REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1740** (CTA Case No. 8973)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
MONETARY AUTHORITY OF SINGAPORE, Respondent.	Promulgated: OCT 17 2018 3:46 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] (Assailed Decision) dated May 23, 2017 and Resolution[2] (Assailed Resolution) dated October 20, 2017 of the Court of Tax Appeals Second Division (Second Division), granting Respondent's claim for refund or issuance of a tax credit certificate in the amount of Php15,661,486.88, representing the twenty percent (20%) final withholding tax ("FWT") erroneously withheld by the Bureau of Treasury on interest income earned during the period January to November 2013 from Respondent's various investments in fixed-rate treasury notes ("FXTNs") issued by the Philippine government.

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1 Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan concurring. Docket, pp. 800-813.

2 *Id.*, pp. 832-836.

The Facts

The facts as found by the Second Division are as follows:

"[Respondent] Monetary Authority of Singapore was established under the Monetary Authority of Singapore Act. Its functions, among others, are to act as the central bank of Singapore, conduct monetary policy, issue currency, oversee payment systems, serve as banker to and financial agent of the Government of Singapore, and to manage the official foreign reserves of Singapore. It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 39, as a One-Time Taxpayer, in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Taxpayer Identification No. 297-257-659-000.

[Petitioner] Commissioner of Internal Revenue is vested by the National Internal Revenue Code (NIRC) of 1997, as amended with the authority to decide, approve, and grant tax refunds. She may be served with summons and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On various coupon dates from January 2013 to November 2013, [Respondent] received interest income on the fixed-rate treasury notes (FXTNs) issued by the Bureau of Treasury, which [Respondent] acquired, net of twenty percent (20%) Final Withholding Tax (FWT) withheld and remitted by the Bureau of Treasury to the BIR, the details of which are broken down, as follows:

Date of Credit	Gross Amount of Interest	20% FWT
January 19, 2013	[Php]18,870,029.71	[Php]3,774,005.94
January 19, 2013	892,500.00	178,500.00
January 27, 2013	8,750,000.00	1,750,000.00
February 18, 2013	8,125,000.00	1,625,000.00
July 19, 2013	701,250.00	140,250.00
July 19, 2013	1,013,625.00	202,725.00
July 19, 2013	18,870,029.71	3,774,005.94
July 27, 2013	8,750,000.00	1,750,000.00
August 19, 2013	2,375,000.00	475,000.00
October 24, 2013	735,000.00	147,000.00

October 25, 2013	2,193,750.00	438,750.00
November 8, 2013	4,125,000.00	825,000.00
November 22, 2013	2,906,250.00	581,250.00
TOTAL	**[Php]78,307,434.42**	**[Php]15,661,486.88**

On April 16, 2014, [Respondent] filed with the BIR Revenue District Office (RDO) No. 39, an administrative claim for refund of erroneously withheld FWT for the period April 20, 2012 to November 22, 2013, broken down, as follows:

Transaction	Gross Interest on Coupon Date	20% FWT on the Gross Interest
On interest income received during the period 20 April 2012 to 03 September 2012	Php79,610,526.34	Php15,922,105.27
On interest income received during the period 19 January 2013 to 22 November 2013	78,307,434.42	15,661,486.88
TOTAL	**Php157,917,960.76**	**Php31,583,592.15**

Thereafter, [Respondent] filed the instant Petition for Review before this Court on January 20, 2015.

In his Answer, filed on March 31, 2015, [Petitioner] interposed the following defenses, to wit:

1) that [Respondent]'s alleged claim for tax refund/credit is subject to administrative investigation/examination by the BIR;

2) that [Respondent] failed to demonstrate that the tax subject of the case was erroneously or illegally collected;

3) that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

4) that [Respondent] must prove compliance with the governing rules relative to tax recovery or refund as provided for under Sections 204 (C) and 229 of the NIRC of 1997, as amended;

> 5) that in an action for tax refund/credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund/credit, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
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> 6) that it cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference; and
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> 7) that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same."[3]

The Ruling of the Second Division

On May 23, 2017, the Second Division promulgated the Assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, [Petitioner] is **ORDERED** to refund or issue a TCC in favor of [Respondent] in the amount of [Php]15,661,486.88 representing 20% FWT on the interest income derived from [Respondent]'s investment in Philippine government securities for the period January 2013 to November 2013."[4]

Aggrieved, Petitioner filed a "Motion for Reconsideration"[5] on June 06, 2017, which the Second Division denied in the Assailed Resolution, thus:

> "**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, [Petitioner]'s **Motion for Reconsideration** is **DENIED** for lack of merit."[6]

On November 09, 2017, Petitioner filed a "Motion for Extension of Time to File Petition for Review",[7] which the Court granted in a Resolution[8] dated November 16, 2017.

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3 *Id.*, pp. 800-802.
4 *Id.*, p. 812.
5 *Id.*, pp. 814-818.
6 *Id.*, p. 836.
7 Rollo, pp. 1-2. Record shows that Petitioner received the Assailed Resolution on October 25, 2017; Docket, p. 831.
8 *Id.*, p. 3.

On November 24, 2017, Petitioner filed the present "Petition for Review".[9]

On December 07, 2017, Respondent filed a "Motion for Time to File Comment/Opposition (to Petitioner's Petition for Review dated 16 November 2017)"[10] *via* registered mail, praying that it be granted a period of fifteen (15) days from December 07, 2017 or until December 22, 2017 within which to file its comment/opposition.

On December 21, 2017, Respondent filed its "Comment/Opposition (to Petitioner's Petition for Review dated 16 November 2017)".[11]

On January 16, 2018, the Court issued a Resolution[12]:

1) Granting Respondent's "Motion for Time to File Comment/Opposition (to Petitioner's Petition for Review dated 16 November 2017)";

2) Noting Respondent's "Comment/Opposition (to Petitioner's Petition for Review dated 16 November 2017)" which was filed within the extension period; and

3) Submitting the instant case for decision.

The Issue

Petitioner raises a single ground in support of its petition – Respondent is not entitled to the refund of or issuance of a tax credit certificate in the amount of Php15,661,486.88 representing alleged erroneously withheld FWT on the interest income derived by Respondent on its investments in FXTNs during the period of January 2013 to November 2013.[13]

The Arguments

Petitioner contends that Respondent did not adduce sufficient evidence that it is a financing institution wholly-owned by the government of Singapore.

Petitioner further claims that based on Section 32(B)(7)(a) of the National Internal Revenue Code ("NIRC") of 1997, as amended, the investment in the

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[9] *Id.*, pp. 4-11.
[10] *Id.*, pp. 36-40.
[11] *Id.*, pp. 41-46.
[12] *Id.*, pp. 48-49.
[13] *Id.*, p. 6.

Philippines in loans, stocks, bonds or other domestic securities must be done directly by foreign governments, financing institutions owned, controlled, or enjoying refinancing from foreign governments, and international or regional financial institutions established by foreign governments so that the income derived therefrom shall be exempt from taxation. The investment could not be done through a mere custodian or an intermediary. In this case, Respondent invested through its custodians and sub-custodians; that is why the FXTNs were not recorded in the records of the Bureau of Treasury under the name of Respondent.

Finally, taxes are the lifeblood of the government. Claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

By way of comment, Respondent counter-argues that:

1) It sufficiently established that it is the central bank of Singapore established under the Monetary Authority of Singapore Act (Chapter 186) ("MAS Act") and is a financing institution wholly-owned by the government of Singapore;

2) Contrary to Petitioner's position that Respondent did not make any investment in the Philippines, Respondent's investments are in the form of Republic of the Philippines Government Bonds (RPGBs) and FXTNs being held by primary purchasers or government securities eligible dealers (GSED), but are ultimately for the benefit of Respondent; and

3) The withholding by the Bureau of Treasury of the twenty percent (20%) FWT and its consequent remittance to the Bureau of Internal Revenue ("BIR"), constitutes an erroneous or illegal collection of tax given the exemption expressly granted by the Tax Code to Respondent.

Respondent also underscores that in Petitioner's instant Petition for Review, he duly admitted and referred to Respondent as "a body corporate of the Government of Singapore".

Respondent likewise states that its tax exemption under Section 32(B)(7)(a) of the NIRC of 1997, as amended, has been confirmed by the BIR in BIR Ruling No. 405-2013 dated November 08, 2013.

Respondent also opines that it was able to support its claim for refund by convincing evidence and stipulations presented during trial, whereas Petitioner did not present any evidence controverting such facts.

The Ruling of the Court

The petition is bereft of merit.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the Second Division in the Assailed Decision and Assailed Resolution. In fact, Petitioner's instant Petition for Review is an exact replica of the pleadings he filed with the court *a quo* – in particular, his Memorandum filed on May 16, 2016[14] and Motion for Reconsideration filed on June 06, 2017[15]. Nevertheless, We shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

Time and again this Court has declared that in order to recover tax erroneously paid or illegally collected, the taxpayer-claimant must comply with the following requisites under Sections 204(C)[16] and 229[17] of the NIRC of 1997, as amended:

1) the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and

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[14] Docket, pp. 791-795.

[15] *Id.*, pp. 814-818.

[16] **Sec. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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(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.

[17] **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, or of any sum alleged to have been excessively or in any manner wrongfully collected, 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.

2) the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

As pointed out by the Second Division in the Assailed Decision, both its administrative and judicial claims for refund were seasonably instituted by Respondent:

> "Records show that the first coupon payment was made on January 21, 2013 which was the same date on which, the 20% FWT was withheld and remitted by the [Bureau of Treasury]. Counting two years from January 21, 2013, [Respondent] had until January 21, 2015, within which to file its claim for refund/TCC both administratively and judicially. Clearly, [Respondent]'s administrative claim filed on April 16, 2014 and judicial claim filed on January 20, 2015 were within the two-year period prescribed by law."[18]

As for the second requisite, We are one with the court *a quo* in its finding that Respondent was able to prove that FWT amounting to Php15,661,486.88 had been erroneously or illegally collected.

First, Respondent is exempt from payment of income tax and, consequently, from FWT pursuant to Section 32(B)(7)(a)(ii) of the NIRC of 1997, as amended. Said section provides:

> "**SEC. 32.** *Gross Income.* —
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> xxx xxx xxx
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> (B) Exclusions from Gross Income. — The following items shall not be included in gross income and **shall be exempt from taxation** under this Title:
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> (7) Miscellaneous Items. —
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> (a) Income Derived by Foreign Government. — **Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by** (i) foreign governments, (ii) **financing institutions owned, controlled, or enjoying**

[18] Docket, pp. 811-812.

> **refinancing from foreign governments**, and (iii) international or regional financial institutions established by foreign governments."[19]

Contrary to Petitioner's allegation, there is nothing in the foregoing provision which would show that the investment should be done directly by the foreign government, and not through a mere custodian or an intermediary, for the income derived from the investment to be exempt from tax. Indeed, even a cursory reading of the provision, quoted above, bares no *indicia* of any qualification as to its application. Section 32(B)(7)(a)(ii) of the NIRC of 1997, as amended, is crystal clear in stating that financial institutions owned and controlled by foreign governments are exempted from payment of income tax on their income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines. There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.[20]

To prove that it is a financial institution wholly owned and controlled by the Government of Singapore, Respondent submitted notarized and authenticated Certificates of Residence-For the Purpose of Claiming Benefit Under the Singapore-Philippines DTA for Years 2013[21] and 2014[22], and a notarized and authenticated copy of the MAS Act[23]. To the Court's mind, these documents constitute sufficient proof that Respondent is (1) a juridical entity residing in Singapore, (2) a Statutory Board constituted by an Act of Singapore Parliament and (3) the duly authorized Central Bank established by the Government of Singapore, the function of which is to conduct monetary policy, issue currency and serve as banker to and financial agent of the Government of Singapore. The fact that Petitioner opted not to present any evidence to the contrary[24] did not help his case.

And second, Respondent acquired several investments in the form of FXTNs, earned interest income therefrom in the amount of Php78,307,434.42, and twenty percent (20%) FWT arising from the interest income amounting to Php15,661,486.88 was erroneously withheld and remitted to the BIR.

Respondent purchased FXTNs through its custodians State Street Bank and Trust Company ("SSBTC") and Northern Trust Company ("NTC")[25], and

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19 *Emphasis and underscoring supplied.*
20 Davao Oriental Electric Cooperative, Inc. v. The Province of Davao Oriental, G.R. No. 170901, January 20, 2009.
21 Docket, Exhibit "P-3", pp. 118-122.
22 *Id.*, Exhibit "P-4", pp. 123-127.
23 *Id.*, Exhibit "P-5", pp. 128-165.
24 *Id.*, Resolution dated February 24, 2016, pp. 751-752.
25 *Id.*, Exhibits "P-7" and "P-8", pp. 174-185 and 186-210.

their depository Euroclear Bank S.A./N.V. ("Euroclear")[26]. SSBTC, NTC and Euroclear on the other hand, availed the services of a sub-custodian, in this case Citibank, N. A. ("Citibank"), The Hong Kong and Shanghai Banking Corporation, Limited ("HSBC"), and Deutsche Bank Manila ("DB Manila") (collectively referred to as "the local banks")[27]. The local banks hold the investments in favor of their various clients, and the interest income over such investments are received by the banks in bulk and are later on credited to the accounts of their clients. Whenever there is FWT due on the interest income derived from the government securities (which correspond to all the holdings of various clients under the local banks' custody accounts), the Bureau of Treasury withholds the same and considers the banks as payees of the interest due on such securities[28].

In support of Respondent's Php78,307,434.42 earned interest income, the corresponding twenty percent (20%) FWT thereon amounting to Php15,661,486.88, and the remittance of said FWT by the Bureau of Treasury to the BIR, Respondent submitted various documents which the Second Division summarized as follows:

> "...[Respondent] submitted various Consularized Certifications and swift message issued by its custodians and/or sub-custodians; Interest Payment Advices; and Certifications issued by the [primary purchasers/Government Securities Eligible Dealers (GSED)]. A perusal of said documents reveal that [Respondent] made several investments in the form of FXTNs and earned interest income therefrom in the amount of [Php]78,307,434.42, with the corresponding FWT of [Php]15,661,486.88, the details of which are as follows:

Exhibit No.	ISIN	Local ISIN	Payment Date	Gross Amount of interest	20% FWT
P-11, P-15	PHY6972FRC68	PIBD1022G545	19-Jan-13	[Php]18,870,029.71	[Php]3,774,005.94
P-17, P-19	PHY6972FRC68	PIBD1022G545	19-Jan-13	892,500.00	178,500.00
P-11, P-15	PHY6972FHQ64	PIBD0716A488	27-Jan-13	8,750,000.00	1,750,000.00
P-11, P-12-1, P-13	PHY6972FQB94	PIBD0718H511	18-Feb-13	8,125,000.00	1,625,000.00
P-20, P-21	PHY6972FRC68	PIBD1022G545	19-Jul-13	701,250.00	140,250.00
P-17, P-19	PHY6972FRC68	PIBD1022G545	19-Jul-13	1,013,625.00	202,725.00
P-11, P-15	PHY6972FRC68	PIBD1022G545	19-Jul-13	18,870,029.71	3,774,005.94
P-11, P-15	PHY6972FHQ64	PIBD0716A488	27-Jul-13	8,750,000.00	1,750,000.00

[26] *Id.*, Exhibits "P-9", "P-11", "P-12" to "P-12-5" and "P-18" to "P-18-2", pp. 211-214, 595-599, 600-611 and 710-715.

[27] *Id.*, Exhibits "P-13", "P-15", "P-19", "P-21" and "P-31", pp. 612-613, 661, 716-717, 721 and 742.

[28] *Id.*, Exhibits "P-14", "P-16", and "P-22", pp. 614, 662 and 722.

Exhibit No.	ISIN	Local ISIN	Payment Date	Gross Amount of interest	20% FWT
P-11, P-12-2	PHY6972FQB94	PIBD0718H511	18-Aug-13	2,375,000.00	475,000.00
P-11, P-12-3, P-13	PHY6972FRD42	PIID2537J015	24-Oct-13	735,000.00	147,000.00
P-11, P-15	PHY6972FTZ36	PIBD0316D206	25-Oct-13	2,193,750.00	438,750.00
P-11, P-12-4, P-13	PHY6972FTN06	PIBD0517K719	8-Nov-13	4,125,000.00	825,000.00
P-11, P-12-5, P-13	PHY6972FSZ45	PIBD0719K560	22-Nov-13	2,906,250.00	581,250.00
Total				**[Php]78,307,434.42**	**[Php]15,661,486.88**

To prove that [Respondent] erroneously paid the 20% FWT on its interest income from investments in government securities in the Philippines, the following documentary evidences were presented:

1) [Bureau of Treasury]'s Letter dated October 24, 2014, covering the Certificate of Final Tax Withheld (BIR Form No. 2306) issued by [Bureau of Treasury] to Citibank, Statement of Taxes Withheld on coupon payments to Citibank's custodian account from January 1 to December 31, 2013 and Journal Vouchers of remittances made by the [Bureau of Treasury].

2) [Bureau of Treasury]'s Letter dated January 23, 2015 covering the BIR Form No. 2306 for Final Taxes withheld issued by [Bureau of Treasury] to DB Manila, Statement of Taxes Withheld on coupon payments to DB Manila's Custodian Account from January 1 to December 31, 2013 and Journal Vouchers of remittances made by the [Bureau of Treasury].

3) [Bureau of Treasury]'s Letter dated January 14, 2015 covering the BIR Form No. 2306 for Final Taxes Withheld from HSBC-Custody Account by the [Bureau of Treasury] and Statement of Taxes Withheld on coupon payments to HSBC Manila's Custody Account from July 1 to July 31, 2013.

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The Letters issued by [Bureau of Treasury] with the Statement of Taxes Withheld shows the amounts of FWT withheld on the interest due on the government securities recorded under the banks' custody accounts, which were later on remitted by the [Bureau of Treasury] to the BIR, as summarized below:

The banks	Period	Final Taxes Withheld
Citibank	January 1, 2013 to December 31, 2013	[Php]643,312,495.66
DB Manila	January 1, 2013 to December 31, 2013	1,244,096,473.66
HSBC	July 1, 2013 to July 31, 2013	56,831,567.55
Total		[Php]1,944,240,536.87

The aforementioned final taxes withheld and remitted by the [Bureau of Treasury] to the BIR correspond to all the holdings of various clients under the banks' custody accounts, which includes [Respondent's] holdings through NTC, SSBTC and Euroclear. The Statement of Taxes Withheld shows that the International Security Identification Numbers (ISINs) of [Respondent's] investments in government securities in the Philippines under the custody accounts of Citibank, DB Manila and HSBC were included, hence, the FWT on [Respondent's] income derived therefrom were included in the amounts withheld and remitted to the BIR."[29]

From all the foregoing, Respondent has sufficiently established its entitlement to a refund or issuance of a tax credit certificate on the erroneously withheld FWT. We find no cogent reason to disturb the findings found by the Second Division.

Petitioner cannot shield itself from the principle that claims for refund are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, for Respondent was able to successfully overcome this burden.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The Decision dated May 23, 2017 and the Resolution dated October 20, 2017 of the Second Division in CTA Case No. 8973 are **AFFIRMED**.

SO ORDERED.

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[29] *Id.*, Assailed Decision, p. 809-811.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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