REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BATANGAS ELECTRIC 1 COOPERATIVE I (BATELEC I), *Petitioner,*	**CTA CASE NO. 8423**
	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 11 2018 10:43 a.m.

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AMENDED DECISION

BAUTISTA, J.:

The Case

Submitted anew for decision is a Petition for Review[1] filed by petitioner Batangas Electric 1 Cooperative I ("BATALEC I") on February 2, 2012, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], seeking for the Court to render judgment declaring the following: *(1)* that

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[1] *Records, CTA Case No. 8423, Vol. 1, Petition for Review ("PFR"),* pp. 6-391, with annexes.
[2] *Section 7(a)(1) of RA No. 1125* reads as follows:

> Sec. 7. *Jurisdiction.* - The Court of Tax Appeals 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;

[3] An Act Creating the Court of Tax Appeals, as Amended.
[4] 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.
[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

payment of the deficiency taxes under protest does not mean abandonment of the legal issues raised in the Petition; *(2)* that petitioner already paid the correct amount of value-added tax ("VAT") due for taxable year ("TY") 2007; *(3)* that petitioner already paid the correct amount of expanded withholding tax ("EWT"), and as a matter of fact, overpaid such tax in relation to the General Professional Partnerships ("GPPs") as no withholding tax is due from professional fees paid thereto; *(4)* that petitioner already paid the correct amount of withholding tax on compensation ("WTC") after duly considering the excess taxes withheld from its employees; *(5)* that petitioner is not liable for interest and penalties for the period beginning January 15, 2008 until the present due to delays not caused by petitioner who has acted in good faith; and *(6)* ordering the Commissioner of Internal Revenue ("CIR") and/or his duly authorized representative in the Bureau of Internal Revenue ("BIR") to desist from levying any deficiency tax due for VAT, EWT, and WTC for TY 2007, or to credit the amounts already paid by petitioner to its future tax liabilities.[6]

The Parties[7]

Petitioner is an electric cooperative created pursuant to *Presidential Decree ("PD") No. 269, as amended.* It is a Public Utility with a franchise to distribute electricity in twelve (12) Municipalities. It is a non-profit organization providing electric service to its member-consumers.

Respondent is the duly appointed CIR with the authority to carry out the functions, duties, and responsibilities of his office, including the power to decide disputed assessments, cancellation and abatement of tax liabilities, and grant of tax refund or issuance of tax credit certificates ("TCCs"), pursuant to the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other tax laws, as well as rules and regulations issued by the BIR.

The Facts

The facts[8], as found by the Court in its Decision dated April 29, 2015, are herein quoted as follows:

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[6] *Records, Vol. 1, PFR, Prayer,* pp. 18-19.
[7] *Id., Vol. 2, Decision, The Parties,* pp. 903-904.
[8] *Id., The Facts,* pp. 904-909.

On July 31, 2008, petitioner received a Letter of First Notice requesting the production of documents pursuant to a Letter of Authority [("LOA")] issued by respondent duly signed and authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering [TY] 2007.

Petitioner submitted the requested documents on August 13, 2008 and again on July 31, 2009. Notwithstanding petitioner's cooperation, respondent issued on September 13, 2010, a letter with Final Request for Presentation of Records wherein it was stated that despite previous demands, petitioner failed to present and submit all the required documents.

On October 12, 2010, respondent issued a Notice of Informal Conference informing petitioner of its alleged tax liabilities for VAT, [EWT] and [WTC] for [TY] 2007 amounting to a total of P[hp]2,971,678.85.

In response, petitioner sent a Letter to respondent dated October 29, 2010 contesting the latter's audit findings.

On December 15, 2010, respondent issued a Preliminary Assessment Notice [("PAN")] with alleged tax liabilities of petitioner amounting to a total of P[hp]6,309,862.96, this was received by petitioner on December 17, 2010.

Consequently, on January 13, 2011, petitioner received a Formal Letter of Demand [("FLD")] and Assessment Notices dated January 10, 2011 for the alleged deficiency VAT, [EWT] and [WTC] in the aggregate amount of P[hp]6,435,709.18, inclusive of interests and compromise penalty, broken down as follows:

	Deficiency Tax Due	**Interest**	**Compromise Penalty**	**Total Tax Due**
VAT	3,536,873.75	2,094,992.07	25,000.00	5,656,865.82
[EWT]	255,777.60	152,905.95	16,000.00	424,683.55
[WTC]	211,639.80	126,520.01	16,000.00	354,159.81
	4,004,291.15	**2,374,418.03**	**57,000.00**	**6,435,709.18**

Petitioner filed its administrative protest to the FLD and Assessment Notices on February 14, 2011 requesting for reinvestigation of the subject assessment. Subsequently on February 15, 2011, petitioner paid the following basic deficiency taxes to respondent:

[EWT]	P[hp]	255,777.60
[WTC]		131,370.07
TOTAL	**P[hp]**	**387,147.67**

On March 9, 2011, petitioner submitted additional supporting documents to substantiate its request for reinvestigation and objections against the FLD and Assessment Notices.

In a Letter dated April 29, 2011, respondent granted petitioner's request for reinvestigation and required petitioner to submit additional pieces of evidence specified therein. Petitioner complied with the request and submitted the documents on May 6, 2011 through a Transmittal Letter dated May 5, 2011.

On May 23, 2011, respondent issued a Revised Notice of Informal Conference informing petitioner that the re-investigation resulted in the determination of the alleged tax liabilities for VAT, [EWT] and [WTC] for [TY] 2007 amounting to P[hp]6,314,098.49. The details are as follows:

I.	**VALUE ADDED TAX**				
	VATable Receipts Per Audit			P[hp]	206,854,972.06
	Tax Rate				12%
	Output Tax Due				24,822,596.65
	Less: Allowed Input Taxes				9,786,712.38
	Tax Due				15,035,884.27
	Less: Supported Tax Payments				11,499,010.52
	Deficiency Tax Due				3,536,873.75
	Add: Interest (1/26/2008 - 1/10/2011)	P[hp]	2,094,992.07		
	Compromise Penalty		25,000.00	[Php]	2,119,992.07
	Total Amount Due			**P[hp]**	**5,656,865.82**
II.	**EXPANDED WITHHOLDING TAX**				
	Expenses Not Subjected to Withholding Tax			P[hp]	35,611,733.23
	Tax Due				1,611,858.81
	Less: Tax Paid				1,356,081.21
	Deficiency Tax Due				255,777.60
	Less: Tax Paid (February 15, 2011)				255,777.60
	Deficiency				-0-
	Add: Interest (1/15/2008 - 6/25/2011)	P[hp]	175,898.25		
	Compromise Penalty		16,000.000	[Php]	191,898.25
	Total Amount Due			**P[hp]**	**191,898.25**
III.	**WITHHOLDING TAX ON COMPENSATION**				
	Withholding Tax Due Per Books - December			P[hp]	357,552.19
	Withholding Tax Remittance - December				145,912.39
	Deficiency Tax Due				211,639.80
	Less: Tax Payment (February 15, 2011)				131,370.73
	Deficiency Tax Due				80,269.73
	Add: Interest	P[hp]	55,201.49		
	Compromise Penalty		12,000.00	[Php]	67,201.49
	Total Amount Due			**P[hp]**	**147,471.22**

On July 28, 2011, petitioner submitted additional

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documents in support of respondent's request and its objection against the assessed deficiency tax liabilities, as determined after re-investigation conducted by respondent.

On December 12, 2011, respondent rendered a Final Decision on Disputed Assessment [("FDDA")] which was received by petitioner on January 5, 2012. Respondent found that after re-investigation, petitioner was still held liable for the alleged tax liabilities.

On February 2, 2012, petitioner flied the instant Petition for Review.

On February 8, 2012, respondent issued a Preliminary Collection Letter demanding payment in the aggregate amount of P[hp]6,314,099.49.

On March 2, 2012, petitioner filed a "Manifestation" dated February 21, 2011 wherein it stated that it *(1)* already paid the correct VAT due and thus has no longer any deficiency taxes for [TY] 2007 and *(2)* the five (5%) Final VAT withheld by the Government is deductible from Output VAT.

Respondent filed her Answer on April 30, 2012, interposing the following Special and Affirmative Defenses:

xxx xxx xxx

On May 14, 2012, petitioner filed it[s] Reply by registered mail which was received by this Court on May 25, 2012.

On July 17, 2012, petitioner filed its Omnibus Motion seeking the supervision of the Court in exploring the possibility of an amicable settlement and/or the appointment of an Independent Certified Public Accountant [("ICPA")] pursuant to Section 5, Rule 12 of the RRCTA. In a Resolution dated August 3, 2012, the Court granted the Commissioning of Mrs. Juanita Gallevo Leviste as ICPA [("ICPA Leviste")].

During trial, petitioner presented as witnesses Teresita Macalindong, Flora Pasia and the ICPA. On the other hand, respondent presented BIR personnel, Ms. Emelita Ruado-Abo, as her lone witness.

On March 26, 2013, petitioner filed its Motion to Amend the Petition for Review to Conform to Evidence that surfaced during trial pursuant to Section 5, Rule 10 of the Revised

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Rules of Court. This Court denied the motion in a Resolution dated June 27, 2013.[9]

With the filing of petitioner's Memorandum[10] by registered mail on February 5, 2014, and respondent's Memorandum[11] by registered mail on February 18, 2014, the case was deemed submitted[12] for decision on February 28, 2014. However, with the submission of petitioner's Motion for Leave to File Attached Reply Memorandum[13] on February 28, 2014, and its *Ex Parte* Compliance[14] on March 21, 2014, the case was deemed re-submitted[15] for decision on May 6, 2014.

On April 29, 2015, the Court promulgated a Decision[16] denying the Petition for Review. The dispositive portion[17] of the Decision reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED.** Accordingly, the FDDA on deficiency VAT and deficiency [WTC] for [TY] 2007 against petitioner is hereby **UPHELD** by this Court and petitioner is hereby **ORDERED TO PAY** the amount[s] of P[hp]4,421,092.19 and P[hp]181,318.30, respectively, inclusive of surcharge and deficiency interest.
>
> On the deficiency [EWT], petitioner is hereby **ORDERED TO PAY** respondent deficiency interest amounting to P[hp]80,659.38.
>
> The foregoing payments to respondent are broken down as follows:

	Basic Tax	**25% Surcharge**	**20% Deficiency Interest on Payments made on Feb. 15, 2011**	**Total**
[VAT]	P[hp] 3,536,873.75	P[hp] 884,218.44		P[hp] 4,421,092.19
[EWT]	-	[-]	P[hp] 80,659.38	80,659.38
[WTC]	80,269.07	20,067.27	80,981.96	181,318.30
Total	**P[hp] 3,617,142.82**	**P[hp] 904,285.71**	**P[hp] 161,641.34**	**P[hp] 4,683,069.87**

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[9] Emphases retained.
[10] *Records, Vol. 2, Memorandum,* pp. 784-809.
[11] *Id., Memorandum,* pp. 827-840.
[12] *Id., Resolution,* p. 843.
[13] *Id., Motion for Leave to File Attached Reply Memorandum,* pp. 845-851.
[14] *Id., Ex Parte Compliance,* pp. 868-889.
[15] *Id., Resolution,* pp. 894-895.
[16] *Records, Vol. 2, Decision,* pp. 903-929.
[17] *Id., Dispositive Portion,* pp. 926-928.

In addition, petitioner is hereby **ORDERED TO PAY:**

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P[hp]3,536,873.75 and on the basic deficiency [WTC] of P[hp]80,269.07 computed from January 25, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the [1997 NIRC];

b) Delinquency interest at the rate of twenty percent (20%) per annum on the amount of P[hp]4,421,092.19, representing basic deficiency VAT of [Php]3,536,873.75 and 25% surcharge of [Php]884,218.44 and on the amount of [Php]181,318.30 representing basic deficiency [WTC] of [Php]80,269.07 and 25% surcharge of P[hp]20,067.27, computed from January 5, 2012 until full payment thereof, pursuant to Section 249 (C) of the [1997 NIRC];

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest of [Php]161,641.34 due on the Feb. 15, 2011 deficiency WT remittances computed from January 5, 2012 until full payment thereof, pursuant to Section 249 (C) of the [1997 NIRC].

SO ORDERED.[18]

On May 15, 2015, petitioner filed a Motion for New Trial[19], praying that it be allowed to rectify its mistake and excusable negligence by presenting and submitting official receipts, sales invoices, BIR Forms, and other documents pertinent to the instant case[20]. Respondent was ordered[21] to file his comment on May 20, 2015, but failed[22] to do so.

On August 7, 2015, the Court resolved to grant petitioner's Motion for New Trial, setting aside the Decision promulgated on April 29, 2015 and setting the case for trial for the presentation of petitioner's additional evidence.[23]

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[18] Emphases retained.
[19] *Records, Vol. 2, Motion for New Trial,* pp. 930-944, with annexes.
[20] *Id., Prayer,* p. 937.
[21] *Id., Vol. 2, Resolution,* p. 946.
[22] *Id., Records Verification Report,* p. 947.
[23] *Id., Resolution,* pp. 955-959.

On September 9, 2015, petitioner filed a Motion to Set Pre-Marking of Exhibits For Additional Evidence[24], which was granted by the Court in its September 29, 2015 Resolution[25], thereby setting the pre-marking of petitioner's exhibits.

On October 20, 2015, petitioner filed a Motion for Clarification[26], on whether the ICPA can pre-mark the exhibits as officer of the Court and petitioner can just pre-mark such exhibits in bulk before the Office of the Clerk of Court, in which case, four (4) settings would be sufficient. This was set to rest during the hearing[27] held on October 27, 2015, wherein the Court allowed the ICPA to mark its voluminous exhibits, however, the Court ruled that it would be up to the petitioner if it would retain its current ICPA or secure the services of another.

On July 18, 2016, counsel for petitioner presented[28] ICPA Leviste, who identified her Judicial Affidavit marked as *Exhibit* "M"[29] and her signature thereon marked as *Exhibit* "M-1"[30], her Amended ICPA Report marked as *Exhibit* "L,"[31] and her signature thereon marked as *Exhibit* "L-1"[32]. Also marked during the hearing were *Exhibits* "L-2," "L-15," "L-16," "L-30," "L-31," and "N". There being no other witness to present, petitioner was granted fifteen (15) days or until August 2, 2016 to file a formal offer of evidence; likewise, respondent was granted the same period from receipt of the formal offer to file his comment/opposition thereto.

On August 12, 2016, petitioner filed its Formal Offer of Evidence[33], offering *Exhibits* "L," "L-1," "L-2," "L-3," "L-4," "L-5," "L-6," "L-7," "L-8," "L-9," "L-10," "L-11," "L-12," "L-13," "L-14," "L-15," "L-16," "L-17," "L-18, "L-19," "L-20," "L-21," "L-22," "L-23," "L-24," "L-25," "L-26, "L-27," "L-28," "L-29," "L-30," "L-31," "M," "M-1," and "N," which were all admitted into evidence by the Court in a Resolution[34] dated September 8, 2016.

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[24] *Records, Vol. 2, Motion to Set Pre-marking of Exhibits for Additional Evidence,* pp. 961-970, with annex.
[25] *Id., Resolution,* pp. 974-975.
[26] *Id., Motion for Clarification,* pp. 979-984.
[27] *Id., Minutes of Hearing on October 27, 2015,* p. 990.
[28] *Id., Minutes of Hearing on July 18, 2016,* p. 1018.
[29] *Id., Exhibit "M," Judicial Affidavit,* pp. 1080-1088.
[30] *Records, Vol. 2, Exhibit "M-1," Signature on Judicial Affidavit,* p. 1088.
[31] *Id., Exhibit "L," Amended ICPA Report,* pp. 1053-1076.
[32] *Id., Exhibit "L-1," Amended ICPA Report, Signature,* p. 1073.
[33] *Id., Formal Offer of Evidence,* pp. 1047-1052.
[34] *Id., Vol. 3, Resolution,* pp. 1100-1101.

During the hearing on October 3, 2016, counsel for respondent manifested that respondent will no longer present sur-rebuttal evidence.[35] The Court then set the initial presentation of evidence for respondent on November 28, 2016, at 1:30 p.m.

On November 18, 2016, respondent filed a Motion to Cancel Hearing with Manifestation[36] stating that upon examination of the records of the case, he no longer deems it necessary to present an additional witness to protect his interest in the instant case, thus submitting the case for decision. This was granted by the Court in a Resolution[37] dated November 28, 2016.

With the filing of respondent's Manifestation[38] on January 13, 2017, which states that he is adopting his Memorandum dated February 14, 2014[39] in lieu of filing a new memorandum; and petitioner's Memorandum[40] filed by registered mail on February 6, 2017, the Court resolved[41] to submit the case for decision on February 22, 2017. Thereafter, the case was raffled anew and received[42] by the Office of Associate Justice Lovell R. Bautista on March 6, 2017; hence this Amended Decision.

The Issues[43]

WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY TAX LIABILITIES REPRESENTING VAT, EWT, AND WTC FOR TY 2007, AS WELL AS PENALTY, DEFICIENCY AND DELINQUENCY INTERESTS, AS PROVIDED IN *SECTIONS 248 AND 249 OF THE 1997 NIRC;*

WHETHER PETITIONER PAID THE CORRECT VAT DUE IN TY 2007;

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[35] *Records, Vol. 3, Minutes of Hearing on October 3, 2016,* p. 1102; *Records, Vol. 3, Order,* p. 1103.
[36] *Records, Vol. 3, Motion to Cancel Hearing with Manifestation,* pp. 1104-1107.
[37] *Id., Resolution,* pp. 1109-1110
[38] *Id., Manifestation,* pp. 1112-1115.
[39] Filed by registered mail on February 18, 2014.
[40] *Records, Vol. 3, Memorandum,* pp. 1126-1234, with annexes.
[41] *Id., Resolution,* pp. 1237-1238.
[42] *Id., Vol. 1, Cover.*
[43] *Id., PTO, Issues,* pp. 508-509.

WHETHER THE CORRECT INPUT VAT WAS DEDUCTED FROM THE VAT DUE FROM PETITIONER IN TY 2007; and

WHETHER THE 5% VAT WITHHELD BY CONSUMERS (BIR FORM NOS. 2306/2307) SHOULD HAVE BEEN DEDUCTED FROM THE VAT DUE FROM PETITIONER IN 2007, CONSIDERING THAT IT DID NOT DIFFERENTIATE BETWEEN GOVERNMENT AND NON-GOVERNMENT INSTITUTIONS IN COMPUTING THE TOTAL OUTPUT VAT BY INDISCRIMINATELY COMPUTING A RATE OF 12%.

WHETHER PETITIONER PAID THE CORRECT AMOUNT DUE UNDER THE EWT SYSTEM IN TY 2007; and

WHETHER PETITIONER ALREADY PAID THE CORRECT AMOUNT OF WTC IN TY 2007.

The foregoing issues can be summarized into:

WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY TAX LIABILITIES REPRESENTING VAT, EWT, AND WTC FOR TY 2007, AS WELL AS PENALTY, DEFICIENCY AND DELINQUENCY INTERESTS, AS PROVIDED IN *SECTIONS 248 AND 249 OF THE 1997 NIRC*

Petitioner's Arguments[44]

On one hand, petitioner states that the ICPA rectified her mistake by submitting an Amended ICPA Report, together with the copies of the official receipts, sales invoices, and BIR Forms; and that when the ICPA made her original report, she thought that summaries of the foregoing documents were sufficient, considering the extremely voluminous number of the documents involved.

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[44] *Records, Vol. 3, Memorandum, Discussion,* pp. 1134-1167.

Petitioner states also that in the Amended ICPA Report, the ICPA put more explanations and clarifications, with a discussion on the Annualized Withholding Tax method provided under *Section 2.79 of Revenue Regulation ("RR") No. 2-98,* which is being practiced by petitioner.

Petitioner maintains that it already paid the correct VAT and claims that it overpaid the VAT due for 2007, because of its net underclaim of input VAT. Further, petitioner alleges that it already paid the EWT and WTC for 2007; that it filed all the documents in good faith and on time, there was no delay on the part of petitioner and it even paid the EWT immediately after it received the FLD dated January 10, 2011; that the Php191,898.25 deficiency being claimed by the BIR represents solely the interest and compromise penalty for the period beginning January 15, 2008 to June 25, 2011; and that the BIR unfairly computed the rate at 68.77% even if petitioner paid the entire principal deficiency by February 15, 2011.

Lastly, petitioner insists that it already paid the correct amount for WTC; that in its letter dated February 14, 2011, it immediately paid Php131,370.07 after deducting Php80,269.73 from the principal amount of Php211,639.80; that the deduction of Php80,269.73 represents the excess withholding income taxes for TY 2007; and that this is allowed under the Annualized Withholding Tax method.

***Respondent's Counter-Arguments*[45]**

On the other hand, respondent counter-argues that petitioner is liable for deficiency VAT for TY 2007; that audit and examination of petitioner's books of accounts and other relevant documents disclosed that petitioner has deficiency VAT in the amount of Php5,974,730.02; and that, as stated in the FAN/FLD, out of the total amount of Php206,854,972.06 VATable receipts *per* audit, only Php9,786,712.38 input tax from purchases were substantiated, resulting to the disallowance of unsubstantiated claims, which brought about the assessment for deficiency VAT, including compromise penalty, amounting to Php5,656,865.82.

With regard to EWT, respondent avers that petitioner has income payments consisting of director's fee, professional fees, and

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[45] *Records, Vol. 2, Memorandum, Discussion,* pp. 828-838.

payment to sub-contractors, which were not fully subjected to withholding tax, resulting in the assessment in the amount of Php424,683.55 deficiency EWT pursuant to *Section 57 of the 1997 NIRC* and *Section 2.57.2(A) and (E) of RR No. 2-98*. In addition, respondent alleges that investigation disclosed that petitioner failed to remit WTC; and that upon reconciliation of WTC *per* books as of December 2007 with its tax remittances for December 2007, a discrepancy was found, which was the reason for the assessment for deficiency WTC pursuant to *Section 255 of the 1997 NIRC*, in relation to *Section 2.98 of RR No. 2-98*; and that petitioner has the legal duty to collect the tax for the government.

Finally, respondent maintains that tax assessments by tax examiners are presumed correct and made in good faith, and the taxpayer has the duty to prove otherwise.

The Ruling of the Court

The only issue to be resolved in this Amended Decision is whether petitioner is liable to pay deficiency tax liabilities representing VAT, EWT, and WTC for TY 2007, as well as penalty, deficiency, and delinquency interests, as provided in *Sections 248 and 249 of the 1997 NIRC*. The Court will no longer delve on the issue on jurisdiction as this was already settled in the Decision dated April 29, 2015, which was put into issue by either of the parties.

Petitioner is liable to pay deficiency VAT.

A review of the records reveal that after re-investigation, respondent notified petitioner through a letter[46] dated December 12, 2011, that deficiency VAT still remains due in the amount of Php5,974,729.02[47], inclusive of increments, computed as follows:[48]

DETAILS	AMOUNTS	
Vatable Receipts *Per* Audit		Php 206,854,972.06
Tax Rate		12%
Output Tax Due		Php 24,822,596.65
Less: Allowed Input Tax		9,786,712.38

[46] *BIR Records, Vol. 2, Exhibit "15,"* p. 1654.
[47] Difference of Php1.00.
[48] *BIR Records, Vol. 2, Exhibit "13,"* p. 1634.

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Tax Due		Php	15,035,884.27
Less: Supported Tax Payments			11,499,010.52
Deficiency Tax Due		Php	3,536,873.75
Add: Interest (1/25/2008 - 1/10/2011)	Php 2,412,856.27		
Compromise Penalty	25,000.00		2,437,856.27
TOTAL AMOUNT DUE		**PHP**	**5,974,730.02**

Petitioner argues that if respondent correctly considered *(1)* the input taxes *per* books amounting to Php11,530,137.92; and *(2)* the five percent (5%) final VAT withheld by government institutions, evidenced by the issuance of BIR Form No. 2306 amounting to Php1,791,190.72, petitioner would not have any deficiency VAT.

However, respondent counter-argues that only Php9,786,712.38 of input tax claimed from purchases were substantiated by petitioner and consequently allowed as a credit to related output tax. Respondent further posits that input taxes amounting to Php1,743,425.54 were disallowed in violation of *Section 4.110-8*[49] *of RR No. 16-2005.* Respondent also disallowed the 5% final VAT withheld from government entities, amounting to Php1,791,190.72, as unsubstantiated claims for creditable withholding tax in violation to *Section 2.58.3(B)*[50] *of RR No. 2-98.*

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[49] *SEC. 4.110-8. Substantiation of Input Tax Credits. –*

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxers shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the [1997 NIRC].

(3) For the purchase of real property – public instrument, i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of se5rvcies – official receipt showing the information required under Secs. 113 and 237 of the [1997 NIRC].

A cash registered machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the [1997 NIRC].

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on "deemed sale" transaction shall be substantiated with the invoice required under Sec/ 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of VAT Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

[50] *SEC. 2.58.3. Claim for Tax Credit or Refund. –*

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Respondent's assessment and petitioner's claim are presented as follows:

DETAILS	*PER* RESPONDENT		*PER* PETITIONER	
Output Tax Due	Php	24,822,596.65	Php	24,820,339.16
Less: Allowed Input Tax		9,786,712.38		11,530,137.92
5% Final VAT from Government		-		1,791,190.72
Tax Due	Php	15,035,884.27	Php	11,499,010.52
Less: Supported Tax Payments		11,499,010.52		11,499,010.52
DEFICIENCY TAX DUE	**PHP**	**3,536,873.75**	**PHP**	**-**

To refute respondent's assessment and to support its allegation that it does not have any deficiency VAT for TY 2007, petitioner submitted an Amended ICPA Report[51], with corresponding supporting documents. The succeeding discussion will tackle in detail the assessment issued by respondent.

Disallowed input VAT of Php1,743,425.54 (Php11,530,137.92 less Php9,786,712.38)

Petitioner submitted official receipts, invoices, and other documents[52] to support its claim that input VAT of Php1,743,425.54 (Php11,530,137.92 less Php9,786,712.38) should be deducted against its output VAT.

As argued by petitioner, respondent's assessment on input VAT was erroneous because he failed to consider input VAT amounting to Php1,743,425.54. However, upon examination and study of the documents presented, the Court still fails to identify which of the documents submitted represents the disallowed input VAT of Php1,743,425.54. An analysis of these documents reveal that

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B) Claims for tax credit or refund 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. Proof of remittance is the responsibility of the withholding agent.

[51] *Records, Vol. 2, Exhibit "L,"* pp. 1053-1076.

[52] *Records, Exhibit "L-3" and "L-4," Annex "B,"* 4 Folders (January and February 2007); *Exhibit "L-5," Annex "B-2,"* 1 Binder (March 2007); *Exhibit "L-6," Annex "B-3,"* 2 Binders (April 2007); *Exhibit "L-7," Annex "B-4,"* 1 Binder (May 2007); *Exhibit "L-8," Annex "B-5,"* 1 Binder (June 2007); *Exhibit "L-9," Annex "B-6,"* 1 Binder (July 2007); *Exhibit "L-10," Annex "B-7,"* 1 Binder (August 2007); *Exhibit "L-11," Annex "B-8,"* 1 Binder (September 2007); *Exhibit "L-12," Annex "B-9,"* 1 Binder (October 2007); *Exhibit "L-13," Annex "B-10,"* 1 Binder (November 2007); *Exhibit "L-14," Annex "B-11,"* 1 Binder (December 2007).

petitioner substantiated input VAT amounting to Php2,655,370.35 supported by official receipts, invoices, check vouchers, and other documents. However, petitioner failed to prove that these documents actually represents invoices and official receipts in support of the disallowed input VAT of Php1,743,425.54, thus the assessment remains.

PERIOD TY 2007	INPUT VAT		EXHIBIT
January		-	
February	Php	834,831.81	L-4
March		102,273.37	L-4
April		158,462.99	L-6
May		402,321.51	L-7
June		69,583.13	L-8
July		256,761.24	L-9
August		47,794.77	L-10
September		230,702.03	L-11
October		262,350.54	L-12
November		116,433.72	L-13
December		173,855.24	L-14
TOTAL	**PHP**	**2,655,370.35**	

5% Final VAT from government of Php1,791,190.72

Section 4.114-2[53] *of RR No. 16-2005*[54]*, as amended by RR No. 4-2007*[55] provides that income payments to the government on their purchases of goods and services shall be subject to final withholding VAT of 5%.

A review of petitioner's Quarterly VAT Returns for TY 2007

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[53] *Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007* read as:

> *SEC. 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. –*
>
> (a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/ or of services taxed at twelve percent (12%) VAT pursuant to Sees. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions. instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost.

[54] Prescribes the Consolidated [VAT] Regulations of 2005 superseding RR No. 14-2005.

[55] Amends certain provisions of *RR No. 16-2005*, as amended, otherwise known as the Consolidated [VAT] Regulations of 2005.

reveals that it did not indicate its "Sale to Government"[56] transactions as well as "VAT Withheld on Sales to Government"[57]. Petitioner argues that it presented its sales to government and non-government institutions in lumpsum. Thus, applying the above-quoted provision to the case at bar, the determination of the Actual Input VAT to be compared against Standard Input VAT includes the determination of the ratable portion of the Sales to Government over its total sales. With petitioner's presentation of sales in lump sum, the Court has no way of determining the actual input tax attributable to sales to government institutions.

Petitioner asserts that it incurred sales to government, thus, the 5% final VAT should be considered as deductible from its output VAT. Petitioner insists that presenting BIR Form Nos. 2306 and 2307[58], is enough to support its claim. The Court does not agree.

An examination and comparison of BIR Form Nos. 2306 and 2307[59] against its summary[60] disclosed that the amounts reflected in the latter does not correspond exactly to the amounts reflected in the BIR Forms. The Court also notes that petitioner submitted two (2) sets of summary with the same totals but differ in details/breakdown, making it impossible for the Court to reconcile the figures in the two (2) sets of summaries against the submitted BIR Forms.

In addition, the Court notes irregularities of the BIR Form Nos. 2306 and 2307 presented, to wit:

1. Period covers TY 2006;

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[56] *Petitioner's FOE, Folder No. 1, Exhibit "B-3-C," Line 16A.*

[57] *Id., Line 26D.*

[58] *Records, Exhibit "L-18," Annex "E-1,"* 2 Binders (January 2007); *Exhibit "L-19," Annex "E-2,"* 2 Binders (February 2007); *Exhibit "L-20," Annex "E-3,"* 2 Binders (March 2007); *Exhibit "L-21," Annex "E-4,"* 2 Binders (April 2007); *Exhibit "L-22," Annex "E-5,"* 3 Binders (May 2007); *Exhibit "L-23," Annex "E-6,"* 3 Binders (June 2007); *Exhibit "L-24," Annex "E-7,"* 3 Binders (July 2007); *Exhibit "L-25," Annex "E-8,"* 2 Binders (August 2007); *Exhibit "L-26," Annex "E-9,"* 2 Binders (September 2007); *Exhibit "L-27," Annex "E-10,"* 2 Binders (October 2007); *Exhibit "L-28," Annex "E-11,"* 3 Binders (November 2007); *Exhibit "L-29," Annex "E-12,"* 1 Binder (December 2007).

[59] *Records, Exhibit "L-18," Annex "E-1,"* 2 Binders (January 2007); *Exhibit "L-19," Annex "E-2,"* 2 Binders (February 2007); *Exhibit "L-20," Annex "E-3,"* 2 Binders (March 2007); *Exhibit "L-21," Annex "E-4,"* 2 Binders (April 2007); *Exhibit "L-22," Annex "E-5,"* 3 Binders (May 2007); *Exhibit "L-23," Annex "E-6,"* 3 Binders (June 2007); *Exhibit "L-24," Annex "E-7,"* 3 Binders (July 2007); *Exhibit "L-25," Annex "E-8,"* 2 Binders (August 2007); *Exhibit "L-26," Annex "E-9,"* 2 Binders (September 2007); *Exhibit "L-27," Annex "E-10,"* 2 Binders (October 2007); *Exhibit "L-28," Annex "E-11,"* 3 Binders (November 2007); *Exhibit "L-29," Annex "E-12,"* 1 Binder (December 2007).

[60] *Records, Petitioner's FOE, Exhibit "L-17," Annex "E,"* Binder 1 of 1.

2. Amount of income payment was not reflected;
3. Amount of tax withheld was not reflected;
4. Nature of income payment was not reflected;
5. Without payor's authorized signature;
6. Data entries were not readable;
7. Entries in the Recipient/Payee Information portion were typewritten while the entries in the Income Payment/Tax Withheld portion were handwritten;
8. Period covered was not reflected; and
9. Payee's TIN was not reflected.

As to the BIR Form Nos. 2306 and 2307 without irregularities, the Court cannot give evidentiary value thereto because their relevance as supporting documents to refute respondent's assessment cannot be verified against the summary.

In as much as petitioner failed to sufficiently substantiate its claim for allowable input tax, the Court upholds respondent's FDDA on basic deficiency VAT for TY 2007 in the amount of Php3,536,873.75.

Payment of Interest

There is no dispute that on February 15, 2011[61], petitioner filed BIR Form No. 0605 and paid the aggregate amount of Php387,147.67 for purposes of eliminating its deficiency tax liability based on the FLD and Assessment Notices issued January 10, 2010, broken down as follows:

TAX	**AMOUNT**
EWT	Php 255,777.60
WTC	131,370.07
TOTAL	**PHP 387,147.67**

Section 249 of the 1997 NIRC provides basis for the assessment of penalty interest, to wit:

SEC. 249. *Interest.* -

(A) *In General* - There shall be assessed and collected on

[61] *Records, Petitioner's FOE, Folder No. 1, Exhibit "E."*

> any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Section (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* - In case of failure to pay:
>
> > (1) The amount of tax due on any return required to be filed; or
> >
> > (2) The amount of tax due for which no return is required; or
> >
> > (3) A deficiency tax, or any surcharge or interest thereon the due date appearing in the notice and demand of the Commissioner.
>
> There shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Section (A) hereof until the amount is fully paid, which interest shall form part of the tax.

The aforementioned provision is clear that the imposition of penalty deficiency interest accrues to the taxpayer on account of deficiency taxes assessed by the CIR. By arguing that petitioner assented to the payment of the basic deficiency taxes, petitioner in effect seeks to be exempt from the imposition of deficiency interest and compromise penalty.

Settled is the rule that taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and must be based on language in the law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption therefrom is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operation[62].

In the case at bar, there is no rule or law cited by petitioner for it to be exempt from deficiency interest. Thus, the Court holds petitioner liable for the payment of deficiency interest from the date prescribed for its payment until the full payment thereof.

Petitioner is liable to pay deficiency EWT.

As to the assessment for deficiency EWT, petitioner claims that it made erroneous payments to the BIR when it withheld and remitted withholding taxes equivalent to ten percent (10%) of income payments made to certain tax exempt entities[63], as follows:

LAW FIRM	AMOUNT PAID		AMOUNT WITHHELD	
Bernardo & Pacido Law Offices	Php	446,428.57	Php	46,642.86
Cabio Law Office and Associates		30,000.00		3,000.00
TOTAL	**PHP**	**476,428.57**	**PHP**	**47,642.86**

Section 26[64] of the 1997 NIRC provides that GPPs are not subject to income taxes. Thus, it is clear that the above-stated law firms, being GPPs, should not have been subjected to EWT, hence, petitioner indeed made erroneous payments amounting to Php47,642.86 arising from income payments of Php476,428.57.

However, the Court has already determined that petitioner is liable for deficiency interest which would have accrued based on the total amount of deficiency tax assessed by respondent. The erroneous overpayment amounting to Php47,642.86 shall be regarded only as a credit in determining the final deficiency withholding tax liability of petitioner. As a result, petitioner is still liable for deficiency interest

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[62] *Mactan Cebu International Airport Authority v. Marcos,* G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[63] *Records, Vol. 1, Amended PFR,* p. 643.

[64] SEC. 26. *Tax Liability of Members of General Professional Partnerships.* - A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation. Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership.

in relation to EWT in the amount of Php80,659.38, computed as follows:

DETAILS	AMOUNTS	
EWT due *per* FLD[65]	Php	1,611,858.81
GPP Erroneous payment		47,642.86
Adjusted Assessment	Php	1,564,215.95
EWT Payment *per* FLD[66]		1,356,081.21
Deficiency EWT	Php	208,134.74
Add: 20% Deficiency Interest From Jan. 15, 2008 to Feb. 15, 2011 (Php208,134.74 x 20% x 1125/365 days)		128,302.24
Total	Php	336,436.98
Less: Payment made on Feb. 15, 2011		255,777.60
AMOUNT STILL DUE	**PHP**	**80,659.38**

Petitioner is not liable for WTC but it is liable for 20% deficiency interest.

No dispute has been raised as far as petitioner's payment of deficiency WTC amounting to Php131,370.07 on February 15, 2011[67] is concerned. However, there was a remaining unpaid basic deficiency WTC amounting to Php80,269.73 (Php211,639.80[68] less Php131,370.07).

Petitioner argues that the remaining unpaid amount of Php80,269.73[69] was refunded to employees whose employment from petitioner was terminated or ended before the end of TY 2007.

In support, petitioner submitted a List of Retired/Resigned Employees, BIR Form 1604-CF, Alphalist of Employees as of December 31, 2007 with No Previous Employer Within the Year, BIR Form No. 1601-C, and Monthly Gross and Withholding Tax Report[70] which sufficiently proves that the amount Php80,269.73 was indeed refunded to employees, thus said assessment is cancelled.

However, petitioner is still liable for 20% deficiency interest

[65] *BIR Records, Folder 2, Formal Letter of Demand,* pp. 1612-1613.
[66] *Id.*
[67] *Petitioner's FOE, Folder No. 1, Exhibits "E," and "E-1."*
[68] *BIR Records, Folder 2, Formal Letter of Demand,* pp. 1612-1613.
[69] *Records, Vol. 3, Amended Report of Independent Certified Public Accountant,* p. 1189.
[70] *Petitioner's FOE, Exhibit "L-31," 1 Binder.*

pursuant to *Section 249 of the 1997 NIRC,* which would have accrued on the payment made on February 15, 2011 amounting to Php131,370.73 from January 10, 2008 up to the time of payment, computed as follows:

20% Deficiency Interest on WTC of Php131,370.73 paid on February 15, 2011:
(Php131,370.73 x 20% x 1125/365 days) **Php80,981.96**

Petitioner is not liable for compromise penalty.

Respondent's imposition of compromise penalty amounting to Php57,000.00 cannot be sustained. Under *RMO No. 01-90*[71], *as amended by RMO No. 19-07*[72], compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty, because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[73] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of petitioner is illegal and unauthorized.[74]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The deficiency VAT assessments issued by respondent against petitioner for TY 2007 are hereby upheld in the amount of **Php4,421,092.19**, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*. Also, petitioner is liable for 20% deficiency interest which have accrued on the payments made on February 15, 2011 representing EWT and WTC in the amounts of **Php80,659.38** and **Php80,981.96**, respectively, computed as follows:

[71] Amendments to the provisions of a "Revised Schedule of Compromise Penalties" for internal revenue violations as prescribed in *RMO 26-86*.
[72] Prescribes the Consolidated Revised Schedule of Compromise Penalties for Violations of the [NIRC].
[73] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 774.
[74] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et. al.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

TAX TYPE	BASIC	25% SURCHARGE	20% DEFICIENCY INTEREST ON PAYMENT MADE ON FEBRUARY 15, 2011	TOTAL
VAT	Php 3,536,873.75	Php 884,218.44	-	Php 4,421,092.19
EWT	-	-	Php 80,659.38	80,659.38
WTC	-	-	80,981.96	80,981.96
TOTAL	**PHP 3,536,873.75**	**PHP 884,218.44**	**PHP 161,641.34**	**PHP 4,582,733.53**

In addition, petitioner is **ORDERED** to pay:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency VAT of Php3,536,873.75 computed from January 25, 2008 until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC;*

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php4,421,092.19, representing basic deficiency VAT of Php3,536,873.75 and 25% surcharge of Php884,218.44 computed from January 5, 2012[75] until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC;* and

3. Delinquency interest at the rate of twenty percent (20%) *per annum* on the deficiency interest of Php161,641.34 (Php80,659.38 plus Php80,981.96) due on the February 15, 2011 deficiency Withholding Tax payment computed from January 5, 2012[76] until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[75] *BIR Records, Vol. 2, Exhibit "15,"* p. 1654.
[76] *Id.*

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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