REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NEGROS SUGAR FARMERS MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, BIR REGIONAL DIRECTOR, REGION 12, BACOLOD CITY,
Respondents.

CTA CASE No. 9810

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

Promulgated:
JAN 11 2021
10:15 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Negros Sugar Farmers Multi-Purpose Cooperative (**petitioner**) seeking to annul and

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[1] Pursuant to Section 3(a)(1) of Rule 4 on Jurisdiction of the Court of the *2005 Revised Rules of the Court of Tax Appeals, as amended.*

...

Section 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

set aside the Decision of the Commissioner of Internal Revenue dated 08 March 2018[2], denying its appeal and affirming the assessment for deficiency value-added tax (**VAT**), expanded withholding tax (**EWT**), and compromise penalties amounting to ₱66,730,257.54 covering fiscal year (**FY**) ended 31 August 2005.

Petitioner is a multi-purpose agricultural cooperative duly organized in accordance with Republic Act (**RA**) No. 6938[3], with license to transact business and sue in the Philippines pursuant to the Cooperative Code.[4]

On the other hand, respondent Commissioner of Internal Revenue (**respondent CIR**) is the chief of the Bureau of Internal Revenue (**BIR**), the government agency responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. Also impleaded as respondent is the Regional Director (**respondent RD**) of Revenue Region 12-Bacolod City.[5]

FACTS OF THE CASE

On 12 February 2008, petitioner received Letter of Authority (**LOA**) No. 00024463[6] dated 06 February 2008 and a First Request for Presentation of Records.[7] Subsequently, a Second Request for Presentation of Records[8] and Final Notice[9] were issued to petitioner on 11 March 2008 and 01 April 2008, respectively. A Subpoena *Duces Tecum*[10] (**SDT**) was likewise served on petitioner on 29 May 2008.[11]

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(1) Decision of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]...

2 Division Docket, pp. 23-36.

3 AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES.

4 Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 182.

5 Paragraphs 2 and 3, id., pp. 182-183.

6 Exhibit "R-1", BIR Records, p. 15.

7 Exhibit "R-2", id., p. 14.

8 Exhibit "R-3", id., p. 13.

9 Exhibit "R-4", id., p. 12.

10 Exhibit "R-5", id., pp. 27-28.

11 Paragraphs 4 to 7, Summary of Admitted Facts, JSFI, Division Docket, p. 183.

Later, a Notice of Informal Conference (**NIC**) dated 15 October 2008.[12] was issued. A Preliminary Assessment Notice (**PAN**) dated 05 December 2008[13] with Details of Discrepancies followed and sent to petitioner *via* registered mail on 09 January 2009.[14]

On 27 January 2009, petitioner filed a Manifestation[15] from Jose V. Ramos (**Ramos**), petitioner's Tax Consultant. In response thereto, a Letter dated 05 February 2009[16] was sent to petitioner by registered mail on 25 February 2009.[17]

Unyielding, respondent RD issued a Formal Letter of Demand[18] (**FLD**) with Details of Discrepancies and Assessment Notices[19] for VAT, EWT and compromise penalties all dated 08 December 2010, and sent to petitioner through registered mail on 17 December 2010.[20] Respondent RD received petitioner's Letter of Protest on 25 January 2011.[21]

Respondent RD issued its Final Decision on 13 February 2013[22] and served on petitioner through registered mail on 27 February 2013. On even date, petitioner received the same.[23]

On 22 March 2013, petitioner filed a Petition to Set Aside/Recall Final Decision[24] addressed to Regional Director Perfecto L. Aranas (**RD Aranas**). Respondent RD received it on 23 April 2013.[25]

On 21 June 2013, petitioner received a Letter dated 18 June 2013[26] from RD Aranas reiterating its Final Decision. Subsequently, petitioner filed an administrative appeal to respondent CIR on 19 July 2013.[27]

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12 Exhibit "R-6", BIR Records, p. 48.
13 Exhibit "R-8", id., pp. 92-94.
14 Paragraphs 8 and 9, Summary of Admitted Facts, JSFI, Division Docket, p. 183.
15 Exhibit "R-9", BIR Records, pp. 100-101.
16 Exhibit "R-10", id., pp. 102-103.
17 Paragraphs 10 and 11, Summary of Admitted Facts, JSFI, Division Docket, p. 183.
18 Exhibit "R-11", BIR Records, pp. 104-110.
19 Exhibits "R-12" to "R-12-c", id., pp. 111-114.
20 Paragraph 12, Summary of Admitted Facts, JSFI, Division Docket, p. 183.
21 Paragraph 13, id.
22 Exhibit "R-13", BIR Records, pp. 137-142.
23 Paragraph 14, Summary of Admitted Facts, JSFI, Division Docket, p. 183.
24 BIR Records, pp. 150-152.
25 Paragraph 15, Summary of Admitted Facts, JSFI, Division Docket, p. 184.
26 BIR Records, pp. 167-169.
27 Id., pp. 206-209.

On 19 March 2018, petitioner received respondent CIR's Decision issued on 08 March 2018[28] denying its administrative appeal.

PROCEEDINGS BEFORE THE COURT

Petitioner filed the instant Petition for Review before this Court on 12 April 2018.[29] Respondent RD filed her Answer on 29 May 2018[30], while respondent CIR filed his Answer on 10 July 2018.[31]

The Court then issued the Notice of Pre-Trial Conference[32], setting the case for pre-trial on 16 August 2018. Accordingly, the parties filed their respective Pre-Trial Briefs.[33]

During the Pre-Trial Conference, the parties were given thirty (30) days to file their Joint Stipulation of Facts and Issues (**JSFI**). The parties filed their JSFI on 17 September 2018[34], which the Court adopted and approved in the Pre-Trial Order dated 23 November 2018.[35] The pre-trial was terminated later on.

When trial subsequently ensued, petitioner presented Ramos as its only witness.

In his Judicial Affidavit[36], Ramos stated that he is petitioner's Tax Consultant. His responsibilities include, among others, giving advice and recommendation, assisting in and supervising all matters involving taxation. He testified as to the nature of petitioner's business, its registration with the Cooperative Development Authority (**CDA**) and its tax-exempt status, as evidenced by a BIR-Ruling.

Ramos likewise testified that petitioner filed a protest to the assessment. Upon receipt of the Final Decision, it filed a Petition to Set

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28 Supra at note 2.
29 Division Docket, pp. 10-13.
30 Id., pp. 52-64.
31 Id., pp. 78-88.
32 Id., pp. 89-90.
33 "Pre-Trial Brief for Petitioner" was filed on 14 August 2018, id., pp. 93-99, whereas "Respondent's Pre-Trial Brief" was filed on 15 August 2018, id., pp. 108-113.
34 Id., pp. 182-189.
35 Id., pp. 196-199.
36 Exhibit "P-8", id., pp. 127-136.

Aside/Recall Final Decision with respondent RD. Respondent RD's denial thereof prompted it to file an administrative appeal before respondent CIR. The latter, in turn, issued his final decision on 08 March 2018 and within thirty (30) days therefrom, petitioner filed the instant Petition for Review. Ramos was not subjected to cross-examination.

Thereafter, petitioner filed its Formal Offer of Exhibits (**FOE**) on 01 February 2019.[37] In its Resolutions dated 25 March 2019[38] and 23 August 2019[39], respectively, except for Exhibits "P-3"[40] and "P-6"[41], for failure to present originals for comparison, the Court admitted petitioner's exhibits.

Respondents, for their part, presented two (2) revenue officers (**RO**) as witnesses, namely: RO Ma. Anna Liza D. Valencia-Brito[42] (**RO Valencia-Brito**); and, RO Guia Marie J. Desuyo[43] (**RO Desuyo**), who both executed their Judicial Affidavits in lieu of their direct testimonies.

First presented to the witness stand was RO Valencia-Brito, who conducted an audit investigation on petitioner's books for TY 2005. She testified that copies of the LOA, First Request for Presentation of Records, Second Request for Presentation of Records, Final Notice, and SDT were served on petitioner for the submission of books and other accounting records. Subsequently, an NIC was issued to petitioner for its failure to submit the required documents.

On cross-examination, RO Valencia-Brito affirmed that there was no authorization from the CDA prior to the conduct of the audit investigation. When asked about the basis for the audit investigation, she responded that the findings were based on the Certificate Authorizing Release of Refined Sugar (**CARR**). She likewise clarified that her participation was only until the issuance of the NIC.

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37 Id., pp. 203-208.
38 Id., pp. 228-229.
39 Id., pp. 271-272.
40 Formally offered as *Certificate of Registration issued to the Petitioner by the Cooperative Development Authority with ILO-3513 dated October 18, 1999.*
41 Formally offered as *Certificate of Tax Exemption Ruling No. ECCP-007-99 issued by the Bureau of Internal Revenue dated November 3, 1999.*
42 Judicial Affidavit, Exhibit "R-7", Division Docket, pp. 220-226.
43 Judicial Affidavit, Exhibit "R-15", id., pp. 242-248.

Thereafter, she submitted the entire docket to the Regional Assessment Division for the issuance of the assessment.

On re-direct examination, RO Valencia-Brito stated that she was not aware of any procedure requiring a prior authorization from the CDA to conduct an audit investigation.

Respondents' second and last witness was RO Desuyo. According to her, her office reviewed the audit report and recommendation from the Revenue District Office No. 77. Based thereon, the PAN was issued and served to petitioner. Petitioner disagreed with the findings in the PAN hence a Second Conference was held. Still, petitioner failed to submit the required documents prompting the issuance of the FLD and Assessment Notices. Petitioner filed its protest to the FLD but the same was found to be lacking merit. On 13 February 2013, a Final Decision was issued to it.

RO Desuyo was not subjected to cross-examination.

After the presentation of his last witness, respondent CIR filed his FOE.[44] In a Resolution dated 22 October 2019[45], the Court admitted all of respondent CIR's exhibits.

Upon the Court's order, petitioner filed its Memorandum on 19 December 2019[46], while respondent CIR filed his Memorandum on 20 December 2019.[47] Thereafter, the case was submitted for decision.[48]

<u>ISSUE</u>

The parties stipulated[49] that the sole issue to be resolved by the Court is –

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44 On 23 September 2019, id., pp. 278-285.
45 Id., pp. 297-298.
46 Id., pp. 306-318.
47 Id., pp. 320-334.
48 Resolution dated 10 January 2020, id., p. 337.
49 JSFI, id., p. 184.

WHETHER PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY EXPANDED WITHHOLDING TAX (EWT) IN THE AMOUNT OF ₱36,254.33 AND VALUE-ADDED TAX (VAT) IN THE AGGREGATE AMOUNT OF ₱66,626,003.21 FOR THE FISCAL YEAR ENDING 31 AUGUST 2005.

ARGUMENTS

In support of the issue above, petitioner vehemently argues that it is registered and is in good standing with the CDA. As such, it is exempt from payment of VAT and is not required to file VAT returns. It also insists that it is not required to pay advance VAT for the withdrawal of sugar from the mill as it was able to secure CARRs from the BIR.

Petitioner adds that the assessment against it was issued beyond the three-year regular prescriptive period. The 10-year period to assess provided under Section 222[50] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, is not applicable for the reason that petitioner is not required to file VAT returns being an exempt entity. Consequently, the assessment issued beyond the regular three-year prescriptive period is null and void and should be cancelled.

In refutation, respondent CIR contends that the assessment has become final and executory upon petitioner's failure to timely file an appeal before the Court of Tax Appeals (**CTA**) or with the CIR within thirty (30) days from its receipt of the Final Decision. Thus, the Court has no jurisdiction to take cognizance of the assessment.

Assuming *arguendo* that the Court has jurisdiction, respondents posit that the period to assess petitioner has not yet prescribed considering that the latter did not file VAT returns and there was substantial underdeclaration. Accordingly, respondent CIR is allowed

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[50] **Sec. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
(a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...
...

to assess within ten (10) years from the time of discovery pursuant to Section 222[51] of the NIRC of 1997, as amended.

Lastly, respondents assert that petitioner failed to prove its claim exemption from payment of taxes. Tax exemption is frowned upon hence, the taxpayer who claims to be exempt must be able to justify his claim by the clearest grant of organic or statutory law.

RULING OF THE COURT

After an assiduous review of the records and the parties' contrasting arguments, We find the instant Petition for Review devoid of merit. We agree with respondents that the Court could not validly delve into the merits of the assessment as the same has already attained finality.

As the records show, petitioner failed to appeal within thirty (30) days from receipt of the Final Decision of respondent RD either before respondent CIR or the CTA. Instead, it opted to file a Petition to Set Aside/Recall Final Decision with respondent RD. What is more, when it received the denial of respondent RD, it still appealed the said decision to respondent CIR.

Section 228 of the NIRC of 1997, as amended, provides:

> ...
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> **Sec. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...
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> ...
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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[51] Supra at note 50.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[52]
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> ...

Correspondingly, Revenue Regulations (RR) No. 12-99[53] which implements the provisions on assessment in the NIRC of 1997, as amended, states:

> ...
>
> 3.1.5. *Disputed Assessment.* — ...
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> ...
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the **Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise the assessment shall become final, executory and demandable**: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized**

[52] Emphasis supplied.
[53] *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty*, 06 September 1999.

> **representative**, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.[54]
>
> ...

Consistent with the foregoing, Section 3(a)(1) of Rule 4 on the Jurisdiction of the Revised Rules of the CTA (**RRCTA**) reads:

> ...
>
> **Sec 3.** *Cases within the Jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][55]
>
> ...

Clearly, what is appealable to this Court is the CIR's decision or inaction in a *disputed assessment.* The manner, form and the reglementary period for protesting an assessment were provided under Section 228 of the NIRC of 1997, as amended, as well as the implementing regulations.

As can be gleaned from RR 12-99, when a taxpayer receives a final decision of the CIR's authorized representative, it can either appeal to the CTA or elevate his protest before the CIR, within thirty (30) days from receipt of the said decision.

The Supreme Court in *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[56], laid down the remedies available to the taxpayer in case of denial of its administrative protest, to wit:

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[54] Emphasis supplied.

[55] Emphasis supplied.

[56] G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text and supplied.

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. If the protest is wholly or partially denied by the CIR **or** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. <u>If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.</u>
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> To further clarify the three options: <u>A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA</u>. A whole or partial denial by the CIR may be appealed to the CTA...
>
> ...

The Supreme Court in the recent case of *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[57], reiterated the above enumeration and emphasized that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.

Admittedly, at first blush, the Court may appear to have jurisdiction over the instant petition as the same was filed within thirty (30) days from receipt of respondent CIR's decision. However, a closer scrutiny would reveal that petitioner had already lost its chance to appeal before Us. <u>The Petition for Review was only filed on 12 April 2018, or five (5) years from petitioner's receipt of the Final Decision on the disputed assessment.</u>

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57 G.R. No. 221780, 25 March 2019.

It bears stressing that petitioner's motion for reconsideration (**MR**) couched as "Petition to Set Aside/Recall Final Decision" before respondent RD did not really toll the running of the 30-day period to appeal to the CTA or respondent CIR himself. In his letter-response to petitioner, respondent RD had even mentioned that the assessment has already attained finality due to petitioner's failure to appeal to this Court or elevate the same to respondent CIR within the reglementary period.

It is noted that petitioner's repeated and successive filing of MRs at the administrative level could not be a reason to extend the appeal period. The law has already clearly laid down the remedies and there could be no excuse to the non-observance.

A summary of the material dates relevant to the protest is presented below:

Date	Event
December 29, 2010	Petitioner received the FLD.
January 21, 2011	Petitioner filed a Letter of Protest which was received by respondent RD on January 25, 2011.
February 27, 2013	Petitioner received the Final Decision dated February 13, 2013 from respondent RD informing petitioner that its protest has been denied.
March 22, 2013	Petitioner filed a Petition to Set Aside/Recall Final Decision before respondent RD which was received on April 23, 2013.[58]
March 29, 2013	**End of 30 days within which to elevate its protest to the CIR or appeal to the CTA.**
June 21, 2013	Petitioner received a letter from respondent reiterating the Final Decision petitioner received last February 27, 2013.
July 19, 2013	Petitioner filed an Administrative Appeal to the CIR dated July 16, 2013.
March 8, 2018	CIR issued a Decision denying petitioner's Administrative Appeal which was received by petitioner on March 19, 2018.
April 12, 2018	Petitioner filed with the CTA the instant Petition.

[58] BIR Records, pp. 186-188.

Petitioner's proper recourse should have been to file the administrative appeal directly with respondent CIR or file a Petition for Review before this Court within thirty (30) days from its receipt of respondent RD's Final Decision. Its decision of filing an MR with respondent RD has no legal mooring.

Time and again, although appeal is an essential part of our judicial process, it has been held consistently that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. 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 basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[59]

Finding that respondents' deficiency assessments have become final, executory and demandable, Our hands are tied to rule on the substantive validity or invalidity of the same. In this regard, We find it unnecessary to belabor on the other issues raised by the parties.

As a final word, nothing is more elementary in law as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.[60]

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Negros Sugar Farmers Multi-Purpose Cooperative is **DISMISSED** for lack of jurisdiction.

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59 *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co., et al.*, G.R. No. 173342, 13 October 2010; Citations omitted.

60 *Foronda-Crystal v. Son*, G.R. No. 221815, 29 November 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice