REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2705** (CTA Case No. 9618)
-versus-	**Present:** Del Rosario, *P.J.*, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, Ferrer-Flores, *and* Angeles, *JJ.*
SNOWY OWL ENERGY, INC. Respondent.	**Promulgated:** JAN 3 1 2024 11:10am

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[2] dated March 3, 2021 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, with the foregoing, the instant Petition for Review filed by petitioner Snowy Owl Energy, Inc. is hereby GRANTED. The assessment for deficiency income tax, final withholding tax and compromise penalty in relation to the subconsultant fees for taxable year 2013 is hereby **CANCELLED** and **SET ASIDE**. Accordingly, the case bond posted in the amount of ₱1,697,835.00 is **ORDERED** released, subject to the usual accounting procedure.

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[1] Respondent in CTA Case No. 9618.
[2] Rollo, CTA EB Case No. 2705, pp. 15-30.

Further, respondent Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing collection with respect to the assessment for taxable year 2013 embodied in the Formal Letter of Demand dated 13 January 2017 and Decision dated 08 May 2017 in the amount of ₱2,953,740.90.

SO ORDERED."

the Resolution[3] dated July 28, 2021 (July 28, 2021 Resolution) of the same Second Division of the Court (Court in Division) denying for lack of merit respondent's "Motion to Admit Attached Motion for Reconsideration," the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's "Motion to Admit Attached Motion for Reconsideration" is **DENIED** for lack of merit. The Decision dated 03 March 2021 has become final and executory.
>
> Accordingly, let an **ENTRY OF JUDGMENT** be issued in this case. The Clerk of Court is **DIRECTED** to forthwith **ENTER** the Decision dated 03 March 2021 in the Book of Entries of Judgments.
>
> **SO ORDERED.**"

and the Resolution[4] dated September 21, 2022 (September 21, 2022 Resolution) of the Court in Division denying for lack of merit respondent's "Motion for Reconsideration of the Resolution dated 28 July 2021," the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's "Motion for Reconsideration of the Resolution dated 28 July 2021, filed on 25 October 2021, is hereby **DENIED** for lack of merit.
>
> As previously ordered in the Decision dated 03 March 2021, which is already final and executory, the cash bond posted in the amount of ₱1,697,835 is **ORDERED** released, subject to the usual accounting procedure. Thus, for being superfluous, petitioner's Motion to Release Bond, filed on 07 March 2022, is merely **NOTED**.
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> **SO ORDERED.**"

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[3] Rollo, pp. 31-34.
[4] Rollo, pp. 35-45.

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (BIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Respondent Snowy Owl Energy, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 008-433-678-000.[6] Its principal office is located at Unit 3006 Antel Global Corporate Center, No. 3 Julia Vargas Avenue, Ortigas Center, San Antonio, Pasig City.[7]

THE FACTS

The facts as stated in the assailed Decision[8] are as follows:

> "On 01 July 2013, petitioner[9] entered into a Consultancy Agreement (Subconsultant Services) agreement) with Rolenergy Inc. (Rolenergy). Based on the Agreement, the latter would serve as petitioner's sub-consultant. Rolenergy is a Hong Kong-based foreign corporation organized and registered in the British Virgin Islands.
>
> The afore-cited Agreement provides the rendition of services in Hong Kong. In accordance therewith, Rolenergy would renew engineering designs and send review reports to petitioner. The compensation for the services rendered will be paid through Banco De Oro (BDO) Wire Transfer. For the year 2013, petitioner's payments were reflected as expense from its Annual Income Tax Return (ITR), without any withholding tax with respect thereto.
>
> On 13 January 2017, respondent issued a Formal Letter of Demand (FLD) with assessment Notices assessing petitioner for deficiency IT, FWT, improperly accumulated earnings tax (IAET) and compromise penalties, summarized as follows:

Tax Type	Amount
Income Tax	₱1,359,981.92
FWT	1,584,917.35
IAET	543,166.82
Compromise Penalties	40,000.00

[5] Joint Stipulation of Facts and Issues, Docket, CTA Case No. 9618, pp. 523-526.
[6] Decision, p. 2.
[7] Petition for Review, Docket, CTA Case No. 9618, p. 10.
[8] Citations omitted.
[9] Respondent in this case.

TOTAL	**₱3,528,066.09**

On February 13, 2017, petitioner filed a protest to the FLD, assailing BIR's assessment against it for IT (disallowance as expense), FWT and compromise penalty with respect to the sub-consultant fees. On the other hand, it recognized the disallowance of the underdeclared rental expense (which formed part of the assessment for deficiency IT) and the assessment for IAET and the compromise penalty relating to the latter.

On 10 February 2017, petitioner paid a total of P592,325.19 as evidenced by Payment Forms (BIR Form No. 0605) and Electronic Filing and Payment Systems (eFPS) Filing Reference Number, broken down as follows:

Tax Type	Amount
Income Tax	₱28,158.37
IAET	543,166.82
Compromise Penalties	20,000.00
TOTAL	**₱592,325.19**

On 22 March 2017, respondent issued a letter giving due course to petitioner's request for investigation and directed the latter to submit supporting documents within sixty (60) days from the filing of its protest. Respondent also acknowledged petitioner's payment for deficiency IT and IAET.

Pursuant to its protest, petitioner submitted additional supporting documents on 12 April 2017.

On 08 May 2017, respondent issued its Decision denying petitioner's protest. Petitioner received the same on 18 May 2017."[10]

On 19 June 2017, respondent filed a Petition for Review[11] before the Court in Division, docketed as CTA Case No. 9618, entitled *"Snowy Owl Energy, Inc. vs. Commissioner of Internal Revenue,"* praying that the assessments made by petitioner in relation to the sub-consultant fees paid by respondent to Rolenergy Inc. are void and have no factual and legal bases.

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[10] Decision pp. 2-4, citations omitted.
[11] Docket, CTA Case No. 9618, pp. 10-18, with annexes.

On 22 August 2017, the petitioner filed his Answer,[12] interposing the following defenses, to wit: that the Final Assessment Notice was received on 13 January 2017; that respondent's protest was filed on 13 February 2017, hence the protest was filed out of time; that the Court has no jurisdiction over the case since the Petition for Review was filed out of time; that the Letter of Denial was allegedly received on 18 May 2017; and that respondent has until 17 June 2017 to file the Petition for Review. Since the Petition for Review was filed on 19 June 2017, the assessments are already final, executory and demandable.

The issues stated in the Joint Stipulations of Facts and Issues are:

1. Whether or not the Honorable Court of Tax Appeals has jurisdiction over the case; and
2. Whether or not the assessments are final and executory and demandable.[13]

On March 3, 2021, the Court in Division rendered the assailed Decision.

On May 24, 2021, respondent filed a "Motion to Admit Attached Motion for Reconsideration"[14] stating that the assailed Decision was received by the BIR-RR7B (East NCR) – Legal Division on March 8, 2021 and the case was assigned to petitioner's counsel Atty. Juffali A. Abdullah (Atty. Abdullah) on March 9, 2021; that on March 10, 2021, Atty. Abdullah contracted COVID-19 infection and was subjected to quarantine procedures from March 9, 2021 to March 26, 2021; that during the quarantine period, Atty. Abdullah has no access to the records of the instant case, hence Atty. Abdullah was not able to prepare and file the Motion for Reconsideration within the prescribed period; that the filing of pleadings was extended by virtue of the Supreme Court Administrative Circular No. 14-2021, wherein it was declared that the "filing of pleadings and other court submissions that fall due during the period from March 29 to March 31, 2021 are hereby extended for three (3) calendar days, counted from April 5, 2021." Thus, petitioner prays that the Court in Division grant the "Motion with Attached Motion for Reconsideration."

On May 31, 2021, the Court in Division issued a Resolution[15] ordering respondent to file comment on petitioner's Motion to Admit Attached Motion for Reconsideration" within ten (10) days from notice.

On June 22, 2021, the Court received respondent's "Opposition (To Respondent's *Motion to Admit Attached Motion for Reconsideration and Motion for Reconsideration of Decision Dated 03 March 2021*)" [16] stating that the deadline for the

[12] Docket, CTA Case No. 9618, pp. 113-119.
[13] Joint Stipulation of Facts and Issues, p. 1.
[14] Ibid., pp. 781-792.
[15] Ibid., p. 793.
[16] Petitioner in CTA Case No. 9618.

petitioner to file a Motion for Reconsideration was on March 23, 2021. Thus, the Supreme Court Circular does not apply to this case since the assailed Decision attained finality on March 24, 2021, or four days before the Supreme Court issued the Circular. Respondent prays that the Court in Division deny the Motion to Admit Attached Motion for Reconsideration.

On July 28, 2021, the Court in Division issued a Resolution denying for lack of merit the petitioner's Motion to Admit Attached Motion for Reconsideration. The Court in Division held that respondent is represented not only by Atty. Abdullah but also by the Office of the Solicitor General (OSG) and Attys. Oscar A. Aguilar and Alvin N. Sto. Domingo (from BIR-Revenue Region 7B); that respondent did not promptly avail of the remedies available to it; that Atty. Abdullah did not explain why the other lawyers representing the respondent could not do what Atty. Abdullah could have done under the situation. Hence, petitioner lost his right to appeal for failure to file the Motion for Reconsideration within the prescribed period.

On October 25, 2021, the Court received petitioner's "Motion for Reconsideration of Resolution dated 28 July 2021."[17] In the said motion, petitioner states that the filing of the motion for reconsideration is the sole responsibility of the handling lawyer; and that the delay in the filing of the motion for reconsideration can still be excused in the interest of substantial justice; that the Court in Division lacks jurisdiction over the case. Hence, petitioner prays that the July 28, 2021 Resolution be reversed, the issuance of Entry of Judgment be reconsidered, the Decision dated March 3, 20221 be reversed and the Petition for Review filed by respondent be dismissed for lack of jurisdiction.

On November 25, 2021, respondent filed an "Opposition (To Respondent's[18] Motion for Reconsideration dated 20 October 2021)."[19]

On February 7, 2022, the Court in Division issued a Resolution[20] submitting for resolution the petitioner's "Motion for Reconsideration of Resolution dated 28 July 2021."

On March 7, 2022, the Court in Division received respondent's "Motion to Release Bond."[21]

On March 30, 2022, the Court in Division issued a Resolution[22] holding in abeyance the resolution of petitioner's "Motion for Reconsideration of Resolution dated 28 July 2021."

[17] Docket, CTA Case No. 9618, pp. 812-822.
[18] Petitioner in this case
[19] Ibid., pp. 830-836.
[20] Ibid., pp. 839-840.
[21] Ibid., pp. 849-851.
[22] Ibid., pp. 857-858.

On April 12, 2022, the Court received petitioner's[23] "Comment/Opposition to Petitioner's Motion for Release Bond."

On May 24, 2022, the Court in Division issued a Resolution[24] submitting for resolution the "Motion to Release Bond" and petitioner's "Motion for Reconsideration of Resolution dated 28 July 2021."

On September 21, 2022, the Court in Division issued the second assailed Resolution holding that the respondent's protest to the Formal Letter of Demand was timely filed, the petitioner's assessment has not yet attained finality, the assessment is not yet demandable at the time the Petition for Review was filed before the Court in Division, the assailed March 3, 2021 Decision has already attained finality for failure of petitioner to file on time his Motion for Reconsideration on the assailed Decision, and since an Entry of Judgment has already been issued, the respondent's subsequent Motion to Release becomes superfluous. Accordingly, the petitioner's "Motion for Reconsideration of Resolution dated 28 July 2021" was denied for lack of merit.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review[25] on October 17, 2022.

On November 22, 2022, the Court *En Banc* issued a Resolution[26] ordering respondent to file Comment, not a motion to dismiss, within ten (10) days from notice and ordered petitioner to show compliance with the noted omissions in the Petition for Review within five (5) days from notice.

On December 1, 2022, respondent filed a "Compliance" pursuant to the Court *En Banc*'s Order dated November 22, 2022.[27]

On December 16, 2022, the Court *En Banc* issued a Minute Resolution[28] ordering petitioner to submit additional copies of his 'Compliance." On even date, respondent filed a "Comment (To the Petition for Review dated 17 October 2022)."[29]

On December 27, 2022, the Court received petitioner's 'Compliance"[30] submitting six (6) additional copies of petitioner's "Compliance" dated November 28, 2022.

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[23] Respondent in CTA Case No. 9618.
[24] Docket, CTA Case No. 9618, pp. 864-865.
[25] Rollo, CTA EB No. 2705, pp. 1-14.
[26] Ibid., pp. 51-52.
[27] Ibid., pp. 54-55, with attached photocopies of Integrated Bar of the Philippines Official Receipt and Mandatory Continuing Legal Education Certificate of Atty. Juffali A. Abdullah.
[28] Ibid., p. 59.
[29] Ibid., pp. 61-71.
[30] Ibid., pp. 73-74.

On January 3, 2023, the Court *En Banc* issued a Minute Resolution[31] requiring respondent to submit additional copies of its "Comment (To the Petition for Review dated 17 October 2022)" and noting petitioner's "Compliance."

On January 30, 2023, the Court *En Banc* issued Minute Resolution[32] noting respondent's submission of additional five (5) copies of its "Compliance (To the Petition for Review dated 17 October 2022)."

In the Resolution dated February 22, 2023,[33] the Court *En Banc* deemed the instant case submitted for decision.

THE ISSUE

The main issue for the Court *En Banc*'s consideration is ***"Whether or not the Court En Banc has jurisdiction to review the Court in Division's Decision and Resolution."***

THE ARGUMENTS

Petitioner contends that the Court in Division erred in cancelling and setting aside the assessment for deficiency income tax, final withholding tax, and compromise penalty in relation to the sub-consultant fees for taxable year 2013, and enjoining the respondent from enforcing collection with respect to the assessment for taxable year 2013 embodied on the Formal Letter to Demand dated January 13, 2017 and Decision dated May 8, 2017.

Petitioner disagrees with the Court in Division's ruling that respondent had until the next working day within which to file the Protest since there is no law, rule or regulation or provision which specifically states that when the deadline of the filing of the protest falls on a weekend,[34] the taxpayer has until the next working day, February 13, 2017 to file its Protest; that since there was failure on the part of petitioner to validly protest the assessments made, the Petition for Review before the Court in Division should have been dismissed.

Further, the filing of the Motion for Reconsideration is the sole responsibility of the handling lawyer; that the handling lawyer has no opportunity to prepare the motion within the required period since he had COVID-19 Virus at that time and he is under quarantine from March 9, 2021 to March 26, 2021; and that the collection of taxes should not be hampered due to the principle that taxes are the lifeblood of the government.

[31] Rollo, CTA EB No. 2705, p. 75.
[32] Ibid., p. 77.
[33] Ibid pp. 79-81.
[34] The last day to file the Protest was on February 12, 2017, a Sunday.

On the other hand, respondent counter-argues that the Petition for Review is a mere rehash of petitioner's arguments in its pleadings and motions filed before the Court in Division which were already passed upon by the Court in Division in the assailed Decision and Resolutions.

The Court in Division has jurisdiction over the case; that petitioner cannot belatedly invoke that the Court in Division has no jurisdiction over the case after it actively participated in the proceedings conducted before it and after the judgment was not rendered in its favor.

The filing of the Motion for Reconsideration is not the sole responsibility of Atty. Abdullah since she is not a single practitioner, but a part of an organization that represents the government in tax cases; that the "Motion to Admit Attached Motion for Reconsideration" has indicated Atty. Oscar A. Aguilar, Atty. Alvin N. Sto. Domingo, Atty. Abdullah, and BIR-RR7B (East NCR) Legal Division as the handling counsels; that the deadline for petitioner to file the Motion for Reconsideration was on March 23, 2021; that the last day of Atty. Abdullah's quarantine period was on March 26, 2021; that the Supreme Court Administrative Circular No. 14-2021 dated March 28, 2021 does not apply in this case because it applied to pleadings and other court submissions that fell due from March 29, 2021 to March 31, 2021; that the assailed Decision attained finality on March 24, 2021, or four (4) days before the Supreme Court issued the said Circular; that petitioner's Motion for Reconsideration was filed only on May 24, 2021; and that while tax collections are important, taxpayers are equally entitled to protection from negligent tax agents.

THE RULING OF THE COURT *EN BANC*

After consideration, the Court *En Banc* finds that the CIR's opportunity to appeal has already lapsed since the assailed Decision has become final and executory for failure of petitioner to file a Motion for Reconsideration in accordance with the rules.

Petitioner's right to appeal is a statutory privilege that must be exercised in the manner provided by law.

Sections 1 and 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide:

> SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

xxx xxx xxx

SECTION 3. *Who may appeal; period to file petition.*- (a) xxx

xxx xxx.

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or a new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit of costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

The records of this case show that petitioner received a copy of the Decision on March 8, 2021.[35]

Based on the above-mentioned provisions, petitioner had fifteen (15) days from March 8, 2021 or **until March 23, 2021** within which to file his Motion for Reconsideration.

It was only on May 24, 2021 that petitioner filed before the Court in Division a "Motion to Admit Attached Motion for Reconsideration" dated May 21, 2021.[36] Hence, petitioner's right to appeal has already lapsed.

A party who fails to question an adverse decision by not filing a Motion for Reconsideration within the period prescribed by the rules loses its right to do so, since the decision as to him, becomes final and binding. In *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,*[37] the Supreme Court ruled that:

"It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over

[35] Docket, Notice of decision, p. 764.
[36] Ibid., pp. 781-792.
[37] G.R. No. 185666, February 04, 2015.

> the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
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> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim."

In the case of *Bureau of Internal Revenue vs. TICO Insurance Company, Inc., Glowide Enterprises, Inc., and Pacific Mills, Inc.,*[38] the Supreme Court extensively discussed the effect of failure to file on time a Motion for Reconsideration, viz:

> It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the final judgment, more so to entertain the appeal. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The right to appeal is not a part of due process of law, but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.
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> In the same vein, "a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal." "Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed within 15 days from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment, as provided under Section 10 of Rule 51. The 15-day reglementary period for filing a motion for reconsideration is non-extendible."
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> Provisions of the Rules of Court prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays, and to the orderly and speedy discharge of judicial business. While this Court has previously allowed the liberal application of procedural

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[38] G.R. No. 204226, April 18, 2022, citations omitted.

rules, these are exceptions that are sufficiently justified by meritorious and exceptional circumstances attendant therein, which are notably not present in the instant petition. Not every plea for relaxation of rules of procedure shall be granted by the Court for it will render such rules inutile.

Significantly, the BIR failed to adduce any cogent or exceptional reason that would warrant the liberal application of the rules. It merely invoked the inadvertence of its counsel's Document Management Division in failing to file its motion for reconsideration on time. However, a counsel's tardiness in complying with reglementary periods for filing pleadings that are attributed to the negligence of said counsel's secretary or clerk is not a valid reason. "It is the counsel's duty to adopt and to strictly maintain a system that ensures that all pleadings should be filed and duly served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel."

That the motion for reconsideration was filed only one day late is immaterial; the Court has similarly refused to admit motions for reconsideration which were filed late without sufficient justification. Indeed, "[j]ust as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case."

In fine, the BIR's failure to seasonably file its motion for reconsideration rendered the December 16, 2011 Decision of the CA final and executory, and beyond the courts' power to amend or revoke."

Since the assailed Decision and Resolutions of the Court in Division have become final and executory, the Court *En Banc* cannot exercise appellate jurisdiction to review the same. Accordingly, the Court *En Banc* must deny the instant petition.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of jurisdiction**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice