REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2202** **(CTA Case No. 9502)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** *and* **Modesto-San Pedro,** *JJ*
THE PROFESSIONAL SERVICES INC., Respondent.	**Promulgated:** JUN 09 2021 4:10pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[1] dated August 13, 2019 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated March 17, 2016 assessing and demanding from petitioner the payment of deficiency income tax and VAT in the total amount of P1,472,331,240.45 for taxable year 2007 are hereby **CANCELLED** and **WITHDRAWN**, on ground of prescription.
>
> **SO ORDERED.**"

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[1] Rollo, CTA EB Case No. 2202, pp. 1-19.

and the Resolution[2] dated November 21, 2019 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing premises, respondent's **Motion for Reconsideration (Re: Decision promulgated on 13 August 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is Chief of the Bureau of Internal Revenue (BIR), the government agency duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the 1997 National Internal Revenue Code, (1997 NIRC), as amended.[3]

Respondent The Professional Services Inc. (TPSI) is a corporation duly organized and existing under and by virtue of Phlippine laws, with principal office address at Don Eugenio Lopez, Sr. Medical Complex, Ortigas Avenue, Pasig City. It may be served with pleadings, notices and other legal processes through Divina Law, with office address at 8th Floor, Pacific Star Building, Sen. Gil Puyat Avenue corner Makati City. It is duly registered with the BIR with Tax Identification No. 000-061-237-000.[4]

THE FACTS

The relevant antecedents as stated in the assailed Decision[5] are as follows:

> "On May 25, 2007, petitioner[6] sold to Robinsons Land Corporation a parcel of land located in San Miguel Avenue corner Lourdes Street, Ortigas City, Mandaluyong City ("the subject property"), in the amount of P1,000,000,000.00. Petitioner paid the corresponding Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) on the said transaction.

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[2] Rollo, pp. 59-63.
[3] Decision, p. 2.
[4] Ibid. p. 2.
[5] Citations omitted.
[6] Respondent in this case.

Prior to such sale, petitioner leased the subject property for two (2) years to A.C. Comsti builders, a parking operator. The said transaction was disclosed in petitioner's financial statements and was classified therein as an "Investment Property."

Subsequently, petitioner received a Letter of Authority No. 2007-0038029 dated August 8, 2008 (first LOA), authorizing Revenue Officers and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2007 to December 31, 2007." The investigation conducted therein led to the issuance of a report dated July 1, 2009, approved by OIC-Assistant Commissioner Ms. Zenaida G. Garcia, finding petitioner liable for deficiency income tax, withholding tax on compensation, final withholding tax and VAT for taxable year 2007, to wit: xxx

But then, an anonymous memorandum dated June 22, 2012 was allegedly received by the BIR, which spurred the issuance of LOA No. 126-2012-00000031 dated July 13, 2012 ("second LOA"), authorizing the examination of petitioner's accounting records for Income Tax and VAT for the same taxable period, xxx

In justifying the issuance of the second LOA, the BIR claims that the "first LOA did not cover the Income Tax and VAT issues on the sale of the property subject of the present case."

Thereafter, OIC- Assitant Commissioner Misajon issued a Preliminary Assessment Notice ("PAN") dated May 7, 2014. A Reply/Protest dated May 23, 2014 was filed by petitioner contesting the said assessment.

On March 28, 2016, petitioner received the Formal Letter of Demand (FLD) with Details of Discrepancies dated March 17, 2016, finding petitioner liable again for deficiency IT and VAT. xxx

Petitioner protested the said FLD in a letter dated April 27, 2016.

In view of respondent's[7] inaction on its protest, petitioner filed through registered mail the instant Petition for Review on November 23, 2016."

On January 27, 2017, the CIR filed his Answer with Motion to Dismiss[8] on the Petition for Review.

On February 15, 2017, TPSI filed its Opposition (To Respondent's Motion to Dismiss).[9]

In the Resolution[10] dated September 5, 2017, the Court in Division denied the CIR's Motion to Dismiss.

The Pre-Trial Conference[11] of this case was held on September 28, 2017.

On October 13, 2017, the parties filed their Joint Stipulations of Facts and Issues.[12] Thereafter, the Court issued the Pre-Trial Order dated October 26, 2017.[13]

As agreed upon by the parties, the issues as stated in the Joint Stipulations of Facts and Issues[14] presented before the Court in Division are as follows:

> 1. Whether the Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN") dated 17 March 2016 is already barred by prescription pursuant to Section 203 of the Tax Code.
>
> 2. Whether actual or constructive fraud cannot be imputed against petitioner, as would warrant the application of the 10-year prescriptive period and the penalty of 50% surcharge.
>
> 3. Whether the Letter of Authority, upon which the Disputed Assessment was premised, is invalid pursuant to Section 235 of the Tax Code.
>
> 4. Whether the Subject Property is a Capital Asset, the sale of which is subject to Capital Gains Tax (CGT), and not Value-Added Tax (VAT) nor regular income tax on net gain.

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[7] Petitioner in this case.
[8] Docket, CTA Case No. 9502, pp. 200-210.
[9] Ibid., pp. 213-222.
[10] Ibid., pp. 229-236.
[11] Ibid., 444.
[12] Ibid., 446-451.
[13] Ibid., 456-460.
[14] Ibid., 447.

> 5. Whether or not petitioner has legal and factual basis to refute the deficiency Income Tax in the amount of P1,081,854,528.12 and deficiency VAT in the amount of P390,476,712.33 for taxable year 2007."

Trial thereafter ensued wherein both parties presented their respective evidence.

In the Resolution[15] dated October 4, 2018, the Court in Division deemed the case submitted for decision.

On August 13, 2019, the Court in Division rendered the assailed Decision.[16]

On August 27, 2019, the CIR filed a "Motion for Reconsideration."[17]

On November 21, 2019, the Court in Division issued the questioned Resolution.[18]

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review on December 18, 2019.[19]

In the Resolution[20] dated January 14, 2020, TPSI was directed by the Court *En Banc* to file its comment in this case.

On January 31, 2020, TPSI filed a "Motion for Additional Time"[21] praying that it be given an additional period of ten (10) days from January 31, 2020, or until February 2020, to file its Comment.

On February 3, 2020, the Court *En Banc* issued a Minute Resolution[22] granting the said motion.

On February 10, 2021, TPSI filed its "Comment."[23]

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[15] Ibid., p. 970.
[16] Ibid., pp. 973-996.
[17] Ibid., 997-1012.
[18] Ibid., 1037-1039.
[19] Rollo, CTA EB No. 2202, pp. 1-19.
[20] Ibid., pp. 53-54.
[21] Ibid., pp-55-58.
[22] Ibid., p. 59.
[23] Ibid., pp. 60-88.

In the Resolution[24] dated March 2, 2020, the Court noted TPSI's "Comment" and ordered the parties to personally appear before Mediation Staff Assistant of Philippine Mediation Center- Court of Tax Appeals (PMC-CTA) on March 26, 2020 at 1:30 p.m., with or without the presence of their counsels for purposes of deciding whether or not they would agree to enter into mediation.

On September 22, 2020, the Court *En Banc* received PMC-CTA Form 6-No Agreement to Mediate[25] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit- CTA.

On October 5, 2020, the Court *En Banc* issued a Resolution[26] noting PMC-CTA Form No. 6- No Agreement to Mediate. Accordingly, the instant case was deemed submitted for decision.

On February 15, 2021, the Court *En Banc* received TPSI's "Omnibus Motion to Set Aside Warrant of Distraint and/or Levy and to Restrain Implementation Thereof." In the said omnibus motion, TPSI states that on February 9, 2021, the CIR, through its agents, served upon them a Warrant of Distraint and/or Levy to collect from the latter the amount of P1,472,331,240.46 despite that the FAN dated 17 March 2016 upon which the Warrant is based was already cancelled and withdrawn through the August 13, 2019 Decision issued by the Court in Division. Hence, TPSI prayed that the Court *En Banc* set aside the Warrant of Distraint and/or Levy; and restraint the CIR and anyone acting for or on its behalf from (a) implementing the Warrant of Distraint and/or Levy, or (b) performing any similar act(s) intended to collect upon the Final Assessment Notice dated 17 March 2016, during the pending of its present appeal.

On February 18, 2021, TPSI filed a "Submission," submitting a copy of the Warrant of Distraint and/or Levy referred to in its omnibus motion.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in granting the Petition for Review filed by TPSI, which cancelled the FAN dated March 17, 2016 assessing and demanding petitioner the payment of deficiency income tax and VAT in the total amount of P1,472,331,240.45 for taxable year 2007.

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[24] Ibid., pp. 91-92
[25] Ibid., p. 93.
[26] Ibid., pp. 96-97.

THE ARGUMENTS

The CIR contends that Court in Division erred in ruling that TPSI should not have been assessed again for taxable year 2007; that there was deliberate misclassification of sales pertaining to a sale of land classified as a capital asset which should have been classified as an ordinary asset pursuant to Section 39 of the NIRC; that the issuance of the second LOA was valid since it did not cover the Income Tax and VAT issues on the sale of real property classified by TPSI as capital asset which should have been classified as ordinary asset; that the Court in Division erred in ruling that the BIR's right to assess TPSI has prescribed; that the deliberate misclassification of income constitutes fraud in the returns filed; that the ten-year prescriptive period to assess should be applied in this case; and that tax assessments by tax examiners are *prima facie* presumed correct and made in good faith.

On the other hand, TPSI argues that the issuance of the second LOA is prohibited under the rule on one tax audit for every taxable year; that there was no preliminary investigation conducted by the BIR prior to the issuance of the second LOA; that without such preliminary investigation, there is no sufficient basis for the bare allegation of existence of fraud; that the disputed assessment was issued beyond the three-year prescriptive period for tax assessment; that there was no under-declaration of income as the entire proceeds of the sale of the subject property was declared in the appropriate tax return; and that the CIR failed to present proof of falsity, fraud or omission on the part of TPSI that would justify the extension of the prescriptive period.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On August 14, 2019, the CIR received the Decision of the Court in Division. On August 27, 2019, the CIR filed a Motion for Reconsideration of the said Decision. On November 21, 2019, the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on December 3, 2019.

From receipt of the said Resolution on December 3, 2019, the CIR has until December 18, 2019 within which to file the Petition for Review. On December 18, 2019, the CIR filed the instant Petition for Review.[27] Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

[27] Ibid., pp. 1-19.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds that the Court in Division is correct when it ruled that the Final Assessment Notice dated March 17, 2016 assessing and demanding petitioner the payment of deficiency income tax and VAT in the total amount of P1,472,331,240.45 for taxable year 2007 should be cancelled and withdrawn. The Court *En Banc* notes that the arguments presented by the CIR are a mere rehash, in fact, quoted verbatim, of the arguments he offered in his Motion for Reconsideration before the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and will elucidate the conclusions of the Court in Division.

Whether or not the Court in Division erred in cancelling the assessment notices

The assessments subject of this case involve deficiency taxes for income tax and VAT. Hence, following provisions are applicable:

> ***Sec. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.-***
>
> xxx xxx xxx
>
> ***(B) Time of Filing of Income Tax Return.-*** The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
>
> ***(C) Time of Payment of the Income Tax.*** – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time prescribed by the Commissioner.
>
> ***Sec. 114. Return and Payment of Value-Added Tax.-***
>
> (A) In General – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for

each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, provides for a three year period for the BIR to assess and collect any deficiency internal revenue tax from a taxpayer, thus:

> SEC. 203. – *Period of limitation upon assessment and collection.* – Except as provided in the Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.** For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. *(Emphasis supplied)*

Respondent **TPSI filed its Income Tax Return (ITR) for taxable year 2007 on April 15, 2008**. Based on the foregoing provisions**, the CIR had until April 15, 2011 within which to assess petitioner for deficiency income tax for taxable year 2007.**

As regards the filing of TPSI's **VAT returns**, the same is illustrated below:

Taxable Quarter	Date of Filing of the Return
1st Quarter	April 23, 2007
2nd Quarter	July 20, 2007
3rd Quarter	October 22, 2007
4th Quarter	January 21, 2008

Applying the above-stated provisions, **the CIR had until April 25, 2010, for the 1st quarter, July 25, 2010 for the 2nd quarter, October 25, 2010 for the 3rd quarter, and January 25, 2011 for the 4th quarter, within which to assess petitioner for the deficiency VAT.**

Records show that **the BIR issued the subject FAN on March 17, 2016 and the same was received by TPSI on March 28, 2016.**[28] Hence, the subject assessments were issued beyond the prescriptive period.

However, respondent maintains that the CIR's right to assess has not yet prescribed because the ten (10) year prescriptive period under Section 222(a)[29] of the 1997 NIRC, as amended, should be applied on the ground that there was a deliberate misclassification of property. According to the CIR, TPSI's misclassification of the property into a capital asset is an act that constitutes fraud with intent to evade payment of tax.

The Court *En Banc* agrees with the finding of the Court in Division that there is no sufficient basis for the application of the 10-year prescriptive period under Section 222 (a) of the 1997 NIRC, as amended.

As aptly discussed in the assailed Decision:

> "In the recent case of *Philippine International Air Terminals, Co., Inc. vs. Commissioner of Internal Revenue*, the CTA Third Division, citing the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.*, ruled that where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency taxes assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year.
>
> To recall, the first LOA specifically mentioned that the scope of the examination of petitioner's books of accounts and other accounting records was for "**all internal revenue taxes for period from January 1, 2007 to December 31, 2007.**" This led to the issuance of a report assessing petitioner of deficiency **income tax**, withholding tax on compensation, final withholding tax and **VAT for taxable year 2007**, which have been settled and paid by petitioner. Even respondent's witness, Revenue Officer Ryan Loon, confirmed such fact during his cross- examination.
>
> Guided by the foregoing, petitioner should not have been assessed again for taxable year 2007.

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[28] Exhibit "P-5"/ Exhibit "R-7."

[29] Sec. 222- *Exceptions as to period of Limitation of Assessment and Collection of Taxes.-*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

> Further, upon scrutiny of the records, the Court finds no sufficient evidence to prove fraud or intentional falsity on the part of petitioner to merit the application of the 10-year prescriptive period under Section 222 (a).
>
> In this case, petitioner literally laid its cards on the table for respondent to examine its documents, pursuant to the first LOA. In fact, it did not conceal the sale of the subject real property as well as the leasing of the same, prior to such sale. xxx
>
> Thus, if there was really intent to evade the payment of tax, petitioner would not have reported the foregoing lease and sale of the subject property in its records forwarded with the BIR.
>
> Further, the records are bereft of any showing that the revenue officers authorized in the first letter of authority have neglected to perform their duties as mandated by law, or they were prevented from ascertaining the correct tax liabilities of petitioner at the very first instance that petitioner's books of accounts and other accounting records for taxable year 2007 were examined. Thus, the Court cannot comprehend why the alleged misclassification committed by petitioner was not discovered by the revenue officers authorized under the first LOA.
>
> Furthermore, even assuming that there was negligence or oversight on the part of the revenue officers authorized under the first LOA, the same cannot prejudice petitioner since the prescriptive period is precisely intended to give the taxpayers peace of mind and free from any harassment."

Accordingly, the ten (10)- year prescriptive period to assess TPSI's tax liabilities arising from the sale of the subject property finds no application in this case. Therefore, the subject assessments issued by the CIR are already barred by prescription.

TPSI's Omnibus Motion to Set Aside Warrant of Distraint and/or Levy and to Restrain Implementation Thereof

As regards TPSI's "Omnibus Motion to Set Aside Warrant of Distraint and/or Levy and to Restrain Implementation Thereof," the Court *En Banc* resolves to grant the same.

The Court of Tax Appeals is authorized by law to suspend the collection of tax, if in its opinion, such collection may jeopardize the interest of the Government and/or the taxpayer. Sections 1 and 2, Rule 10 of the Revised Rules of the Court of Tax Appeals provides:

> SECTION 1. *No Suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, distraint, levy, distraint, or sale of any property of the taxpayer for the satisfaction of tax liability as provided under existing laws, except as hereinafter prescribed.
>
> SECTION 2. *Who may file.* – Where the collection of the amount of the taxpayers liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means as provided under existing laws, may jeopardize the interest of the Government or taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.

The Court in Division's Decision and Resolution as regards the subject assessment were not yet reversed and set aside. Considering that the Court *En Banc's* finding that the subject assessments are void, no tax collection based on such assessments can be pursued by the CIR since a void assessment bears no valid fruit.

Accordingly, any amount collected against TPSI, based on the subject assessments through garnishment of its bank deposits, distraint of its personal properties, levy of its real properties, and/or through such other collection remedies afforded to petitioner, are illegally collected.

The collection remedies provided under the 1997 NIRC, as amended, can only be employed once the taxes have become delinquent. Revenue Regulations No. 4-2019 (RR 4-19) defines when a tax becomes delinquent:

> A. Delinquent Account – shall pertain to a tax due from a taxpayer arising the audit of the Bureau of Internal Revenue (BIR) which had been issued Assessment Notices that have become final and executory due to the following instances:
>
> 1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for

reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;

2. Failure to file an appeal to the Court of Tax Appeals (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or
3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA)."

Based on the foregoing, a tax becomes delinquent when a taxpayer: a) fails to pay the tax due in a FAN/FLD which has not been protested, whether for reconsideration or reinvestigation, within thirty (30) days from receipt thereof; b) fails to file an appeal before this Court or an administrative appeal before the CIR within thirty (30) days from receipt of the denial of the request for reconsideration or reinvestigation; and c) fails to file an appeal before this Court within thirty (30) days from receipt of petitioner's denial of the administrative appeal.

Records show that none of the said instances are present in this case, thus, the tax which is the alleged tax deficiency subject of the present assessments never became delinquent. Accordingly, **there was no basis for the CIR to institute the collection remedies provided by the 1997 NIRC, as amended.**

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[30] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.

There being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of merit**. Accordingly, for being void, the subject assessments issued against respondent TPSI for taxable year 2007 for deficiency income tax and VAT are **CANCELLED** and **SET ASIDE**.

[30] G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

As regards TPSI's "**Omnibus Motion to Set Aside Warrant of Distraint and/or Levy and to Restrain Implementation Thereof**", the same is **GRANTED**.

Accordingly, the Court *En Banc* **LIFTS** and **DECLARES** as **NULL AND VOID** the **WARRANT OF DISTRAINT AND LEVY No. 126-2021-027.**

The BIR is expected in good faith to refrain from enforcing the said warrant while the case is pending appeal.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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.

ROMAN G. DEL ROSARIO
Presiding Justice