REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1202** (CTA Case No. 8239)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
AR REALTY HOLDINGS, INC., Respondent.	***Promulgated:***
	JAN 28 2016 10:30 a.m.

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DECISION

UY, *J.*:

This Petition for Review[1] filed on July 25, 2014 seeks the reversal and setting aside of the Decision dated April 1, 2014[2] and the Resolution dated July 9, 2014,[3] both promulgated by the Second Division of this Court (hereinafter referred to as the "Court in Division") in CTA Case No. 8239, entitled *"AR Realty Holdings Co., Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

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[1] EB Docket, pp. 1 to 8.

[2] EB Docket, pp. 10 to 62; Penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas.

[3] EB Docket, pp. 64 to 70; Penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justice Juanito C. Castañeda, Jr.

<u>Decision dated April 1, 2014</u>:

"In view of the foregoing, this Court partially grants the instant Petition for Review. The assessment issued by respondent against petitioner covering deficiency income tax for taxable year 2006 in the amount of ₱377,980.91 is hereby cancelled and/or withdrawn. However, the assessments on deficiency VAT and EWT for taxable year 2006 is hereby upheld but in the adjusted aggregate amount of ₱137,767.57, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

	VAT	EWT	Total
Basic deficiency tax	₱ 109,708.54	₱ 505.51	₱ 110,214.05
Add: 25% Surcharge	27,427.14	126.38	27,553.52
TOTAL	**₱137,135.68**	**₱ 631.89**	**₱137,767.57**

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT and EWT computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Deficiency Interest computed from
Value-added tax	January 25, 2007
Expanded withholding tax	January 15, 2007

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱137,767.57 and on the deficiency interest which has accrued as stated above in (a) computed from March 10, 2011 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby ordered to **CANCEL AND SET ASIDE** Assessment Notice No. IT-TVN147716-06-411-0290 for the alleged deficiency income tax liability of petitioner. Finally, petitioner is hereby ordered to settle the deficiency VAT and EWT liabilities, including surcharges and interests.

SO ORDERED."

Resolution dated July 9, 2014:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration (of the Decision dated 1 April 2014), filed on April 14, 2014, and, petitioner's Motion for Partial Reconsideration (to the Decision dated 01 April 2014), filed on April 16, 2014, are both hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner, Commissioner of Internal Revenue, is the chief of the Bureau of Internal Revenue (BIR), the government agency responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.

Respondent, AR Realty Holdings Co., Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Unit 1810 Cityland 10 Tower 1, 6815 H.V. Dela Costa, Ayala Avenue, Makati City and primarily engaged in realty operations. It is duly registered with the BIR - Revenue District Office No. 50 of Revenue Region No. 8, South Makati City, Philippines.

Petitioner issued Tax Verification Notice No. 00050126 dated July 20, 2007, authorizing Revenue Officer (RO) Jerry C. Angeles, under the supervision of Group Supervisor (GS) Lucy Abrasia of Revenue District Office No. 50, Revenue Region No. 8, to examine/audit respondent's internal revenue taxes covered by taxable year 2006.

After the examination of respondent's records, which included, but was not limited to the duly filed tax returns, books and other accounting records, RO Angeles submitted his findings through an undated Post Reporting Notice, received by respondent on February 27, 2008, with alleged deficiency internal revenue taxes for taxable year 2006 in the total amount of ₱1,071,623.30, including increments, to wit:

Tax Type	Basic	Surcharge	Interest	Compromise	TOTAL
Income Tax	₱ 901,595.60	-	₱153,776.15	-	₱ 1,055,371.474
Expanded Withholding Tax (EWT)	4,063.28	-	896.36	-	4,959.64
Documentary Stamp Tax (DST)	zzx 6,954.00	₱ 1,738.50	1,599.42	₱1,000.00	11,291.92
TOTAL					**₱ 1,071,623.30**

On July 24, 2008, respondent received an undated Revised Post-Reporting Notice, with a revised assessment of the alleged deficiency taxes in the amount of ₱2,670,277.42, including increments, as follows:

Tax Type	Basic	Surcharge	Interest	Compromise	TOTAL
Income Tax	₱ 260,985.87	-	₱57,416.89	-	₱318,402.76
EWT	4,063.28	-	1,097.09	-	5,160.37
DST	7,925.00	₱ 1,981.25	2,139.75	₱ 2,000.00	14,046.00
Value Added Tax (VAT)	1,881,184.11		451,484.19		2,332,668.29
TOTAL					**₱2,670,277.42**

After a series of informal discussions, petitioner issued the Preliminary Assessment Notice (PAN) dated March 18, 2009, with alleged deficiency taxes, inclusive of interest and compromise penalties, in the amount of ₱892,857.90, broken down as follows:

Tax Type	Amount
Income Tax	₱ 364,322.86
VAT	511,578.02
EWT	5,877.84
DST	11,079.18
TOTAL	**₱ 892,857.90**

On April 3, 2009, respondent filed its protest to the PAN, contesting the factual and legal bases of petitioner's assessment.

Petitioner issued an Assessment Notice-Formal Assessment Notice (AN-FAN) on April 8, 2009, which was received by respondent on May 12, 2009, reiterating the alleged deficiency internal revenue taxes as follows:

Tax Type	Assessment No.	Amount
Income Tax	IT-50126-06-09-0253	₱ 369,751.98
VAT	VT-50126-06-09-0253	518,969.64
EWT	WE-50126-06-09-0253	5,962.45
DST	DS-50126-06-09-0253	11,238.05
TOTAL		**₱ 905,922.12**

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On April 30, 2009, petitioner issued a letter alleging respondent's failure to file a timely protest to the PAN, and considered the protest to the PAN as a protest to the FAN; and requested for the payment of the undisputed deficiency documentary stamp tax in the amount of ₱11,183.70, allegedly uncontested and not included in its protest.

On May 12, 2009, respondent filed an administrative protest to the AN-FAN for lack of legal and factual bases.

On May 14, 2009, respondent paid the undisputed DST amounting to ₱11,217.15, including the interest until the time of payment.

On June 24, 2009, respondent received the letter from the petitioner dated June 18, 2009, informing respondent that due and by reason of the protest to the AN-FAN, the docket of the case was forwarded to Revenue District No. 50, South Makati, and further acknowledging respondent's payment of ₱11,217.15.

On February 11, 2011, respondent received the Amended Assessment Notice under Assessment No. IT-TVN147716-06-11-0290 dated February 8, 2011 (Amended AN-FAN), directing the payment of ₱377,980.91, or the filing of a protest in writing to the CIR within thirty (30) days from receipt, or on February 11, 2011.

Attached to the Amended AN-FAN was the Final Decision on Disputed Assessment dated February 8, 2011, through Jaime B. Santiago, CESO V, Regional Director of Revenue Region No. 8, finally denying the protest letter dated May 12, 2009 of respondent. The said Amended AN-FAN reiterated the alleged assessment for internal revenue taxes contained in the AN-FAN, except for some modifications on unsupported expenses in the Income Tax and DST already paid, and requesting respondent to settle the same, or opt to appeal with this Court, within thirty (30) days from receipt, or until March 13, 2011.

Respondent filed a Petition for Review before the Court in Division on March 11, 2011, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997.[4]

On April 18, 2011, petitioner filed her Answer, averring special

[4] Petition for Review, Division Docket – Vol. I (CTA Case No. 8239), pp. 4 and 9.

and affirmative defenses; and reminded petitioner that taxes are important because it is the lifeblood of the government and should be calculated without unnecessary hindrance (*Commissioner v. Algue, Inc., L-28896, 17 February 1988).*

Thereafter, petitioner filed her Pre-Trial Brief on May 18, 2011, while respondent filed its Pre-Trial Brief on May 23, 2011. On June 21, 2011, the parties filed their Joint Stipulation of Facts and Simplification of Issues, which was approved by the Court in Division in the Resolution dated June 28, 2011.

During trial, both parties presented their respective documentary and testimonial evidence. Respondent filed its Formal Offer of Evidence on March 13, 2012, with petitioner's Comment thereto filed on March 20, 2012. Petitioner filed her Formal Offer of Evidence on December 4, 2012, with respondent's Comment on the same filed on December 12, 2012. On March 14, 2013, the parties separately filed their Memorandum.

In the Resolution dated April 3, 2013, CTA Case No. 8239 was submitted for decision by the Court in Division.

On April 1, 2014, the Court in Division rendered its assailed Decision,[5] partially granting the Petition for Review in CTA Case No. 8239, and ordering the Commissioner of Internal Revenue to CANCEL and SET ASIDE Assessment Notice No. IT-TVN147716-06-411-0290 for the alleged deficiency income tax liability of respondent for taxable year 2006. Respondent, on the other hand, was ordered by the Court in Division to settle the deficiency VAT and EWT liabilities, including surcharges and interests, for the same taxable year.

Petitioner then filed a Motion for Reconsideration (of the Decision dated 1 April 2014) on April 14, 2015,[6] to which respondent filed its Comment (to Respondent's Motion for Reconsideration dated 14 April 2014) on May 8, 2014.[7] Respondent likewise filed a Motion for Partial Reconsideration (to the Decision dated 01 April 2014) on April 16, 2014,[8] to which petitioner failed to file her Comment, despite

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[5] EB Docket, pp. pp. 10 to 62; Division Docket – Vol. II (CTA Case No. 8239), pp. 457 to 509.
[6] Division Docket – Vol. II (CTA Case No. 8239), pp. 518 to 522.
[7] Division Docket – Vol. II (CTA Case No. 8239), pp. 526 to 528.
[8] Division Docket – Vol. II (CTA Case No. 8239), pp. 510 to 515.

due notice.[9] For lack of merit, both Motions were denied by the Court in Division in the assailed Resolution dated July 9, 2014.[10]

Consequently, petitioner filed the instant Petition for Review[11] before the Court *En Banc* on July 25, 2014, praying for the reversal and setting aside of the assailed Decision and Resolution; and that another one be rendered, ordering respondent to pay the deficiency income tax.

Without necessarily giving due course to the instant Petition for Review, the respondent was directed by the Court *En Banc* to file its Comment thereon.[12] Thus, on September 25, 2014, respondent filed its Comment (to the Petition for Review dated 21 July 2014).[13]

After considering the arguments/discussion raised by the parties in their respective pleadings, the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective memorandum.[14]

Respondent filed its Memorandum on December 3, 2014.[15] However, petitioner failed to file her Memorandum, as per Records Verification dated January 7, 2015.[16] Correspondingly, the case was submitted for decision on January 29, 2015.[17]

Hence, this Decision.

THE ISSUE

Petitioner raises the following issues[18] for the Court *En Banc*'s resolution, to wit:

[9] Records Verification dated May 12, 2014 issued by the Judicial Records Division of this Court, Division Docket – Vol. II (CTA Case No. 8239), p. 529.
[10] EB Docket, pp. 64 to 70; Division Docket – Vol. II (CTA Case No. 8239), pp. 531 to 537.
[11] EB Docket, pp. 1 to 8.
[12] EB Docket, pp. 78 to 79.
[13] EB Docket, pp. 80 to 84.
[14] Resolution dated October 21, 2014, EB Docket, pp. 86 to 87.
[15] EB Docket, pp. 88 to 97.
[16] EB Docket, p. 98.
[17] Resolution dated January 29, 2014, EB Docket, pp. 100 to 101.
[18] EB Docket, p. 4.

> "Whether the Honorable Second Division of the CTA erred in ordering petitioner to cancel and set aside Assessment Notice No. IT-TVN147716-06-411-0290 for the alleged deficiency income tax liability of respondent."
>
> "Whether the Honorable Second Division of the CTA erred in denying herein petitioner's Motion for Reconsideration."

Petitioner's arguments:

Petitioner contends that respondent's total excess tax credits in the amount of ₱850,247.98 should not be considered in offsetting its income tax due for failure to support the same with BIR Form No. 2307, or the Certificate of Creditable Tax Withheld at Source.

Citing Section 2.58.3 (A) (B) of Revenue Regulations (RR) No. 2-98, as amended, petitioner claims that even if respondent presented its Annual Income Tax Returns for the succeeding years of 2007, 2008 and 2009, to show that the same were not utilized, the total amount of tax credits claimed cannot be ascertained by mere presentation of the Annual Income Tax Returns. It must be established by showing a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Finally, petitioner argues that the excess tax credits carried over to the succeeding years in the amount of ₱837,589.42 should be disallowed in order to recapture the benefit derived in crediting the same. To allow respondent to carry over the excess tax credits and the Minimum Corporate Income Tax (MCIT), and credit it in the succeeding years, then let it be credited in the year the MCIT was paid by offsetting the same from deficiency income tax would result to double benefit.

Respondent's counter-arguments:

Respondent counters that the arguments raised by petitioner are a mere rehash of the issues already presented before and already passed upon by the Court in Division.

With regard to the total tax credits in the amount of ₱850,247.98, respondent argues that in the course of trial, the ICPA testified that the excess credit, as appearing in the BIR Formal Letter of Final Decision on Disputed Assessment is the same as the amount indicated in its Annual Income Tax Return for calendar year 2006. Furthermore, the ICPA clearly stated in his report that the subject excess credits were carried over in the succeeding years of 2007, 2008, and 2009, but were never utilized, since creditable withholding taxes were higher than the tax due for the following taxable years.

Moreover, respondent opines that the propriety of the figure or amount being claimed as excess tax credit was never questioned in any part of the proceedings or raised as an issue as evidenced in the Final Decision on Disputed Assessment/Details of Discrepancy dated February 8, 2011, and in the Joint Stipulation of Facts and Issues.

Finally, according to respondent, the assessment pertaining to Income Tax for Calendar Year 2006 is through an Amended Assessment dated February 8, 2011. The said amended assessment having been issued more than three (3) years from the deadline of filing of the return on April 15, 2007, petitioner's right to assess has prescribed. Clearly, assessment for income tax is null and void for having been issued beyond the period allowed by law.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

Section 2.58.3 (A) (B) of RR No. 2-98, as amended, applies only to cases involving claims for tax credit or refund.

Petitioner heavily relies on Section 2.58.3 (A) (B) of RR No. 2-98, as amended, in arguing that the total tax credits in the amount of ₱850,247.98 must not be considered in offsetting against its income tax due, for respondent's failure to support the same with BIR Form No. 2307 or the Certificate of Creditable Tax Withheld At Source.

The Court *En Banc* does not agree.

Section 2.58.3 (A) (B) of RR No. 2-98 provides as follows:

> "SECTION 2.58.3. ***Claim for Tax Credit or Refund.*** —

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> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (B) **<u>Claims for tax credit or refund</u> of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that** the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**." *(Emphases and underscoring supplied)*

A careful reading of the foregoing provisions would reveal that the requirement of showing the fact of withholding by a copy of the withholding tax statement specifically pertains only to claims for tax credit or refund. Thus, said provisions cannot be used or cited by petitioner as a requirement in this case, which does not involve a claim for tax credit or refund, but one involving tax assessments.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[19] Correspondingly, Section 2.58.3 (A) (B) of RR No. 2-98 applies only to claims for tax credit or refund.

Thus, We cannot subscribe to petitioner's contention that respondent's failure to present the pertinent BIR Form No. 2307 or the Certificate of Creditable Tax Withheld At Source to support the amount of ₱850,247.98. To Our mind, said contention of petitioner is merely an after-thought, since the said amount (consisting of the amounts of ₱12,658.56, representing MCIT payment, and ₱837,589.42, representing excess tax credit carried over to succeeding year), was disallowed by the BIR for the following

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[19] *Bolos vs. Bolos*, G.R. No. 186400, October 20, 2010.

reasons only, as stated in the subject FDDA,[20] to wit:

> "**<u>MCIT Payment (P12,658.56)</u>** – MCIT Payment in the amount of P12,658.56 was not credited against the deficiency income tax since the same shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years pursuant to Section 27 (E) (2) of the NIRC, as amended.
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> **<u>Excess tax credit carried over to succeeding year (P837,589.42)</u>** – Excess tax credit carried over to succeeding period/year in the amount of P837,589.42 was deducted from the total allowable tax credit considering that the said amount has been credited, against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of the NIRC.
>
> *Similar to your contention in NOLCO, you alleged that the cited provision of the NIRC [Section 27 (E) (2)], allows taxpayers to carry over to the three succeeding years the excess tax credit and MCIT paid.*
>
> *Again, we are of position that the above argument is not tenable. When the excess tax credit and MCIT payment was carried over in the succeeding year, it maybe credited against the Normal Income Tax due of the said succeeding years thus, giving benefit/credit to taxpayers. The disallowance was made in order to recapture such benefits. To allow you to carry over excess tax credit and the MCIT and credit it in the succeeding years and of the same time be credited in the year the MCIT was paid by offsetting the same from your deficiency income tax, would result to double benefit which was never been the intent of the provision. Accordingly, our finding on excess tax credit and MCIT payment are herewith reiterated."*

For sure, if the reasons for the disallowance of the total amount of ₱850,247.98 is the non-submission of BIR Form No. 2307 or the Certificate of Creditable Tax Withheld at Source, the BIR could have easily have stated the same in the same FAN and FDDA. Since it has not done so, it can only mean that there are no other reasons by which the said total amount was disallowed. To renege now from the

[20] Exhibit "A", Division Docket – Vol. I (CTA Case No. 8239), p. 228.

cited reasons would call for the application of the doctrine of estoppel.

Petitioner's claim that there would result a "double benefit", if the amount of ₱837,589.42 is allowed, is unfounded.

Petitioner maintains that the excess tax credits carried over to the succeeding years in the amount of ₱837,589.42 should be disallowed in order to recapture the benefit derived in crediting the same. According to petitioner, to allow respondent to carry over the excess tax credits and the MCIT, and credit it in the succeeding years, and then let it be credited in the year the MCIT was paid by offsetting the same from deficiency income tax, would result to double benefit.

The contention is untenable.

As correctly pointed out by the Court in Division in the assailed Decision, it is inappropriate to disallow the benefit of excess tax carry-over which will redound to the succeeding year, for such is beyond the scope of the present assessment. But even granting that We ought to look into such issue, the same deserves scant consideration.

Based on the FDDA dated February 8, 2011 issued by petitioner,[21] the amount of ₱837,589.42 is computed as follows:

Excess tax credit from prior year(s)	₱ 649,245.32
Creditable tax withheld	201,002.66
Total	₱ 850,247.98
Less: MCIT Payment	12,658.56
Excess tax credit carried over to succeeding year	₱ 837,589.42

From this computation, it can be seen that the amount of ₱12,658.56, which represents the MCIT Payment, has already been deducted and thus, it is no longer included in the amount to be carried over to the succeeding periods. Such being the case, even when the amount of ₱837,589.42 has been carried over to the succeeding years to be applied to respondent's future income tax liabilities, the contention on the supposed double benefit that may

[21] Exhibit "14", Division Docket – Vol. I (CTA Case No. 8239), pp. 400 to 404 (@ p. 400).

arise in the succeeding years, as regards the MCIT, has no leg to stand on.

Furthermore, there is no indication that the amount of ₱837,589.42 has been claimed twice in the succeeding periods so as to effectuate the alleged double benefit, since it is merely carried over to the succeeding years in accordance with Section 76 of the NIRC of 1997[22]. Petitioner failed to pinpoint any evidence to show that respondent claimed twice the said amount as excess tax credits in the succeeding periods.

Lastly, the supposed double benefit could not have been realized by respondent since it incurred losses in the succeeding taxable years, as can be seen in respondent's Annual Income Tax Returns for 2007,[23] 2008[24] and 2009[25]. Thus, there is no income tax in the said periods to which the amount of ₱837,589.42 may be applied or offset.

WHEREFORE, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[22] "SEC. 76. *Final Adjustment Return.*—Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or

(B) **Carry-over the excess credit;** or

(C) Be credited or refunded with the excess amount paid, as the case may be.

xxx xxx xxx." *(Emphasis supplied)*

[23] Exhibit "U".

[24] Exhibit "V".

[25] Exhibit "W".

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice