REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2703** (CTA Case No. 9674)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
PORT BARTON DEVELOPMENT CORPORATION, Respondent.	Promulgated: MAR 14 2024 4:27

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DECISION

FERRER-FLORES, J.:

For review on appeal before this Court are the Decision[1] dated March 8, 2022 ("assailed Decision") and the Resolution[2] dated September 12, 2022 ("assailed Resolution") of the Court of Tax Appeals (CTA) Third Division and CTA Special Third Division, respectively, (CTA in Division), in the case of *Port Barton Development Corporation vs. Commissioner of Internal Revenue,* docketed as CTA Case No. 9674.

The dispositive portion of the assailed Decision reads:

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[1] *Rollo*, pp. 30 to 45; Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

[2] *Id.* at 47-53.

WHEREFORE, in light of the foregoing considerations, the present *Amended Petition for Review* is **GRANTED**. Accordingly, the subject income tax and VAT assessments, including the interests, surcharges and penalties, for taxable year 2011, in the aggregate amount of Php6,434,062.46 are declared as **INVALID**, and therefore, are **CANCELLED and SET ASIDE**.

Furthermore, Respondent [Commissioner of Internal Revenue] or any person duly acting on his behalf is **ENJOINED** from taking any further action against Petitioner [Port Barton Development Corporation] arising from the subject tax assessments.

Moreover, the PCL dated July 11, 2017 and FNBS dated July 24, 2017 issued against Petitioner are likewise **CANCELLED** and **SET ASIDE.**

SO ORDERED.

The dispositive portion of the assailed Resolution reads:

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

THE FACTS

The following are the facts of the case, as found by the CTA in Division,[3]

Petitioner Port Barton Development Corporation is a domestic corporation organized under the laws of the Philippines with principal office at 3/F Alegria Building, 2294 Pasong Tamo Extension, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to authorize the examination of taxpayer's books of accounts, to issue and decide deficiency assessments of internal revenue taxes.

On March 07, 2013, Petitioner received *Letter Notice* ("LN") No. 048-RLF-11-11-00174 dated February 26, 2013, informing Petitioner of a certain discrepancy on its local purchases, specifically, an alleged under-declaration thereof amounting to Php6,443,358.00 for the calendar year ended 2011.

Thereafter, on June 20, 2016, Petitioner received the *Preliminary Assessment Notice* ("PAN") dated June 16, 2016 on the BIR's finding of deficiency income tax and VAT for calendar year 2011. The formal written protest was submitted to BIR Makati Regional No. 08 Director's Office on July 4, 2016.

[3] *Rollo*, pp. 31 to 37; Citations omitted; Petitioner is Port Barton Development Corporation (PBDC) while respondent is the Commissioner of Internal Revenue (CIR).

The PAN correctly indicated Petitioner's business address at — G/F Alegria Building, 2229 Pasong Tamo Extension, Makati City.

The next written communications received by Petitioner were the *Preliminary Collection Letter* ("PCL") dated July 11, 2017 and the FNBS dated July 24, 2017. Petitioner received both letters on August 01, 2017. This time around, the addresses in the PCL and FNBS were indicated to be — 58 San Bernardo St., Pasig City 1600. Respondent seeks to collect deficiency income tax and VAT assessments, including the applicable penalty, interest, surcharge and penalties, as follows:

Deficiency Tax	***Amount***
Income tax	Php4,571,250.20
VAT	Php1,862,812.26
Total	**Php6,434,062.46**

On August 30, 2017, Petitioner filed its *Petition for Review*. The case was initially raffled to this Court's First Division.

Noting that the *Verification and Certification Against Forum Shopping and Special Power of Attorney* attached to the *Petition for Review* bore no date of execution, the Court issued the Resolution dated September 19, 2017, directing the Petitioner to submit duly dated documents. In compliance thereto, Petitioner submitted the duly dated and notarized documents on November 02, 2017. On even date, Petitioner also filed a *Motion to Amend Petition for Review* on November 02, 2017, praying for the amendment of paragraph 3 of, and of the prayer stated in, the said *Petition for Review*. In the Resolution dated December 07, 2017, the Court granted Petitioner's *Motion to Amend.*

On January 05, 2018, Petitioner filed a *Motion to Admit Amended Petition for Review*, attaching therewith its *Amended Petition for Review*. In the Resolution dated January 22, 2018, the Court denied the said *Motion to Admit* on the following grounds, to wit: (1) the Certification/Verification and the Special Power of Attorney attached to the Amended Petition for Review were mere photocopies bearing no date of execution, while their respective dates of acknowledgment and subscription appear to be earlier than the said *Amended Petition for Review*; and (2) paragraph 2 of the said *Certification/Verification* attached to the *Amended Petition for Review* refers only to the preparation and filing of the *Petition for Review*, not to the *Amended Petition for Review*.

Petitioner then filed a *Motion for Reconsideration (on Motion to Admit Amended Petition for Review)* on February 9, 2018, praying for: (1) the admission of the attached *Certification/Verification on Non-Forum Shopping*, *Secretary's Certificate on Adoption of Board Resolution*, and *Special Power of Attorney*, and (2) the reconsideration of the Court's denial to admit the *Amended Petition for Review*.

In the Resolution dated February 20, 2018, the Court granted Petitioner's *Motion for Reconsideration* and admitted the submitted documents, as well as the *Amended Petition for Review*, in the interest of justice.

Respondent posted his *Answer* on April 10, 2018.

On May 22, 2018, Respondent transmitted the *BIR Records* for this case.

The Pre-Trial Conference was initially scheduled on June 07, 2018.

On June 04, 2018, *Respondent's Pre-Trial Brief* was filed.

At the Pre-Trial Conference held on June 07, 2018, Petitioner's counsel manifested that the *Answer* filed by Respondent was not responsive to the *Amended Petition for Review*, and thus, he did not file a *Pre-Trial Brief.* Respondent's counsel then prayed that he be allowed to file an *Amended Answer* which was granted by the Court. Thus, the scheduled Pre-Trial Conference was cancelled and reset to August 16, 2018.

On June 22, 2018, Respondent posted a *Manifestation/Compliance*, submitting, *inter alia*, his *Answer*. In his *Answer*, Respondent interposed the following special and affirmative defenses, to wit:

> '8. Petitioner did not refute or reconcile the computerized matching conducted by this Bureau on information/data provided by third party sources against Petitioner declarations per VAT returns disclosed the following discrepancy indicated in Letter Notice No. 048-RLF-11-00-000174 dated February 26, 2013:

Per Summary List of Sales submitted by your suppliers	6,442,358.09
Domestic Purchases per Tax Returns filed	
Under-declaration of local Purchases	6,442,358.09
Percentage (%) of Discrepancy	100.00

> 9. Petitioner did not submit any accounting books or documents to reconcile the discrepancy found by the BIR in Letter Notice No. 048-RLF-11-00-000174 dated February 26, 2013.
>
> xxx xxx xxx
>
> 11. In this case, BIR Records shows that the Petitioner moved out in order, thus, it did not receive the FAN *[Final Assessment Notices]* sent by the BIR. Moreover, Petitioner moved out without notifying BIR or without updating its registration.
>
> Attached herein as Annex 'C' and forms integral part hereof is the photocopy of the returned FAN date July 1, 2016 as proof that the Petitioner move out, thus, the Petitioner was not able to receive the FAN. Also attached herein as Annex 'D' is the photocopy of the returned BIR's letter dated August 1, 2016 as

proof that the pertinent moved out, thus, it was not able to receive BIR's letter dated August 1, 2016.

12. It must be noted that applicable in this case is Section 11 of BIR Revenue Regulation No. 12-85 which states:

> "Sec. 11. Change of Address. — In case of change of address, the taxpayer must give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in is [*sic*] tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.

13. Considering that the BIR records shows that the Petitioner moved out, applicable in this case is Section 223 of the National Internal Revenue Code as amended which provides:

> SEC. 223. Suspension of Running of Statute of Limitations. — x x x; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; x x x

14. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil. 967 [1960]).

15. Assessments are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the Petitioner. All presumptions are in favour of the correctness of tax assessments. (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).

16. Tax assessments by examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior

officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'

Petitioner filed its *Pre-Trial Brief* on July 13, 2018.

The Pre-Trial Conference was further reset to, and held on, September 13, 2018.

Pursuant to the Order dated September 26, 2018, the present case was transferred to the Third Division of this Court.

On October 25, 2018, the parties filed a *Joint Motion to Admit Joint Stipulation of Facts and Issues*, attaching therewith their *Joint Stipulation of Facts and Issues* ("JSFI"), and praying for the admission thereof. In the Resolution dated November 5, 2018, the Court granted the parties' *Joint Motion* and admitted the said JSFI, and deemed the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated November 14, 2019 was issued.

As trial ensued, Petitioner presented its testimonial and documentary evidence. It offered the testimony of its General Manager, Mr. Roberto B. Bidaña.

The *Formal Offer of Evidence for the Petitioner* was filed on April 17, 2019. Respondent's *Comment (To Petitioner's Formal Offer of Evidence)* was then filed on April 26, 2019. In the Resolution dated May 21, 2019, the Court admitted all of Petitioner's offered exhibits.

For his part, Respondent likewise presented his testimonial and documentary evidence. He offered the testimony of Revenue Officer (RO) Angelo P. San Ramon.

Respondent's Formal Offer of Evidence was filed on August 16, 2019. Petitioner, however, failed to file its comment thereon.

On October 03, 2019, Petitioner filed an *Urgent Motion to Postpone [Hearing November 14, 2019]*, requesting for the deferment of the submission of its rebuttal witness' Judicial Affidavit and postponement of the court hearing.

In the Resolution dated October 09, 2019, the Court admitted all of Respondent's offered exhibits; and granted Petitioner's *Urgent Motion to Postpone*.

On February 06, 2020, Petitioner filed an *Urgent Motion to Postpone [Hearing of February 11, 2020]*, which was granted by the Court in the Resolution dated February 11, 2020. Thereafter, on August 28, 2020, Petitioner filed another *Urgent Motion to Postpone [Hearing of September 02, 2020]*, which was likewise granted by the Court in the Resolution dated September 02, 2020.

On November 27, 2020 Petitioner filed a *Compliance,* submitting the *Sworn Statement of Ms. Lourdes Pantola* dated November 26, 2020. It then offered the testimony of Ms. Lourdes Pantola, its Accountant, as a rebuttal witness.

> Subsequently, the *Formal Offer of Evidence on Rebuttal for the Petitioner* was filed on December 11, 2020. On December 10, 2020, Respondent posted his *Comment (To Petitioner's Formal Offer of Evidence on Rebuttal)*. In the Resolution dated February 02, 2021, the Court admitted all of Petitioner's exhibits.
>
> The *Memorandum for Respondent* was posted on March 11, 2021. Petitioner, however, failed to file its memorandum.
>
> This case was deemed submitted for decision on July 05, 2021."

In the assailed Decision, the CTA in Division granted the Amended Petition for Review, and declared that the subject income tax and VAT assessments for TY 2011 were invalid, and were, therefore cancelled and set aside. The Commissioner of Internal Revenue (CIR) or any person acting on his behalf was enjoined from taking any further action against Port Barton Development Corporation (PBDC) arising from the subject assessments. Likewise, the Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) against PBDC were cancelled and set aside.

In the assailed Resolution, the CTA in Division denied CIR's Motion for Reconsideration for lack of merit. A copy thereof was received by CIR on September 21, 2022.[4]

On October 6, 2022, CIR filed a Motion for Extension of Time to File Petition for Review.[5] On October 13, 2022, this Court granted CIR a final and non-extendible period of fifteen (15) days from October 6, 2022, or until October 21, 2022, within which to file the Petition for Review.[6]

On October 17, 2022, CIR filed the Petition for Review before the Court *En Banc*.

On January 12, 2023, this Court ordered PBDC to file comment[7]. PBDC filed through courier its Comment To Petitioner's Petition for Review on February 2, 2023 which was received by the Court on February 3, 2023.[8]

Thereafter, this Court submitted this case for decision on March 14, 2023.

Hence, this decision.

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[4] *Rollo*, p. 46.
[5] *Id.* at 1-4.
[6] *Id.* at 5.
[7] *Id.* at 73-74.
[8] *Id.* at75-82.

THE ISSUES

The grounds for the allowance of the Petition for Review[9] raised by PBDC are the following:

A. THE CTA 3RD DIVISION FAILED TO CONSIDER THE FACT THAT THE PAN AND THE FAN WERE SIGNED BY BIR'S REGIONAL DIRECTOR [RD]. THUS, THE PAN AND FAN ISSUED AGAINST RESPONDENT WERE VALID ASSESSMENTS UNDER THE LAW ON AGENCY.

B. THE CTA 3RD DIVISION FAILED TO CONSIDER THE FACT THAT THE RESPONDENT DID NOT NOTIFY BIR OF FORMER'S CHANGE OF ADDRESS OR UPDATED ITS OFFICE ADDRESS WITH BIR. THUS, THE FAN WAS SERVED TO RESPONDENT'S REGISTERED ADDRESS. CONSEQUENTLY, THE SERVICE OF THE FAN WAS VALID, THUS, THE SAME BECAME FINAL AND EXECUTORY THROUGH RESPONDENT'S FAULT.

THE CTA 3RD DIVISION ERRED IN NOT APPLYING SECTION 11 OF REVENUE REGULATIONS NO. 12-85 TO THIS INSTANT CASE AND FAILED TO CONSIDER THE FACT THAT THE RESPONDENT ACTED IN BAD FAITH AND IN ABUSE OF RIGHT IN CHANGING ITS ADDRESS DURING A PENDING TAX INVESTIGATION. THUS, THE SERVICE OF ASSESSMENT NOTICE TO ITS REGISTERED ADDRESS IS VALID.

C. THE CTA 3RD DIVISION FAILED TO CONSIDER THE FACT THAT THE FAN WAS ALREADY FINAL, EXECUTORY AND DEMANDABLE IN THIS CASE PURSUANT TO SECTION 11 OF REVENUE REGULATIONS NO. 12-85 AND REVENUE MEMORANDUM ORDER NO. 26-2016. CONSEQUENTLY, WHEN THE RESPONDENT FILED ITS PETITION FOR REVIEW IN CTA CASE NO. 9674, CTA 3RD DIVISION HAS NO JURISDICTION TO TAKE COGNIZANCE OF RESPONDENT'S PETITION FOR REVIEW.

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9 *Id.* at 9-10.

CIR's Arguments

CIR argues that in the instant case, there was a valid assessment under the law on agency because the RD signed the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) in this case. CIR avers that the authority of Revenue Officer (RO) Angelo P. San Ramon to conduct tax audit against PBDC was authorized/ratified by the RD; and, that even in the absence of a Letter of Authority (LOA), the audit was authorized and the assessment issued was valid.

CIR alleges that PBDC abused its right when it changed its address while there was an ongoing Bureau of Internal Revenue (BIR) tax audit against it.

CIR submits that the FAN was validly served to PBDC. He contends that the FAN was already final, executory and demandable, and this Court has no jurisdiction to take cognizance of this case.

PBDC's Arguments

PBDC counter-argues that the CIR has not cited specific legal provision and BIR circulars that would dispense with the requirement of LOA preparatory to the conduct of an examination. It also contends that the BIR was properly notified of PBDC's change of business address. It avers that the FAN being null and void did not acquire finality; thus, it never attained the status of being executory and demandable.

THIS COURT'S RULING

The instant petition is denied.

CTA has jurisdiction in the instant case under "other matters" pursuant to Section 7(a)(1) of RA No. 1125, as amended

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[10]

[10] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs,* G.R. No. 209830, June 17, 2015.

Section 7(a)(1) of Republic Act (R.A.) No. 1125,[11] as amended by R.A. No. 9282,[12] states:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"**; (Emphases added)

A plain reading of the above-provision shows that the jurisdiction of the CTA is not limited to disputed assessments and refunds.

In *Commissioner of Internal Revenue vs. Manila Medical Services, Inc.*,[13] citing *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division et al.*,[14] reiterated that:

> "...the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.** The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy." *(Emphasis supplied)*

Verily, the jurisdiction of the CTA also includes other matters or cases that arise out of the National Internal Revenue Code (NIRC) or other laws administered by the BIR. The CTA in Division is correct in ruling that, "the FNBS dated July 24, 2017, being substantially a collection letter, constitutes as an act of Respondent [CIR] on "other matters" arising under the NIRC[.]"[15]

LN is not converted to LOA; thus, assessment is void for lack of authority of RO

Sections 6 (A) and 13 of the NIRC of 1997, as amended, state:

[11] An Act Creating the Court of Tax Appeals, Approved: June 16, 1954.

[12] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, Approved: March 30, 2004.

[13] G.R. No. 255473, February 13, 2023.

[14] G.R. No. 258947, March 29, 2022.

[15] *Rollo*, p. 40.

> "SEC. 6. ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** —
>
> > **(A) Examination of Return and Determination of Tax Due.** — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax...**
>
> SEC. 13. ***Authority of a Revenue Officer.*** — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax**, or **to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphases supplied)*

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard)*,[16] the Supreme Court differentiated LN from LOA, *viz:*

> "The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.**" *(Emphasis supplied)*

In *Medicard*, the Supreme Court held that the absence of an LOA violated MEDICARD's right to due process. The assessment issued by the CIR is inescapably void for not having an authority to examine MEDICARD in the first place.

To emphasize, the Court has consistently held that, in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[17]

[16] G.R. No. 222743, April 5, 2017.
[17] *Id.*

In the case at bar, it is undisputed that the PAN[18] and FAN[19] were based on the LN, which was not converted to LOA. As correctly found by the Court in Division, RO San Ramon lacked the proper authority to conduct the examination and assessment of PBDC. As a result, the assessments in the instant case were void.

At this juncture, we will no longer discuss the other issue in this case, *i.e.,* whether FAN was properly served.

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the CTA Third Division and CTA Special Third Division, respectively.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision, dated March 8, 2022, and the assailed Resolution, dated September 12, 2022, of the CTA Third Division and CTA Special Third Division, respectively, in CTA Case No. 9674 are **AFFIRMED.**

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[18] *Rollo*, p. 324
[19] *Id.* at 333.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On judicial leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Official Business)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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