REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TOLEDO POWER COMPANY,
Respondent.

CTA EB No. 2359
(CTA Case No. 9465)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, JJ.

Promulgated:

JAN 0 5 2022
3:50 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on October 27, 2020 by petitioner Commissioner of Internal Revenue (CIR) against respondent Toledo Power Company, praying to reverse and set aside the *Decision* dated June 8, 2020[2] and the *Resolution* dated October 2, 2020,[3] both rendered by the First Division of this Court in CTA Case No. 9465, entitled *"Toledo Power Company,*

[1] EB Docket, pp. 1 to 12.

[2] Penned by Retired Associate Justice Esperanza R. Fabon-Victorino, concurred by Presiding Justice Roman G. Del Rosario, and Associate Justice Catherine T. Manahan, EB Docket, pp. 19 to 42.

[3] Penned by Associate Justice Catherine T. Manahan and concurred by Presiding Justice Roman G. Del Rosario, EB Docket, pp. 43 to 50.

Petitioner, versus Commissioner of Internal Revenue, Respondent". The dispositive portions respectively read as follows:

***Decision* dated June 8, 2020:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is ordered to issue a tax credit certificate to petitioner Toledo Power Company in the amount of **₱18,391,219.77**, representing its erroneously paid final withholding taxes during the taxable years 2014 and 2015 arising from income payments made to Yashima & Co. Ltd., a non-resident foreign corporation exempt from tax under RP-Japan Tax Treaty, as amended.
>
> **SO ORDERED.**"

***Resolution* dated October 2, 2020:**

> "**WHEREFORE**, premises considered, the Motion for Reconsideration filed by respondent CIR is **DENIED** for lack of merit and the assailed Decision of the Court in the above-captioned case dated June 8, 2020 is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the CIR with authority to act upon and approve claims for refund or tax credit, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.

On the other hand, respondent is a general partnership formed to undertake the business of acquiring, owning, maintaining and operating coal-fired and oil-fired electrical generation facilities, with business address at TPC Power Plant, Daang Lungsod, Toledo City, Cebu.

It is registered with the Securities and Exchange Commission (SEC) with Company Registration No. APO94-900, and with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 003-883-626-00000.

On November 28, 2013, a part of respondent's equipment in generating power called Turbine Generator 5 (TG5) was placed on maintenance shutdown due to malfunction. Assessment showed that certain parts of TG5 need to be replaced. In view thereof, respondent secured the repair services of Yashima & Co. Ltd. (Yashima), as evidenced by the Contract of Supply of Labor, Equipment and Materials. Yashima is a Japanese corporation not registered to do business in the Philippines per SEC Certification.

Respondent paid the repair services of Yashima and withheld from such income payment the amount of ₱18,391,219.94, which it remitted to the Bureau of Internal Revenue (BIR).

On August 26, 2016, respondent filed with the BIR's International Tax Affairs Division (ITAD), a *Tax Treaty Relief Application (TTRA)* for Business Profits, together with a letter dated August 25, 2016 requesting for confirmation of its opinion that its income payments to Yashima were exempt from income tax, pursuant to the RP-Japan Tax Treaty, as amended.

On September 5, 2016, respondent filed with the BIR's Large Taxpayers Division – Cebu, an *Application for Tax Credits/Refunds*, with a letter dated September 2, 2016, asking for the refund of erroneously paid final withholding taxes (FWTs) remitted during the taxable years (TYs) 2014 and 2015, representing taxes withheld from its income payments to Yashima in the total amount of ₱18,391,219.94.

On September 8, 2016, respondent filed a *Petition for Review* which was initially raffled to the Third Division of this Court and docketed as CTA Case No. 9465 entitled *"Toledo Power Company v. Commissioner of Internal Revenue"*.

On November 3, 2016, petitioner filed his *Answer* in CTA Case No. 9465. Petitioner moved to dismiss the case on the ground of prematurity or lack of cause of action due to respondent's failure to exhaust administrative remedies before filing the case in this Court. Petitioner also interposed the following defenses, *to wit*:

(a) That respondent is not the party in interest to claim for refund since it is a mere withholding agent and not the person or entity required by law to pay the tax;

(b) That respondent failed to file the TTRA before the transaction or occurrence of the first taxable event, pursuant to Revenue Memorandum Order (RMO) No. 72-10; and

(c) That a claim for refund is not *ipso facto* granted and respondent must substantiate the same, which respondent failed to do.

After the Pre-Trial Conference held on February 14, 2017, the parties filed their *Joint Stipulation of Facts and Issues* on March 13, 2017. Thereafter, the Third Division issued the *Pre-Trial Order* on March 27, 2017.

During trial, respondent presented as witnesses Mary Ann C. Vergara, the Tax Compliance Officer of respondent's parent company, Global Business Power Corporation (GBPC); Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA); and Bernardito R. Vergara, respondent's TPC1 Maintenance Manager.

On February 13, 2018, respondent filed its *Formal Offer of Evidence*. In the *Resolution* dated April 23, 2018, the Third Division admitted respondent's evidence except Exhibits "P-62" to "P-66", "P-68" to "P-85", "P-86-A" to "P-90-A", "P-86-B" to "P90-B", "P-86-C" to "P-90-C3", "P-86-D" to "P-90-D2", and "P-112".

For his part, petitioner manifested that he will no longer be presenting any evidence as there was no investigation report on respondent's administrative claim for refund.

On May 15, 2018, respondent filed a *Motion for Reconsideration (Re: Resolution Dated April 23, 2018)*, praying that Exhibits "P-62" to "P-66", "P-68" to "P-85", "P-86-A" to "P-90-A", "P-86-B" to "P-90-B", "P-86-C" to "P-90-C3", "P-86-D" to "P-90-D2", and "P-112" be admitted by the Third Division.

In the *Resolution* dated May 23, 2018, the Third Division admitted respondent's Exhibits "P-62" to "P-66", "P-84", "P-86-A" to "P-90-A", "P-86-B" to "P-90-B", "P-86-C" to "P-90-C3", "P-86-D" to "P-90-D2", and "P-112".

On August 24, 2018, respondent filed a *Motion to Reopen Proceedings (With Motion to Defer Filing of Memorandum)*, while petitioner filed his *Opposition (Re: Motion to Reopen Proceedings)* on August 30, 2018.

In the *Order* dated September 21, 2018, CTA Case No. 9465 was transferred to the First Division (Court in Division) pursuant to CTA Administrative Circular No. 02-2018.[4]

In the *Resolution* dated October 29, 2018, the Court in Division denied respondent's *Motion to Reopen Proceedings (With Motion to Defer Filing of Memorandum)*.

On November 27, 2018, respondent submitted its *Tender of Excluded Evidence (With Motion to Defer Filing of Memorandum)*, which the Court in Division noted in the *Resolution* dated December 18, 2018.

Petitioner filed his Memorandum on June 26, 2018, while respondent filed its *Memorandum* on March 5, 2019. Thereafter, CTA Case No. 9465 was submitted for decision on March 13, 2019.

On June 8, 2020, the Court in Division rendered the assailed *Decision*[5] granting the *Petition for Review* in CTA Case No. 9465, ordering petitioner to issue a tax credit certificate to respondent in the amount of ₱18,391,219.77.

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Decision promulgated 8 June 2020)*[6] on June 30, 2020, with respondent's *Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated June 8, 2020)*[7] filed on July 9, 2020.

In the assailed *Resolution*[8] dated October 2, 2020, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

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[4] *"Reorganizing the Three Divisions of the Court"* issued on September 18, 2018.
[5] EB Docket, pp. 19 to 42; Division Docket – Vol. 2 (CTA Case No. 9465), pp. 1031 to 1054.
[6] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 1055 to 1063.
[7] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 1066 to 1078.
[8] EB Docket, pp. 43 to 50; Division Docket – Vol. 2 (CTA Case No. 9465), pp. 1082 to 1089.

Thus, on October 27, 2020, petitioner filed before the Court *En Banc* a *Petition for Review*,[9] docketed as CTA EB No. 2359.

In the *Resolution*[10] dated November 26, 2020, the Court *En Banc* ordered respondent to file its *Comment* to the *Petition for Review* within ten (10) days from receipt thereof.

On December 16, 2020, respondent filed its *Comment/Opposition (To Petitioner's Petition for Review dated October 21, 2020)*.[11] Thereafter, the Court *En Banc* resolved to give due course to the instant *Petition* and submitted the same for decision on January 12, 2021.[12]

Hence, this *Decision*.

THE ISSUE

Petitioner filed the present *Petition for Review* on the basis of the following assignment of error:

> "The First Division of the Honorable Court erred in ruling that respondent is entitled to refund in the amount of ₱18,391,219.94 allegedly representing erroneously paid final withholding taxes."[13]

Petitioner's arguments:

Petitioner argues that respondent, being a mere withholding agent, has no personality to file the claim for refund. Petitioner insists that respondent is not the statutory taxpayer who is the proper person to file a claim for refund or tax credit. Thus, respondent has no legal standing to pursue the present petition since it is not the real party in interest.

Likewise, petitioner stresses that in order to be entitled to refund of creditable withholding taxes, it must be shown in the income tax return of respondent that the income payment received was declared as part of its gross income. According to petitioner, no income tax return was presented by respondent which would show

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[9] EB Docket, pp. 1 to 12
[10] EB Docket, pp. 52 to 53.
[11] EB Docket, pp. 54 to 66.
[12] EB Docket, pp. 68 to 69.
[13] EB Docket, p. 3.

that the income payment it received was declared as part of its gross income because respondent and Yashima are unrelated entities. Petitioner alleges that since respondent did not file the claim for refund on behalf of Yashima, respondent has no legal standing to claim the refund. To rule otherwise would result to the unjust enrichment of respondent.

Moreover, petitioner asserts that in a claim for refund of taxes withheld, respondent should prove not only the fact of withholding but also the subsequent remittance to the BIR, which respondent failed to do.

Respondent's counter-arguments:

Respondent counter-argues that while it is indeed the taxpayer who has the legal personality to file a claim for refund, the withholding agent may also file a claim for refund in lieu of the taxpayer, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Smart Communication, Inc.*[14]

Respondent also points out that as the withholding agent of Yashima, it has paid the tax as withholding agent as evidenced by the electronic Filing and Payment System (eFPS) printouts of its BIR Forms No. 1601-F, and petitioner failed to question the legitimacy of the said evidence.

In addition, respondent contends that the fact that it was indeed the withholding agent of Yashima was properly established by respondent's witness, Mary Ann C. Vergara.

Lastly, respondent asserts that pursuant to Section 2.57.1 of Revenue Regulations (RR) No. 2-98, respondent has the responsibility to deduct the withholding tax from income payment, and remit the same to the BIR.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is bereft of merit.

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[14] G.R. Nos. 179045-46, August 25, 2010.

Respondent, as a withholding agent, has the legal personality to file the claim for refund.

Petitioner points out that as a mere withholding agent, respondent has no personality to file a claim for refund. Instead, it is Yashima, the statutory taxpayer, who is the proper party to file the claim for refund.

Petitioner is mistaken.

Sections 204 (c) and 229 of the National Internal Revenue Code (NIRC) read as follows:

> "Sec. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed **unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> xxx xxx xxx
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> Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, **until a claim for refund or**

> **credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner, may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the foregoing, the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.[15]

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation and The Court of Tax Appeals,*[16] the Supreme Court held that a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company, *to wit*:

> " ... The term "taxpayer" is defined in our NIRC as referring to "any person subject to tax imposed by the Title [on Tax on Income]." It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent, is moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less

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[15] *Commissioner of Internal Revenue v. Smart Communication, Inc.*, G.R. No. 179045-46, August 25, 2010.

[16] G.R. No. L-66838, December 2, 1991.

> than the amount that should have been withheld under law.
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> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. **It is very difficult, indeed conceptually impossible to consider a person who is statutorily made "liable for tax" as not "subject to tax". By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him."** (*Emphasis supplied*)

In *Filipinas Synthetic Fiber Corporation v. Court of Appeals, et al.,*[17] citing *Philippine Guaranty Company, Inc., v. Commissioner of Internal Revenue*,[18] the Supreme Court pointed out that a withholding agent acts as the agent both of the government and of the taxpayer, *to wit*:

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. **Thus, the withholding agent is constituted the agent both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.** The withholding agent, therefore is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law." (*Emphasis supplied*)

It bears stressing that the withholding agent and the taxpayer need not be related parties in order for the withholding agent to have

[17] GR Nos. 118498 & 124377, October 12, 1999.
[18] G.R. No. L-22074, April 30, 1965.

a right to file a claim for refund on behalf of the taxpayer. In fact, in *Commissioner of Internal Revenue v. Smart Communication, Inc.,*[19] the Supreme Court categorically stated that in case the taxpayer does not file a claim for refund, the withholding agent may file the claim, thus:

> "Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer.
>
> **We do not agree.**
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> Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, **there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund**. Rather, **what is clear in the decision is that a withholding agent has a legal right to file a claim for refund** for two reasons. *First,*[20] he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second,*[21] as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.
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> In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld,

[19] G.R. Nos. 179045-46, August 25, 2010.
[20] Italics by the Supreme Court.
[21] *Id.*

> and from whom he deprives his legal right to file a claim for refund.
>
> xxx xxx xxx
>
> In view of the foregoing, we find no error on the part of the CTA in upholding **respondent's right as a withholding agent to file a claim for refund**." *(Emphasis supplied)*

In the instant case, as correctly observed by the Court in Division, the excess or erroneous payments arose from the income payments made by respondent to Yashima for rendering repair service on respondent's equipment in relation to its power generating business. Respondent paid Yashima and withheld accordingly taxes from said payments. Considering that Yashima is a Japanese corporation[22] not doing business in the Philippines,[23] respondent becomes the withholding agent in the Philippines for payments it has made to Yashima, pursuant to Section 57 (A)[24] of the NIRC of 1997, as amended.

Moreover, under Section 2.57 (A) of RR No. 2-98, as amended, the withholding agent has the responsibility to withhold and remit the FWTs to the government, thus:

> "(A) *Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of

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[22] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 665 to 694.

[23] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 695.

[24] SECTION. 57 *Withholding of Tax at Source.* –

(A) *Withholding of Final Tax on Certain Incomes.* – Subject to the rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

> underwithholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.
>
> xxx xxx xxx"

Here, respondent, as the withholding agent, has the responsibility and liability to withhold and remit the taxes on its income payments for the services rendered by Yashima. As previously discussed, a withholding agent is entitled to file a claim for refund for erroneously withheld taxes. Hence, We uphold respondent's right to file a claim for refund.

Respondent was able to prove the fact of withholding and subsequent remittance of taxes to the BIR.

Petitioner insists that respondent failed to prove that it remitted the taxes withheld to the BIR; thus, it is not entitled to any refund.

Petitioner's contention is belied by the records of the case.

We affirm the findings of the Court in Division that respondent was able to prove that it had remitted the withholding taxes on its income payments to Yashima for the period September 10, 2014 to October 13, 2015, amounting to ₱18,391,219.77. To prove the fact of withholding and remittance of FWT, respondent submitted BIR Forms No. 1601-F[25] and BIR ePayment Confirmations,[26] which were admitted by the Court in Division.[27]

For petitioner's failure to point out any error in the foregoing findings of the Court in Division, said findings must prevail over petitioner's general claim that respondent failed to prove that the withheld taxes came to the hands of the BIR. After all, findings of fact of the Court in Division should not be disturbed except for strong and valid reasons.[28]

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[25] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 632, 634 to 635, 637 to 638, 640 to 641, and 643 to 644.
[26] Division Docket – Vol. 2 (CTA Case No. 9465), pp. 633, 636, 639, 642, and 645.
[27] *Resolution* dated April 23, 2018, Division Docket – Vol. 2 (CTA Case No. 9465, pp. 777 to 779.
[28] Refer to *Rogelia R. Gatan and the Heirs of Bernardino Gatan v. Jesusa Vinarao and Spouses Mildred Cabauatan and Nomar Cabauatan*, G.R. No. 205912, October 18, 2017.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on June 8, 2020, and the *Resolution* promulgated on October 2, 2020, by the First Division of this Court in CTA Case No. 9465 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice