17 Id., pp. 383-386.
18 Id., p. 388.
19 Id., pp. 389-395.
20 Id., pp. 399-405.
21 Id., pp. 407-412.

petitioner in default pursuant to Section 3[22], Rule 9 of the Rules of Court, as amended.

Later or on 19 October 2017, petitioner filed a "Motion for Reconsideration on the Resolution declaring the [Petitioner] in Default"[23] (**MR**) with respondent's Opposition[24] filed on 29 November 2017. On 12 December 2017, the Third Division denied the MR.[25]

On 25 January 2018, respondent filed an "Omnibus Motion A. To Set Commissioner's Hearing and B. To Order [Petitioner] to Elevate the Bureau of Internal Revenue Records of this Case"[26] which the Third Division granted in a Resolution dated 06 February 2018.[27]

During respondent's *ex-parte* presentation of evidence, respondent personally testified and further presented Atty. Roxanne B. Tadique (**Atty. Tadique**), Atty. Hyacinth B. Aldueso (**Atty. Aldueso**), and Mr. Jonathan De Guzman (**De Guzman**) as her witnesses. All witnesses testified by way of their respective judicial affidavits.

On the witness stand, respondent testified to the material allegations in her Petition for Review.[28] She attested to the fact of her dismissal from DB on account of redundancy; her receipt of separation benefits including "retirement pay"; her subsequent filing of her ITR and application for tax refund with the documents required by the BIR; and, the BIR's inaction on her claim.

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22 **Sec. 3.** *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.
...

23 Division Docket, Volume I, pp. 413-419.

24 Id., pp. 423-431.

25 See Resolution dated 12 December 2017, id., pp. 433-436.

26 Id., pp. 437-440.

27 Id., pp. 442-443.

28 Judicial Affidavit and Supplemental Judicial Affidavit of Ma. Jethra B. Pascual, Exhibits "P-3" and "P-39", id., pp. 444-464 and Volume III, pp. 1069-1081, respectively.

As for Atty. Tadique[29] and Atty. Aldueso[30], they both corroborated respondent's testimony being the assigned lawyers of respondent's counsel, C&G Law, who assisted respondent in processing her administrative claim for refund. They confirmed respondent's compliance with the BIR's documentary requirements since they were the ones who communicated with DB and procured such documents in her behalf.

Lastly, De Guzman[31], who was Deutsche Knowledge Services Pte., Ltd.'s Vice President for Rewards, authenticated some of respondent's documentary exhibits.

On 17 August 2018, respondent filed her Formal Offer of Evidence[32] (**FOE**). In a Resolution dated 29 October 2018[33], the Third Division denied all of respondent's exhibits except for Exhibits "P-1", "P-12", "P-15", "P-16", "P-17", "P-18", "P-24", "P-33" and "P-36"[34] along with their respective sub-markings.

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29 Judicial Affidavit and Supplemental Judicial Affidavit of Atty. Roxanne B. Tadique, Exhibits "P-32" and "P-35", id., Volume II, pp. 598-615 and pp. 950-955, respectively.

30 Judicial Affidavit of Hyacinth B. Aldueso, Exhibit "P-30", id., pp. 802-814.

31 Judicial Affidavit of Jonathan De Guzman, Exhibit "P-36", id., pp. 959-973.

32 Id., Volume III, pp. 1117-1153.

33 Id., pp. 1396-1397.

34

Exhibit	Description
"P-1"	Letter dated June 16, 2014 with the subject "RE: CONFIRMATION OF REDUNDANCY" (Confirmation of Redundancy).
"P-1-A"	Signature of Jose Antonio Sta. Ana.
"P-1-B"	Signature of John Barnes.
"P-12"	Letter dated February 24, 2016 addressed to Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law) with attachments (February 24, 2016 Letter).
"P-12-C"	Signature of Nerissa Berba.
"P-12-D"	Signature of Geraldine Guerrero.
"P-15-B"	Signature of Nerissa Berba.
"P-15-C"	Signature of Geraldine Guerrero.
"P-16"	Letter dated June 16, 2016 addressed to Deutsche Bank (June 16, 2016 Letter).
"P-17"	Letter dated July 5, 2016 addressed to [Respondent] (July 5, 2016 Letter).
"P-17-B"	Signature of Jose Antonio Sta. Ana.
"P-18"	Letter dated July 22, 2016 addressed to [Respondent] (July 22, 2016 Letter).
"P-18-M"	Signature of Jose Antonio Sta. Ana.
"P-24"	Employment Certificate of Ma. Jethra B. Pascual (Employment Certificate).
"P-24-A"	Signature of Jose Antonio Sta. Ana.
"P-24-B"	Signature of Geraldine Guerrero.
"P-33"	Letter dated June 28, 2017 addressed to C&G Law (June 28, 2017 Letter).

Respondent filed her Motion for Partial Reconsideration[35] (**MPR**) of the foregoing resolution on 21 November 2018. After due consideration, the Third Division, in a Resolution dated 11 March 2019[36], ultimately resolved to admit all of respondent's exhibits except Exhibits "P-4", "P-4-A", and "P-11-B" for respondent's failure to present originals thereof for comparison.

On 25 March 2019, respondent filed a "Proffer of Excluded Evidence"[37] (**Proffer of Excluded Evidence**). On 17 June 2019[38], the Third Division noted respondent's Proffer of Excluded Evidence and deemed the case submitted for decision.

On 30 June 2020, the Third Division promulgated the assailed Decision[39] which dispositive portion reads, thusly:

> ...
>
> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** the amount of **SEVEN MILLION EIGHT HUNDRED NINETY-SEVEN THOUSAND ONE HUNDRED FIFTY-EIGHT PESOS (₱7,897,158.00)**, representing erroneous/overpayment of withholding tax on Petitioner's retirement pay for TY 2014.
>
> **SO ORDERED.**
>
> ...

Aggrieved, petitioner filed his "Motion for Reconsideration (Decision dated 30 June 2020)"[40] on 20 August 2020. However, the

"P-33-A"	Certified computational breakdown of BIR Form No. 2316 (Certified Computational Breakdown).
"P-33-B"	Signature of Jonathan De Guzman.
"P-33-C"	Signature of Fionna-Marie Casillan.
"P-33-D"	Signature of June Anne Castor.
"P-33-E"	Signature of Genevieve Albano.
"P-33-F"	Signature of Jonathan de Guzman.
"P-36"	Judicial Affidavit of Jonathan De Guzman dated April 27, 2018 (De Guzman Judicial Affidavit).
"P-36-A"	Signature of Jonathan De Guzman.

35 Division Docket, Volume III, pp. 1398-1431.
36 Id., pp. 1483-1489.
37 Id., pp. 1490-1492.
38 See Resolution, id., Volume IV, pp. 1500-1501.
39 Supra at note 3.
40 Division Docket, Volume IV, pp. 1525-1535.

Third Division denied the said motion in a Resolution dated 28 October 2020.[41] Hence, the present petition[42] before the Court *En Banc*.

PROCEEDINGS BEFORE THE COURT *EN BANC*

In a Resolution dated 04 March 2021[43], the Court *En Banc* ordered respondent to file her comment to petitioner's Petition for Review.

On 10 March 2021, respondent filed her "Comment (on the Petition for Review dated January 4, 2021)".[44] In a Resolution dated 19 May 2021[45], the Court *En Banc* submitted petitioner's present Petition for Review for decision.

ISSUES

In herein petition, petitioner forwards the following arguments in his bid to reverse the Third Division's actions, to wit:

> I.
> REDUNDANCY IN THIS CASE IS NOT CLEARLY ESTABLISHED; AND,
>
> II.
> EVEN ASSUMING ARGUENDO THAT THERE IS REDUNDANCY, THE HONORABLE COURT [THIRD DIVISION] ERRED IN RULING THAT THERE IS ERRONEOUS/OVERPAYMENT OF WITHHOLDING TAX ON [RESPONDENT] MA. JETHRA B. PASCUAL'S RETIREMENT PAY AND THEREBY ORDERING [PETITIONER] COMMISSIONER OF INTERNAL REVENUE TO REFUND THE AMOUNT OF ₱7,897,158.00.[46]

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41 Supra at note 4.
42 Supra at note 1.
43 *Rollo*, pp. 46-47.
44 Id., pp. 48-65.
45 Id., pp. 72-73.
46 Id., p. 5.

ARGUMENTS

In support of the above, petitioner argues that respondent failed to establish the fact of redundancy due to her non-compliance with the documentary requirements of Revenue Memorandum Order (**RMO**) No. 66-2016.[47] He claims that the submission of the requirements listed under said RMO was necessary for a successful claim for refund. He further maintains that, at any rate, respondent is not entitled for a refund of the claimed taxes withheld due to the reason that respondent admitted to receiving her "retirement pay". Petitioner argues further that the said pay was received under DB's AG Manila Branch Employees' Retirement Plan[48] (**Retirement Plan**).

Respondent, on the other hand, echoes the Third Division's findings. She also points out that the issues raised by petitioner are a mere rehash of those already settled by the Third Division.

RULING OF THE COURT *EN BANC*

After a careful review of the records and the parties' arguments, the Court finds the petition to be without merit. The reasons are essayed below, in *seriatim*.

REDUNDANCY WAS CLEARLY ESTABLISHED.

Item II(5) of RMO No. 26-2011, as amended by RMO No. 66-2016, requires that in order for separation benefits due to redundancy to remain tax-exempt, the beneficiary must prove the fact of redundancy by submitting the following reportorial requirements:

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47 Amending Pertinent Provisions of Revenue Memorandum Order (RMO) No. 26-2011, Prescribing the Guidelines in the Tax Treatment of Separation Benefits Received by Officials and Employees on Account of Their Separation from Employment Due to Death, Sickness or Other Physical Disability and the Issuance of Certificate of Tax Exemption from Income Tax and from the Withholding Tax.

48 Exhibit "P-28", Division Docket, Volume III, pp. 1288-13107.

...

5) Redundancy

a) Written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment (DOLE) at least thirty (30) days before the effectivity of termination, specifying the ground for termination.

b) Board Resolution, in case of a juridical entity, or sworn affidavit to be executed by the owner, in case of a sole proprietor, stating the following:

i. That there has been superfluous positions or services of employees;

ii. That the positions or services are in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner;

iii. That the redundant positions have been abolished in good faith; and

iv. That the selection of employees to be terminated has been made in accordance with a fair and reasonable criteria.

c) Adequate proof of redundancy such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring.

...

Petitioner's insistence on the applicability of the above requirements to the case at bar is misplaced.

First, a perusal of the foregoing provision reveals that the obligation to submit such documentary requirements are imposed on the employer which, in this case, is DB. *Second,* DB cannot be expected to submit such requirements as it was the one who considered a part of respondent's separation benefits as taxable "retirement pay". Therefore, to require submission of such requirements would be unreasonable and unfounded given that the same would negate DB's own presumption of said benefit's taxability. *Third,* RMO No. 66-2016 does not have any retroactive effect. Section 246 of the NIRC of 1997, as amended, provides:

> ...
> **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...
> ...

It is noted that RMO No. 66-2016 came into effect only on 06 December 2016. Records of the case will show that respondent's employment was officially terminated on 17 September 2014. She filed her ITR for TY 2014 on 11 April 2015 and, later, her administrative claim for refund on 09 July 2015.

RESPONDENT IS ENTITLED TO THE REFUND OF THE TAXES CLAIMED.

In debunking respondent's claim, petitioner quotes the following statements during her direct testimony as proof of her admission of receipt of her "retirement pay":

> ...
> Q: As a consequence of the termination of your employment from Deutsche Bank because of redundancy, what did you receive, if any?
>
> A: I was given my last pay which includes, among other, my separation pay and retirement pay.[49]
> ...

For one, it must be noted that respondent did not testify as an expert in labor law for the Court to expect legal accuracy in her statements. Furthermore, DB's Certification[50] of her separation benefits would show that DB did refer to the disputed portion of her benefits as "retirement pay" albeit mistakenly as will be explained below.

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49 Supra at note 28.
50 Supra at note 6.

To the Court's mind, petitioner focuses too heavily on the benefit's designation as "retirement pay" that he ignores the ultimate reason why such benefit was awarded to respondent in the first place. It is undisputed that respondent lost her employment due to redundancy in accordance with Article 283 of the Labor Code which states:

> ...
> **Art. 283. Closure of establishment and reduction of personnel.** The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. **In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher.** In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.[51]
> ...

Save for a company's closure due to severe business losses, employees dismissed pursuant to the above causes are entitled to a separation pay. The taxability of separation benefits is governed by Section 32(B)(6)(b) of the NIRC of 1997, as amended, which reads:

> ...
> **SEC. 32.** *Gross Income.* -
> ...
>
> (B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this title:
> ...

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51 Emphasis supplied.

(6) *Retirement Benefits, Pensions, Gratuities, etc.*-

...

(b) **Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee.**[52]

...

A perusal of DB's retirement plan[53] shows that its employees are entitled to involuntary separation benefits under specific circumstances, to wit:

...

ARTICLE VII:

RETIREMENT BENEFITS

...

Section 2 – Early Retirement

Upon early retirement, a Member will receive a lump sum benefit equal to a percentage of 150% of his Final Monthly Salary multiplied by his years of Credited Service calculated as of his Early Retirement Date...

...

Section 4 – Involuntary Separation Benefit

A Member terminated involuntarily for reasons beyond his control (except for just cause), including but not limited to retrenchment, **redundancy**, shall be entitled to receive whichever is greater of: (a) the applicable minimum benefit prescribed by law on involuntary separation or (b) **the benefit accruing to a Member computed in accordance with Article VII Sections 1, 2, or 3 of this Plan**, such that the employee shall not be entitled to the benefits of this Plan and separation pay under Art. 283 of the Labor Code.

Such benefit shall be in full satisfaction of all termination benefits which the Employee may be entitled to under the Labor Code, this Plan, or any policy or practice of the Company.[54]

...

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52 Emphasis supplied.
53 Supra at note 48.
54 Emphasis supplied.

As quoted above, an employee dismissed by reason of redundancy is entitled to a benefit computed in accordance with Article VII, Sections 1[55], 2, or 3[56] of the Retirement Plan. Since respondent's employment was terminated when she was 46 years old, her benefits were computed in accordance with Section 2[57] thereof. Clearly, the benefit that accrued in respondent's favor under the retirement plan was a consequence of her separation from DB; only that the amount of her separation pay, in this case, was computed consistent with the values used for computing a retirement pay. A similar situation was tackled in the case of *Mateo v. Coca-Cola Bottlers Phils., Inc.*[58] (**Mateo**) wherein the Supreme Court ruled, thusly:

> ...
>
> As petitioner was dismissed due to redundancy, she is entitled to receive, under the law, a separation pay equivalent to at least one month pay for every year of her service.
>
> It is likewise undisputed that petitioner was a member of respondent's Retirement Plan (Plan) duly approved by the BIR. The Plan expressly provides that a member who was involuntary separated from service for any cause beyond the member's control shall receive "in lieu of any other retirement benefits, a separation benefit computed in accordance with the retirement formula" or the termination benefit mandated by law, whichever is higher. Pertinent are Sections 1 and 3, Article V of the Plan which provide:
>
> **ARTICLE V**
> **PAYMENT OF BENEFITS**
>
> **Section 1. <u>Retirement Benefit.</u>** A Member who retires on the retirement dates as defined in Article IV of this Plan shall be entitled to and shall be paid a retirement benefit equivalent to 100% of Final Pay for every year of Credited Service, plus commutation of his unused Sick Leave Credits, if any.
> ...
>
> **Section 3. <u>Involuntary Separation Benefit.</u>** Any Member who is involuntarily separated from service by the Company for any cause beyond his control shall be entitled to receive in lieu of any other retirement benefits, a separation benefit computed in accordance with the retirement benefit

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55 Section 1 – Normal and Late Retirement Benefits.
56 Section 3 – Voluntary Separation Benefit.
57 Supra at p. 14.
58 G.R. No. 226064, 17 February 2020; Citations omitted, emphasis and underscoring in the original text and supplied.

> formula described in Section 1 of this Article or the applicable termination benefit under existing laws, whichever is greater, irrespective of his length of service with the Company.

The Plan also expressly provides that a member's company liabilities shall be deducted from the benefit to be received and that the member shall not be entitled to any benefit other than that payable thereunder:

> ...
> **Section 6. Obligations.** Upon separation or a Member from the Company, any amount of benefit which he or his Beneficiary is entitled to receive under this Plan shall first be used to pay off all liabilities of the Member to the Company and to the Plan.
>
> **Section 7. No Other Benefits.** No benefits other than what is provided in accordance with the foregoing Sections 1 to 5 of this Article V shall be payable under this Plan.
> ...

The Plan clearly indicates that an employee who was involuntarily separated from service, although not having reached the compulsory or optional retirement age nor having met the tenurial requirement, like herein petitioner, is entitled to receive an "involuntary separation benefit" to be computed using the retirement benefit formula, or the separation pay under the law, whichever is higher. Plainly, petitioner has the right to demand to be paid the separation benefit as computed under the Plan or separation pay in accordance with Article 283 of the Labor Code, and shall be entitled to receive the higher amount.

Here, it is clear that petitioner received her separation pay computed under the formula used for determining retirement pay. The fact that petitioner's separation pay was computed in accordance with the formula for computing retirement pay does not thereby convert the character of the benefit received into a retirement benefit. The retirement formula was used because it was, in fact, more advantageous for the petitioner. Thus, there should be no confusion as regards the character of the benefit which petitioner received considering that Section 3 of the Plan unequivocally characterizes the benefit to be received due to involuntary separation from service as a separation benefit.

...

> We hold that even assuming, arguendo, that complainant's separation pay was computed in reference to respondent's retirement plan, it does not change the fact

> that complainant was separated on account of redundancy and not because she reached either the optional or compulsory retirement age. Thus, it is wrong to apply the provisions of the [NIRC] anent exemption of retirement benefits from income tax.
>
> Neither was there any showing that petitioner voluntarily opted to retire so as to treat the amount she received as her retirement pay. Not being a retirement pay, it was likewise plain error on the part of the CA to have applied the four conditions under Section 32(B)(6)(a) of the NIRC for tax exemption of retirement benefits...[59]
>
> ...

With the foregoing decision, it becomes evident that DB committed the same mistake of considering the benefit given to respondent (under the Retirement Plan) as "retirement pay" and thus subjecting it to a withholding tax. Applying the ruling in *Mateo*, respondent's benefit under the Retirement Plan despite its erroneous designation as "retirement pay" is not taxable since she received the same as a consequence of redundancy and not due to her retirement.

All told, the Court finds no cogent reason to reverse or modify the assailed Decision and Resolution reached by the Court's Third Division.

WHEREFORE, with the foregoing premises, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 04 January 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 30 June 2020 and Resolution dated 28 October 2020, respectively, of the Court's Third Division in CTA Case No. 9566 entitled *Ma. Jethra B. Pascual v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[59] Emphasis supplied.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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.

ROMAN G. DEL ROSARIO
Presiding Justice