REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),
Respondent.

CTA EB CASE No. 868
(CTA Case No. 7976)

X- X

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, AND THE HEAD REVENUE EXECUTIVE ASSISTANT, LARGE TAXPAYER SERVICE, in their official capacities as Officers of the Bureau of Internal Revenue,
Respondent.

CTA EB CASE No. 869
(CTA Case No. 7976)

Members:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:
JUL 2 3 2013 [illegible] 8:35 a.m.

X- -X

DECISION

CASANOVA, *J.*:

This is a consolidation of the respective appeals of both parties filed by way of verified Petitions for Review[1], assailing the Decision[2] (Assailed Decision) dated September 5, 2011 and the Resolution[3] (Assailed Resolution) dated January 24, 2012, both promulgated by the Court of Tax Appeals First Division.

The facts of the case, as found by the CTA First Division, are as follows:

> "Petitioner alleges that it is a duly created government instrumentality by virtue of Presidential Decree (P.D.) No. 1869, as amended, with business address at 6th Floor, Hyatt Hotel and Casino, Pedro Gil cor. M.H. Del Pilar Sts., Malate, Manila.
>
> Respondent Commissioner of Internal Revenue (CIR) is the government official empowered, among others, to assess and collect internal revenue taxes, and to decide disputed assessments. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> The other respondent is the Head Revenue Executive Assistant (HREA) of the Large Taxpayers Service who is impleaded as such and as authorized representative of his co-respondent CIR.
>
> Under P.D. No. 1869, specifically in Section 10, Title IV thereof, petitioner's franchise includes the 'rights, privilege and authority to operate and maintain gambling casinos, clubs, and other

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[1] Petition for Review, CTA Case No. 868, Docket, pp. 7-25 and Petition for Review, CTA Case No. 869, Docket, pp. 5-52.
[2] CTA EB Case No. 868, Docket, pp. 26-63.
[3] CTA EB Case No. 868, Docket, pp. 64-82.

recreation or amusement places, sports, gaming pools, i.e.. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines'. Likewise it is legally empowered to 'do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees.' It also has regulatory powers over 'all persons primarily engaged in gambling, together with their allied business'.

The franchise mandates petitioner to remit to the Bureau of Internal Revenue (BIR) five percent (5%) franchise tax of its gross revenue or earnings derived from its operations. It shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.

On July 14, 2008, petitioner received a letter dated July 2, 2008 from respondent HREA, requesting for an informal conference on the results of an investigation regarding all its internal revenue tax liabilities for the taxable years 2005 and 2006.

On August 11, 2008, petitioner received from respondent CIR a Preliminary Assessment Notice (PAN) dated July 29, 2008, on its alleged deficiency income tax, VAT, FBT, and documentary stamp tax (DST) for taxable years 2005-2006. On February 3, 2009, petitioner received from CIR a Formal Letter of Demand (FLD), with attached Assessment Notices all dated December 9, 2008, but this time only for deficiency income tax, VAT, and FBT, inclusive of charges, interest and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of P5,927,542,547.76, broken down as follows:

Taxable Year 2005

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 98,856,851.52	P 24,714,212.88	P 53,680,624.58	P 25,000.00	P 177,276,688.98
VAT	837,606,020.73	209,401,505.18	491,548,519.56	25,000.00	1,538,581,045.48
FBT	32,297,128.28	8,074,282.07	18,953,547.61	25,000.00	59,349,957.96

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Totals	**P 968,760,000.53** *(sic)*	**P 242,190,000.13** *(sic)*	**P 564,182,691.75**	**P 75,000.00**	**P1,775,207,692.42**

Taxable Year 2006

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	P 889,270,123.21	P 222,317,530.80	P 305,031,834.04	P 25,000.00	P 1,416,644,488.06
VAT	1,665,267,061.23	416,316,765.31	644,207,422.04	25,000.00	2,725,816,248.58
FBT	6,017,119.97	1,504,279.99	2,327,718.74	25,000.00	9,874,118.70
Totals	**P2,560,554,304.41**	**P640,138,576.10** *(sic)*	**P 951,566,974.82**	**P 75,000.00**	**P4,152,334,855.34**

On March 3, 2009, petitioner filed a letter-protest dated February 16, 2009, addressed to respondent CIR.

On September 29, 2009, petitioner filed the instant Petition for Review alleging inaction on the part of respondent CIR.

On December 10, 2009, respondent filed her Answer and anchored her defense on the following Special and Affirmative Defenses:

'Special and Affirmative Defenses

4. Respondent hereby repleads the above admissions and denials as part of his Special and Affirmative Defenses.

5. Petitioner is subject to ordinary corporate income tax.

 5.1 Philippine Amusement and Gaming Corporation (PAGCOR) was one of the five government-owned or controlled corporation (GOCCs) exempted from payment of corporate income tax under Section 27(C) of Republic Act No. 8424 otherwise known as 'An Act Amending the National Internal Revenue Code, as amended and for other purposes'. Under Section 1(C) of RA 9337 (effective November 1, 2005), PAGCOR was deleted from the list of exempted GOCCs.

5.2 Before RA 9337 became effective, various groups already lodged petitions for certiorari with the Supreme Court (SC) questioning the validity and constitutionality of RA 9337. On September 1, 2005 the SC dismissed all the petitions and declared RA 9337 as constitutional.

5.3 PAGCOR is no longer exempt from corporate income tax in view of its exclusion from the list of government-owned or controlled corporations (GOCCs) exempt from income tax under Section 27 (C) of the RA 8424. This is evident from the enactment of RA 9337. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

5.4 In the case of *Abakada Guro Party List vs. Honourable Secretary Ermita et al.* the SC succinctly stated: 'The Philippine Amusement and Gaming Corporation is not exempt from income tax anymore.' Both in law and jurisprudence the ultimate truth is announced of the relegation of petitioner into the status of an ordinary corporate taxpayer.

6. As an ordinary corporate taxpayer, petitioner is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716 otherwise known as the Expanded VAT Law.

6.1 After the apparent relegation of petitioner into the status of an ordinary taxpayer, respondent issued Revenue Regulations No. 16-2005, an existing and valid regulation imposing VAT on corporate taxpayers.

6.2 The issuance of RR 16-2005 has the presumption of validity. With the proliferation of specialized activities and its attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. By virtue of the power of the subordinate legislation, administrative bodies such as the BIR may implement the broad policies laid down in the statute by the filling in details which Congress may not have the opportunity or competence to provide.

6.3 In fact, even before the issuance of RR 16-2005, the BIR maintains that PAGCOR is subject to 10% VAT. This stand is reflected in several BIR rulings. All legislative franchisees, except only electric gas and water utilities have been expressly subjected to the 10% VAT pursuant to Section 102 of the old NIRC as amended by RA 7716 (now Sec. 108 of the NIRC of 1997). Upon effectivity of Section 102 of the old NIRC as amended by RA 7716, PAGCOR ceased to be embraced by the franchise tax. Instead it became subject to 10% VAT, in lieu of all other taxes, pursuant to Section 13 of PD No. 1869 as amended by Sections 3 and 12 of RA 7716. The 5% franchise tax had already been replaced by VAT. Section 108 of the NIRC of 1997 (then Section 106 of old NIRC as amended) provides that all franchise grantees which are not subject to the franchise tax under Section 119 NIRC of 1997 shall be considered as other franchise grantees subject to the 10% VAT.

7. Petitioner is liable for Fringe Benefits Tax (FBT) under Section 33 of the NIRC of 1997 in relation to RR No. 3-98.

7.1 Pursuant to Section 33(A) of the NIRC of 1997 in relation to RR No. 3-98, employers are required to withhold at the rate of 32% effective 01 January 2000 on the grossed up monetary value of fringe benefits furnished or granted to the employee, except rank and file employees.

7.2 Based on the investigation conducted by respondent's examiners, petitioner provided automobiles for all its officers. Pursuant to the car expense plan, petitioner would shoulder sixty percent (60%) of the price tag of the automobile and forty percent (40%) will be paid by the officer thru a five year interest free loan. Petitioner, however, did not subject the aforementioned fringe benefits as part of compensation.

7.3 Section 2.78.1 of RR No. 2-98(A) defines compensation as follows:

'(A) Compensation Income Defined-

In general, the term 'compensation' means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is at the same time, an employee of the employer/corporation; taxable bonuses and **fringe benefits except those which are subject to the fringe benefits tax under Sec. 33 of the Code.**' (Emphasis supplied)

7.4 Section 2.33 (B)(3)(a) of RR No. 3-98 also states:

'If the employer purchases the motor vehicle in the name of the employee, the value of the benefit is the acquisition cost thereof. The monetary value of the fringe benefit shall be the entire value of the benefit, regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.'

7.5 Undoubtedly, such failure on the part of petitioner to perform the sacred duty of a government withholding agent will result in FBT liability. Hence, assessment will ensue as a matter of course.

8. Petitioner was duly assessed and informed of its deficiency income tax, VAT and FBT liabilities for taxable years 2005 and 2006.

8.1 After petitioner ceased to be one of the listed GOCCs exempt from the corporate income tax under the NIRC of 1997, respondent issued Letter of Authority No. 2007 32676 dated 19 March 2008 to authorize the revenue examiners named therein for the purpose of examining petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2005 to 31 December 2006.

8.2 A Preliminary Assessment Notice (PAN) dated 29 July 2008 was issued to petitioner for deficiency Income Tax, VAT, FBT and Documentary Stamp Tax (DST) for taxable years 2005 and 2006.

8.3 A Formal Letter of Demand (FLOD) with annexed Details of Discrepancies and attached Assessment Notices dated 09 December 2008 was issued to petitioner for deficiency Income Tax, VAT and FBT for taxable year 2005 and 2006.

8.4 Along with the FLOD, were Assessment Notice Nos. IT-05-000234; VT-05-000279; FBT-05-000070; IT-06-000235; VT-06-000280 and IT-06-000071 all dated 09 December 2008 attached thereto.

9. All told, petitioner is therefore liable for deficiency taxes broken down as follows:

Taxable Year 2005

Assessment Notice No. IT-05-000234 (Income Tax)

Winnings		20,274,893,157.40
Bingo-In-House		105,778,364.69
Bingo-Franchisee		1,374,675,920.88
Other Business Income		1,455,655,844.89
Total Income		**23,211,003,287.86**
Less:	Expenses	
	Personal Services	5,224,572,117.12
	Maintenance and Other Operating Expenses	4,338,108,146.88
	Contributions to the Government	11,953,634,140.64
	Total Expenses	**21,516,314,404.64**
Net Income		1,694,688,883.22
Tax Due (For November and December Only)		98,856,851.52
Tax Paid		**0.00**
Deficiency Income Tax		**98,856,851.52**
Add:	Surcharge	24,714,212.88
	Interest	**53,680,624.58**
	Compromise	25,000.00
Total Tax Due		**177,276,688.98**

Assessment Notice No. VT-05-000279 (VAT)

Winnings		18,431,721,052.18
Bingo-In-House		96,162,149.72
Bingo-Franchisee		1,249,705,382.62
Other Business Income		1,327,602,290.42
Total Gross Receipts		**21,105,190,874.94**
Less:	Creditable Input Tax	
	Total Maintenance and Other Operating Expenses	4,454,027,737.93
	Less: Expenses not subject to VAT	1,603,175,240.33
	Total possible sources of Input VAT	2,850,852,497.60
	Divided by VAT Rate	1.10
	Total Allowable Input Tax	259,168,408.87

Value Added Tax Due		1,851,350,678.62
Tax Paid (Franchise Tax Paid)		1,013,744,657.89
Deficiency Value Added Tax		**837,606,020.73**
Add:	Surcharge	209,401,505.18
	Interest	**491,548,519.56**
	Compromise	25,000.00
Total Tax Due		**1,538,581,045.48**

Assessment Notice No. FBT-05-000070 (FBT)

PAGCOR 60% share on Car Plan	65,250,539.17
Officer 40% share (Interest Free Loan)	3,380,858.41
Total Fringe Benefit	68,631,397.58
Divide by Percentage for CY 2000 above	68%
Grossed Up Monetary Value	100,928,525.86
Multiply by: Fringe Benefit Tax Rate	32%
Total Fringe Benefit Tax Due	32,297,128.28
Less: Fringe Benefit Tax Paid	0.00
Basic Fringe Benefit Tax Deficiency	32,297,128.28
Add: Surcharge	8,074,282.07
Interest	**18,953,547.61**
Compromise	25,000.00
Total Tax Due	**59,349,957.95**

Taxable Year 2006
Assessment Notice No. IT-06-000235 (Income Tax)

Winnings		20,461,208,552.70
Bingo-In-House		107,749,320.50
Bingo-Franchisee		1,433,044,821.20
Other Business Income		3,275,860,681.62
Total Income		**25,277,863,376.02**
Less:	Expenses	
	Personal Services	5,778,832,235.84
	Maintenance and Other Operating Expenses	4,979,751,269.44
	Contributions to the Government	11,978,529,718.03
	Total Expenses	**22,737,113,223.31**
Net Income		2,540,771,780.61
Tax Due (For November and December Only)		889,270,123.21
Tax Paid		**0.00**
Deficiency Income Tax		**889,270,123.21**

Add:	Surcharge	222,317,530.80
	Interest	**305,031,834.04**
	Compromise	25,000.00
Total Tax Due		**1,416,644,488.05**

Assessment Notice No. VT-06-000080 (VAT)

Winnings		18,601,098,684.27
Bingo-In-House		97,953,927.73
Bingo-Franchisee		1,302,768,019.27
Other Business Income		2,991,769,817.64
Total Gross Receipts		**22,993,590,448.91**
Less:	Creditable Input Tax	
	Total Maintenance and Other Operating Expenses	4,979,751,269.44
	Less: Expenses not subject to VAT	4,193,029,614.48
	Total possible sources of Input VAT	786,721,654.96
	Divided by VAT Rate	1.12
	Total Allowable Input Tax	84,291,605.89
Value Added Tax Due		2,636,616,597.23
Tax Paid (Franchise Tax Paid)		971,349,536.00
Deficiency Value Added Tax		1,665,267,061.23
Add:	Surcharge	416,316,765.31
	Interest	**644,207,422.04**
	Compromise	25,000.00
Total Tax Due		**2,725,816,248.58**

Assessment Notice No. FBT-06-000071 (FBT)

PAGCOR 60% share on Car Plan	8,725,566.45
Officer 40% share (Interest Free Loan)	4,060,813.50
Total Fringe Benefit	12,786,379.95
Divide by Percentage for CY 2000 above	68%
Grossed Up Monetary Value	18,803,499.92
Multiply by: Fringe Benefit Tax Rate	32%
Total Fringe Benefit Tax Due	6,017,119.97
Less: Fringe Benefit Tax Paid	0.00
Basic Fringe Benefit Tax Deficiency	6,017,119.97
Add: Surcharge	1,504,279.99
Interest	**2,327,718.74**
Compromise	25,000.00
Total Tax Due	**9,874,118.71**

> 10. In the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* the Supreme Court held:
>
> > 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

During the pre-trial conference on April 30, 2010, the parties submitted the instant Petition for Review for decision without presentation of evidence on agreement that there are no factual issues involved and only the legal issues are left for the determination of the Court. In view thereof and as prayed for, the parties were granted a period of thirty (30) days from receipt of the Pre-trial Order dated July 21, 2010, within which to file their respective memoranda.

On September 9, 2010, the instant case was submitted for decision, after CIR filed her Memorandum on July 20, 2010 and PAGCOR, on September 2, 2010.

On September 5, 2011, the First Division of this Honorable Court promulgated the Assailed Decision, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments representing deficiency VAT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amount of P4,264,397,294.06 for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE.**
>
> However, the assessments for deficiency income tax and Fringe Benefit Tax (FBT) for taxable years 2005 and 2006 are hereby **AFFIRMED** with **MODIFICATIONS.** The compromise penalties were

cancelled in the absence of mutual agreement between the parties. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the following basic deficiency income tax and FBT for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
INCOME TAX			
Basic	P 98,856.851.52	P 889,270,123.21	P 988,126,974.73
Surcharge	24,714,212.88	222,317,530.80	247,031,743.68
Subtotal	**P 123,571,064.40**	**P 1,111,587,654.01**	P 1,235,158,718.41
FBT			
Basic	P 32,297,128.28	P 6,017,119.97	P 38,314,248.25
Surcharge	8,074,282.07	1,504,279.99	9,578,562.06
Subtotal	**P 40,371,410.35**	**P 7,521,399.96**	P 47,892,810.31
TOTAL DEFICIENCY TAX	**P 163,942,474.75**	**P1,119,109,053.97**	**P 1,283,051,528.72**

In addition, petitioner shall pay deficiency interest at the rate of twenty percent (20%) *per annum* on the following basic deficiency income taxes and FBT computed from the dates indicated herein until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended:

	CY 2005	CY 2006
Income Tax	P 98,856,851.52	P 889,270,123.21
Computed from	April 15, 2006	April 15, 2007
FBT	P 32,297,128.28	P 6,017,119.97
Computed from	January 25, 2006	January 25, 2007

Petitioner is also liable to pay delinquency interest at the rate of twenty percent (20%) *per annum* on the accrued deficiency interest which was due for payment on December 31, 2008 and on the following deficiency taxes, computed from December 31, 2008 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended:

	CY 2005	CY 2006	TOTAL
INCOME TAX	P 123,571,064.40	P 1,111,587,654.01	P 1,235,158,718.41
FBT	P 40,371,410.35	P 7,521,399.96	P 47,892,810.31
TOTAL DEFICIENCY TAX	**P 163,942,474.75**	**P1,119,109,053.97**	**P 1,283,051,528.72**

SO ORDERED."

On September 15, 2011, this Honorable Court promulgated a Resolution[4] rendering the Motion to Suspend Tax Collection[5] filed by PAGCOR on July 20, 2011 and the Motion to Admit Attached Comment[6], filed by CIR on August 31, 2011 moot and academic in light of the Assailed Decision.

On September 22, 2011, CIR filed her Motion for Partial Reconsideration (Re: Decision promulgated 05 September 2011)[7]. PAGCOR filed its Motion for Partial Reconsideration of the Honorable Court's 5 September 2011 Decision[8] on October 4, 2011 and its Comment To Respondent's Motion For Partial Reconsideration[9] on October 17, 2011. On November 18, 2011, CIR filed her Comment (Re: Petitioner's Motion for Partial Reconsideration of the Decision promulgated 05 September 2011)[10].

In a Resolution[11] dated January 24, 2012, the CTA First Division denied the Motions filed by the parties. It states:

> "**WHEREFORE**, the Motions for Partial Reconsideration dated September 22, 2011 AND October 4, 2011, filed by Commissioner of Internal Revenue and Philippine Amusement and Gaming Corporation, respectively, are hereby **DENIED**, for lack of merit.

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[4] Division Docket, pp. 000419-000421.
[5] *Ibid.* pp. 000327-000343.
[6] *Id.*, pp. 000365-000378.
[7] *Id.*, pp. 000422-000429.
[8] *Id.* pp. 000435-000460.
[9] *Id.* pp. 000479-000489.
[10] *Id.* pp. 000529-000543.
[11] *Id.* pp. 000545-000563.

> The Motion for Reconsideration dated October 7, 2011, filed by petitioner Philippine Amusement and Gaming Corporation is also **DENIED**, for lack of merit.
>
> **SO ORDERED."**

Hence, both parties filed their respective Petitions for Review.

On February 27, 2012, PAGCOR filed its Petition for Review with Urgent Motion for the Suspension of Tax Collection[12], docketed as CTA *En Banc* Case No. 869, raising the following grounds:

> A. THE CTA FIRST DIVISION, GRAVELY ERRED IN HOLDING THAT P.D. 1869, AS AMENDED (ALSO KNOWN AS PAGCOR CHARTER), SPECIFICALLY ON PAGCOR'S EXEMPTION FROM ALL FORMS/KINDS OF TAXES PROVIDED IN SEC. 13, HAS BEEN AMENDED/REPEALED BY R.A. 8424 AND 9337 WHICH WILL NOW EFFECTIVELY SUBJECT PAGCOR'S INCOME FROM CASINO OPERATIONS AND RELATED SERVICES TO INCOME TAX.
>
> B. THE CTA FIRST DIVISION, FAILED TO CONSIDER THAT PAGCOR UNDER ITS CHARTER IS LIABLE ONLY FOR THE 5% FRANCHISE TAX WHICH IS IN LIEU OF ALL KINDS OF TAXES, LEVIES, FEES OR ASSESSMENTS OF ANY KIND, NATURE OR DESCRIPTION, LEVIED, ESTABLISHED OR COLLECTED BY ANY MUNICIPAL, PROVINCIAL, OR NATIONAL GOVERNMENT AUTHORITY.
>
> C. THE CTA FIRST DIVISION, SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THE FULL IMPORT OF PAGCOR'S TAX EXEMPTION UNDER ITS CHARTER WHICH NECESSARILY INCLUDES ITS EXEMPTION FROM THE FRINGE BENEFITS TAX (FBT).

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[12] Rollo, (CTA EB No. 869), pp. 5-53.

D. THE CTA FIRST DIVISION, SERIOUSLY ERRED WHEN IT DECLARED THAT PAGCOR IS LIABLE FOR THE FBT AS A WITHHOLDING AGENT. THIS IS VIOLATES *(sic)* PAGCOR'S RIGHT TO DUE PROCESS AS IT WAS ORIGINALLY ASSESSED FOR THE FBT AS FINAL DIRECT TAX.

E. ASSUMING THAT PAGCOR IS NOT EXEMPT FROM THE FBT, THE CAR PLAN EXTENDED TO ITS OFFICERS INURED TO ITS BENEFIT AND IT IS REQUIRED OR NECESSARY IN THE CONDUCT OF ITS BUSINESS, HENCE, SUCH BENEFIT SHOULD NOT BE COVERED BY THE FBT.

F. ASSUMING THAT PAGCOR IS SUBJECT TO THE ALLEGED DEFICIENCY INCOME TAX AND FBT, IT IS ONLY LIABLE FOR BASIC TAX, *I.E.,* EXCLUDING SURCHARGE AND INTEREST.

PAGCOR argues that P.D.1869 was not amended or repealed by R.A.s 8424 and 9337, such that its income from casino operations and related services remains tax-exempt except for the 5% franchise tax. PAGCOR expresses reservation on CTA First Division's reliance on the ruling in the case of *Abakada Guro Party List vs. Honorable Executive Secretary Ermita, et. al.*[13] (Abakada case) declaring it as not exempt from income taxes anymore is but an obiter dictum, thus not binding as precedent. PAGCOR further argues that the ruling in the case of *Philippine Amusement and Gaming Corporation vs. The Bureau of Internal Revenue (BIR), et al.* [14] removed its tax exemption under R.A. 9337 but not under P.D. 1869, as amended by R.A. 9487, thus PAGCOR retains its income tax exemption under its Charter.

Anent the assessed alleged deficiency Fringe Benefits Tax (FBT), petitioner alleges that the full import of PAGCOR's tax exemption under its Charter necessarily includes exemption from FBT and that assuming that PAGCOR is not FBT exempt, the car plan

[13] G.R. No. 168056, September 1, 2005.
[14] G.R. No. 172087, March 15, 2011.

extended to its officers inured to its benefit and is necessary in the conduct of its business, hence, such benefit should not be subject to FBT.

Moreover, PAGCOR reiterates its Motion to Suspend Tax Collection, citing Section 11 of R.A. 1125[15] and Sections 2 and 3 of Rule 10[16] of the Revised Rules of the Court of Tax Appeals, as its legal bases. PAGCOR also submitted that its tax exemption as provided in Section 13(2) of P.D. 1869[17], as amended and its claim that the pending collection of deficiency taxes against it is prejudicial to the interest of the national government and the taxpayer are grounds to support its Motion. It further emphasized that its funds partake the nature and character of government or public funds because they are earmarked or allocated by special laws for special public purposes, hence these funds cannot be garnished or levied upon.

Finally, PAGCOR posits that it is exempt from the bond requirement on the ground that being a government agency or instrumentality, it is exempt from posting judicial bonds.

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[15] **Section 11.** *Who may appeal; effect of appeal.* - Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
No appeal taken by the Court of Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

[16] **Sec. 2.** *Who may file.* – Where the collection of the amount of taxpayer's 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 the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.
Sec. 3. *When to file.* – The motion for suspension of the collection of tax may be filed together with petition for review or with the answer, or in a separate motion filed by the interested party at any stage of the proceedings.

[17] (2) *Income and other Taxes.* – (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

On February 24, 2012, CIR filed its Petition for Review[18], stating the following assigned error:

> THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT RULED THAT THE CASINO OPERATIONS AND RELATED OPERATIONS OF PETITIONER IS NOT SUBJECT TO VAT.

CIR, on the other hand, submits that the *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*[19] (Acesite) case is not on all fours with the facts of the instant case as Acesite is based on the NIRC of 1977 while the instant case is based on the NIRC of 1997 as amended by R.A. No. 9337. Moreover, CIR posits that as an ordinary corporate taxpayer, PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of R.A. No. 7716. In support of its position, CIR cited the case of *Renato V. Diaz and Aurora Ma. F. Timbol vs. The Secretary of Finance and the Commissioner of Internal Revenue*[20] (Toll Operators Case) where the Supreme Court discussed the imposition of VAT on franchise grantees pursuant to the provisions of Section 108 of the NIRC of 1997.

On May 14, 2012, PAGCOR filed its Comment[21], arguing that CIR's Petition for Review should be denied on the following grounds: (1) Both the cases of Acesite[22] and *Philippine Amusement and Gaming Corporation vs. The Bureau of Internal Revenue (BIR), represented herein by Hon. Jose Mario Buñag, in his official capacity as Commissioner of Internal Revenue and John Doe and Jane Doe, who are persons acting for, in behalf, or under the authority of Respondent*[23], settled the issue as to PAGCOR's VAT exemption; (2) The Supreme Court's ruling in the Toll Operators case finds no application in the present petition as PAGCOR's VAT exemption is based on P.D. 1869, which was never repealed, amended or modified by R.A. 7716, R.A 8424 and R.A. 9337;

[18] Rollo, (CTA EB No. 868), pp. 7-25.
[19] G.R. No. 147295, February 16, 2007.
[20] G.R. No. 193007, July 19, 2011.
[21] Rollo, (CTA EB Case No. 868), pp. 98-120.
[22] See Note 19.
[23] G.R. No. 172087, March 15, 2011.

and (3) that RR 16-2005, the CIR's basis for the VAT assessment imposed on it, has already been nullified by the Supreme Court.

CIR filed her Motion to Admit Attached Comment[24] and Comment (Re: Petition for Review under CTA EB No. 869)[25] on June 20, 2012. In a Resolution[26] dated July 12, 2012, this Honorable Court granted CIR's Motion and resolved to give due course to the respective Petitions for Review of the parties.

On September 7, 2012, PAGCOR filed its Memorandum.[27] CIR, on September 28, 2012, filed her Motion to Admit Attached Memorandum[28] and Memorandum[29].

On December 3, 2012, this Honorable Court issued a Resolution[30] granting CIR's Motion to Admit and admitting the attached Memorandum. In the same Resolution, the instant case was submitted for decision.

As the parties raised dissimilar issues and arguments in their respective petitions, this Court will discuss the two petitions separately.

In her petition, CIR raised the argument that PAGCOR, as an ordinary taxpayer, is liable for the payment of VAT for its income from casino operations and related services pursuant to RA 7716, RR 16-2005 and the Supreme Court's ruling in the Toll Operators case regarding the imposition of VAT on franchise grantees under Section 108 of the 1997 NIRC.

This Court is not persuaded.

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[24] Rollo, (CTA EB Case No. 868), pp. 127-130.
[25] *Ibid.*, (CTA EB Case No. 868), pp. 131-137.
[26] *Id.*, (CTA EB Case No. 868), pp. 145-148.
[27] *Id.*, (CTA EB Case No. 868), pp. 155-210.
[28] *Id.*, (CTA EB Case No. 868), pp. 222-226.
[29] *Id.*, (CTA EB Case No. 868), pp. 227-249.
[30] *Id.*, (CTA EB Case No. 868), pp. 279-281.

The issue on the imposition of VAT on the casino operations and related services of PAGCOR has long been settled by no less than the Supreme Court, the final arbiter of judicial controversies, in the cases of Acesite[31] and PAGCOR vs. BIR[32]. In the said decisions, the Supreme Court clearly and categorically ruled that PAGCOR is exempted from VAT under RA 9337 and that RR 16-2005 is invalid for being contrary to law.

The Supreme Court, in the Acesite case thoroughly discussed the matter of PAGCOR's exemption from indirect taxes like VAT. It stated:

> "**PAGCOR is exempt from payment of indirect taxes.**
>
> It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:
>
> Sec. 13. Exemptions. -
>
> x x x x
>
> (2) Income and other taxes. - (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> x x x x

[31] See Note 19.
[32] See Note 23.

> **A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect.** We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:
>
> **Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations.** The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424. (Emphasis supplied.)
>
> **Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes."** (Emphasis supplied).

Moreover, the issue on the validity of RR 16-2005 imposing VAT on PAGCOR was settled in the recent case of PAGCOR vs. BIR[33], where the Supreme Court held that:

> Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. **Nowhere in R.A. No. 9337 is it provided that**

[33] See Note 23.

petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption from the payment of corporate income tax, which was already addressed above by this Court.

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof, which reads:

Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

Section 109. Exempt Transactions. - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

x x x x

(k) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except Presidential Decree No. 529.

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

[R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:

SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x

x x x x

> (B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory** effectively subjects the supply of such services to zero percent (0%) rate;
>
> x x x x

Hence, we reiterate our ruling in the Assailed Decision and Assailed Resolution that the deficiency VAT assessments for the taxable years 2005 and 2006, in the aggregate amount of P4,264,397,294.06 should be cancelled/withdrawn on the ground that PAGCOR is exempt from VAT pursuant to the provisions of RA 9337, as confirmed in recent Supreme Court decisions.

PAGCOR's Petition, on the other hand, is hinged on its claim that under its charter, PD 1869, as amended by RA 9487, it is exempt from all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority and that it is liable only for the 5% franchise tax in lieu of all forms and kinds of taxes. PAGCOR prays for the cancellation of income tax deficiency assessments imposed against it on the ground that RA 8424, as amended by RA 9337, did not repeal its tax exemption granted to it under Section 13 of its Charter.

This Court finds no merit in PAGCOR's claim.

While it is true that under Section 13 of PD 1869, as amended by RA 9487, PAGCOR is exempted from any and all forms and kinds of taxes, a perusal of the provisions of RA Nos. 8424 and 9337 reveals that such exemption has already been repealed. RA 9337 amended Section 27 of the 1997 NIRC and deleted PAGCOR from the list of government-owned and controlled corporations (GOCCs) which are exempted from paying income tax, it states:

> "Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> "SEC. 27. Rates of Income Tax on Domestic Corporations. -
>
> xxx xxx xxx
>
> "(C) Government-owned or -Controlled Corporations, Agencies or Instrumentalities. - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.
>
> xxx xxx xxx."

Under the statutory construction rule of *expressio unius est exclusio alterius*, the express mention of one person, thing, or consequence implies the exclusion of all others.[34] This rule is more clearly explained by the Supreme Court in the case of *Benjamin ("Kokoy") T. Romualdez vs. Hon. Simeon V. Marcelo, In His Official Capacity as The Ombudsman, and Presidential Commission on Good Government*[35], to wit:

> "Indeed, it is an elementary rule of statutory construction that the express mention of one person,

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[34] Victorias Milling Co. vs. Court of Appeals and International Pharmaceuticals, Inc., G.R. No. 168062, June 29, 2010.
[35] G.R. Nos. 165510-33, July 28, 2006 citing Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994.

> thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim 'expressio unius est exclusio alterius.' Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."

Applying the rule to the case at bench, the express mention of the GOCCs in Section 27 of the 1997 NIRC limits the application of exemption from income tax among those listed, and as PAGCOR is not included in the list, the inevitable conclusion is that it is now liable for income tax.

The withdrawal of PAGCOR's income tax exemption had likewise, been pronounced in the case of Abakada case[36] where the Supreme Court explicitly ruled that "(t)he Philippine Amusement and Gaming Corporation is not exempt from income taxes anymore."

In the case of PAGCOR vs. CIR[37], the Supreme Court held that PAGCOR is no longer exempt from corporate income tax as it has been effectively removed from the list of exempted corporations pursuant to Section 1 of RA 9337 amending Section 27 of the 1997 NIRC, to wit:

> "Under Section 1 of R.A. No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1977, petitioner is no longer exempt from corporate income tax as it has been effectively omitted from the list of GOCCs that are exempt from it. xxx
>
> xxx xxx xxx
>
> With the subsequent enactment of R.A. No. 9337, amending R.A. No. 8424, PAGCOR has been excluded from the enumeration of GOCCs that are exempt

[36] See Note 13.
[37] See Note 23.

> from paying corporate income tax. The records of the Bicameral Conference Meeting dated April 18, 2005, of the Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill No. 3555, show that it is the legislative intent that PAGCOR be subject to the payment of corporate income tax, thus:
>
> xxx xxx xxx
>
> Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.
>
> In this case, **PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption.** The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim expressio unius est exclusio alterius. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. **Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: exceptio firmat regulam in casibus non exceptis.**

Thus, it is perfectly clear that PAGCOR's income tax exemption has been effectively withdrawn by the amendments to the 1997 NIRC introduced by RA 9337. The recent Supreme Court decisions on the issue likewise confirmed that PAGCOR is now liable for income tax. Hence, this Court upholds the deficiency income tax assessment for the taxable years 2005 and 2006 imposed against PAGCOR.

PAGCOR, likewise, prays for the cancellation of its deficiency assessment for FBT, arguing that the assessment violated its right to due process. It further argues that assuming that it is liable for FBT, the assessment should be set aside on the following grounds: its tax exemption under its Charter and the fact that the car plan is required or necessary in the conduct of its business.

PAGCOR's contentions lack merit.

This Honorable Court notes that the abovementioned issues on the assessment of deficiency FBT issued against PAGCOR in relation to the car plan benefit extended to its officers have been thoroughly discussed and ruled upon in the Assailed Decision and Assailed Resolution. We affirm *in toto* the CTA First Division ruling that petitioner is liable for deficiency FBT. We, thus, quote with approval, the pertinent portions of the Assailed Decision:

> "Therefore, the government's cause of action against petitioner is not for the collection of income tax but for the enforcement of the withholding tax provisions of the NIRC of 1997, and compliance is imposed on petitioner as the withholding agent.
>
> Petitioner admitted that it provided car plan benefits to its executives during the taxable years 2005 and 2006, for which respondent assessed it with FBT. However, it did not present any evidence to prove that the said car plan benefits were required by the nature of or necessary to its business.
>
> During the pre-trial conference on April 30, 2010, petitioner insists that no factual issues are involved in this case and agreed to submit it for decision based on the stipulated legal issues. Hence, the Court is constrained to consider that the said car plan benefit is in the nature of fringe benefits subject to FBT.
>
> In fine, the liability for payment of the tax rests primarily on petitioner, as a withholding agent. Therefore, petitioner's non-compliance with said

> obligation to withhold renders it personally liable for the tax arising from the breach of a legal duty. Consequently, the assessments pertaining to petitioner deficiency FBT covering the years 2005 and 2006 should be sustained albeit with modification."

Anent PAGCOR's claim that assuming it is subject to deficiency income tax and FBT, it shall only be liable for the basic tax and not for surcharge and interest in view of the provisions of its Charter on tax exemption. We reiterate our ruling in the Assailed Resolution that the penalty and interest imposed are not penal but compensatory for the concommitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the government.[38]

Finally, resolving PAGCOR's Motion for Suspension of Collection of Tax, this Court finds no merit in PAGCOR's Motion. Under the Revised Rules of the Court of Tax Appeals, a Motion for Suspension of Collection of Tax may be filed by an interested party when collection of taxpayer's liability may jeopardize the interest of the Government or the taxpayer[39]. PAGCOR failed to show how the collection of its deficiency income tax and FBT liability would in any way jeopardize its interest. It failed to adequately prove how the subject amount of the instant Petition will affect its responsibilities in remitting its income for various government agencies, instrumentalities and projects. On the contrary, facilitating the expedient collection of these deficiency taxes will enable the Government to build up its tax collection and fund various operations of the Government with dispatch.

Upon thoroughly considering the matters brought forward by both parties in their respective petitions, this Honorable Court affirms the ruling in the Assailed Decision and Assailed Resolution of

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[38] Phil. Refining Co. (now known as Unilever Philippines [PRC], Inc.) vs. CA, CTA and the Commissioner of Internal Revenue, G.R. No. 118794, May 8, 1996.

[39]
RULE 10
SUSPENSION OF COLLECTION OF TAX
xxx xxx xxx
SEC. 2. *Who may file.* - Where the collection of the amount of the taxpayer's 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 the taxpayer, an interested party may file a motion for the suspension of the collection of tax liability.

the CTA First Division finding PAGCOR liable for deficiency income tax and FBT while upholding its exemption from VAT liability.

WHEREFORE, both Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the September 5, 2011 Decision and the January 24, 2012 Resolution of the CTA First Division in CTA Case No. 7976 entitled *"Philippine Amusement and Gaming Corporation vs. Commissioner of Internal Revenue and the Head Revenue Executive Assistant, Large Taxpayer Service, in their official capacities as Officers of the Bureau of Internal Revenue"*, are hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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