REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,	**CTA EB CASE NO. 1092** (CTA AC No. 96)
Petitioner,	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
MARIETA A. BONDAD, in her capacity as Municipal Treasurer, and JOEL D. TINGBAOEN, in his capacity as Municipal Assessor, of the Municipality of Mankayan, Benguet, Respondents.	Promulgated: DEC 16 2014 3:15 p.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by petitioner Lepanto Consolidated Mining Company (Lepanto) on December 03, 2013 seeking the reversal and setting aside of the Decision[1] dated August 16, 2013 and Resolution[2] dated November 11, 2013 of the Second Division[3] of this Court in CTA AC No. 96, entitled *Lepanto Consolidated Mining Company vs. Marieta A. Bondad, in her capacity as Municipal Treasurer, and Joel D. Tingbaoen, in his*

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[1] *Rollo*, pp. 38 to 58.
[2] *Rollo*, pp. 59 to 69.
[3] Composed of Senior Associate Justice Juanito C. Castañeda, Jr. as Chairperson, Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas as members.

capacity as the Municipal Assessor, both of the Municipality of Mankayan, Benguet .

THE PARTIES

Petitioner Lepanto is a corporation duly organized and existing under Philippine laws with principal office at the 21st Floor, BA-Lepanto Building, Paseo de Roxas, Makati City.[4]

Respondent Marieta A. Bondad is of legal age, married and the incumbent Municipal Treasurer of the Municipality of Mankayan, Benguet with office address at Mankayan Municipal Hall, Mankayan, Benguet.[5]

Respondent Joel D. Tingbaoen is of legal age, married, and the former Municipal Assessor of Mankayan, Benguet who issued the questioned assessment with office address at Mankayan Municipal Hall, Mankayan, Benguet.[6]

THE FACTS

Petitioner is a large scale mining company with more or less forty (40) units of mobile mining equipment known as Load Haul and Dump Equipment ("LHD") used in its mining operation.

The controversy stems from the issuance of Local Finance Circular No. 2-09 on August 20, 2009, by the Department of Finance (DOF) declaring mobile equipment used in mining operations, such as dump trucks, excavators, bulldozers, and payloaders, including petitioner's LHDs (Load Haul and Dump equipment) as personal properties, and therefore not subject to Real Property Tax (RPT).

On January 21, 2010, petitioner's Finance Manager, Nelson B. Varilla, wrote a letter to respondent Municipal Assessor (copy furnished to the respondent Municipal Treasurer), requesting that the tax assessment on

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[4] Petition for Review, *Rollo*, p. 1.
[5] *Id.*, p. 1.
[6] *Id.*, p. 1.

its loader equipment be cancelled on the ground that said equipment are exempt from RPT, pursuant to DOF Local Finance Circular No. 2-09.

In a letter dated June 1, 2010, respondent Municipal Treasurer denied petitioner Lepanto's request for cancellation of the assessment on its loader equipment. Attached to said letter is a notice of assessment demanding payment of realty taxes on petitioner Lepanto's properties including its loader equipment.

On August 6, 2010, petitioner Lepanto filed a petition which was docketed as Civil Case No. 6410-CV-117, with Branch 64 of the Regional Trial Court (RTC) of Abatan, Buguias, Benguet. Petitioner contested the assessment on its LHDs for being contrary to the provisions of DOF Local Finance Circular No. 2-09.

On September 29, 2010, respondents filed their Comment/Answer with Affirmative Defense praying, among others, for the dismissal of the Appeal on the grounds that the appeal falls under the primary jurisdiction of the Local Board of Assessment Appeals and that petitioner should have paid the RPT under protest as a condition precedent to their Appeal.

On March 15, 2011, the RTC denied respondents' "Motion to Dismiss" incorporated in the Answer.

After trial, on October 19, 2011, the RTC rendered a Decision, the dispositive portion of which reads, as follows:

> "WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring Respondents' letter, dated June 1, 2010, denying petitioner's written request, dated January 21, 2010, to be of no legal force and effect;
>
> 2. Declaring the current tax assessments of petitioner's "Load Haul Dump" mining equipments, issued by respondent-Mankayan, Benguet, as null and void; and
>
> 3. Ordering the Respondents to delete from their assessment records the tax assessments of all "Load Haul and Dump" mining equipments of Petitioner, as real properties.

SO ORDERED."[7]

On November 17, 2011, respondents filed a Motion for Reconsideration, which was granted by the RTC in a Resolution dated April 3, 2012, the dispositive portion of which reads, as follows:

> "WHEREFORE, finding merit to the Motion for Reconsideration, filed by Respondents, the same is hereby granted. The Decision, dated October 19, 2011, is hereby reconsidered and set aside, and a new judgment is hereby rendered:
>
> 1. Declaring Respondents' letter, dated June 1, 2010, denying petitioner's written request, dated January 21, 2010, to be with legal force and effect;
>
> 2. Declaring the current tax assessments of petitioner's "Load Haul Dump" mining equipments, issued by respondent-Mankayan, Benguet, as valid; and
>
> 3. Order the Respondents to maintain from their assessment records the tax assessments of all "Load Haul and Dump" mining equipments of Petitioner, as real properties.
>
> SO ORDERED."[8]

On April 19, 2012, petitioner Lepanto filed a Motion for Reconsideration (of the Resolution dated April 3, 2012), which was denied by the RTC in its Order dated July 17, 2012.

On August 17, 2012, petitioner Lepanto filed a Petition for Review with this Court, docketed as CTA AC No. 96, which was raffled off to the CTA Second Division, assailing the Resolution of the RTC, under Rule 42 of the Revised Rules of Court, in relation to Rule 8, Section 3 of the Revised Rules of the Court of Tax Appeals, as amended.[9]

On October 8, 2012, respondents filed their Comment on the Petition for Review.[10]

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[7] Assailed Decision, p. 4-5 of 15; CTA AC 96 Docket, p. 237-238; Rollo, p. 42-43.
[8] Assailed Decision, p. 5-6 of 15; CTA AC 96 Docket, p. 238-239; Rollo, p. 43-44.
[9] CTA AC 96 Docket, pp. 7-37.
[10] CTA AC 96 Docket, p. 169.

On October 22, 2012, the CTA Second Division gave due course to the Petition for Review and granted both parties a period of thirty (30) days from notice, within which to file their simultaneous memoranda. Petitioner Lepanto filed its Memorandum on November 22, 2012, while respondents filed their Memorandum on December 14, 2012. Upon elevation of the entire original records of Civil Case No. 6410-CV-117, the case was deemed submitted for decision on January 8, 2013.

On August 16, 2013, the CTA Second Division rendered the assailed Decision[11] denying the Petition for Review for lack of merit, the dispositive portion of which reads, as follows:

> "**WHEREFORE**, finding no reversible error in the Assailed Resolution dated April 3, 2012 and Assailed Order dated July 17, 2012, both rendered by the Regional Trial Court (RTC), Branch 64, of Abatan, Buguias, Benguet, the same are both hereby **AFFIRMED**.
>
> **SO ORDERED**."

On September 6, 2013, petitioner Lepanto filed a "Motion for Reconsideration (of the Decision dated August 16, 2013)"[12] but the same was denied for lack of merit by the CTA Second Division in its Resolution[13] dated November 11, 2013, the dispositive portion of which reads, as follows:

> "**WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration (Of the Decision dated 16 August 2013) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

On December 3, 2013, petitioner Lepanto filed the present Petition for Review, raising the following issue and grounds, *viz*:

"ISSUE"

> Whether or not petitioner Lepanto's subject equipment are real properties subject to RPT.

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[11] CTA AC 96 Docket, pp. 234-253; Rollo, pp. 39-58.
[12] CTA AC 96 Docket, p. 255.
[13] CTA AC 96 Docket, p. 384; Rollo, p. 60.

GROUNDS FOR THIS PETITION

1. Petitioner's Load Haul and Dump (LHD) and Low Profile Trucks (LPT) are not real properties under Art. 415, paragraph 5 of the Civil Code because the requisites under this provision are absent.

2. The LHDs and LPTs are also not machineries within the meaning of Section 199(O) of the Local Government Code (LGC).

3. Local Finance Circular No. 2-09 dated August 20, 2009 is not in conflict with Art. 415(5) of the Civil Code and Section 199(O) of the LGC.

4. The Honorable Court's reliance on Republic vs. Court of Appeals, Henrico Vero, et. al, G.R. No. 79732, November 9, 1993, is misplaced.

5. The Honorable Court has jurisdiction over the present petition."[14]

After the filing of respondents' Comment on February 24, 2014, the Court *En Banc* required both parties to submit their simultaneous memoranda within thirty (30) days from notice.[15] On June 30, 2014, respondents filed their Memorandum.[16] Petitioner Lepanto, on the other hand, filed its memorandum[17] on August 18, 2014. On September 24, 2014, the case was deemed submitted for decision.[18]

THE PARTIES' ARGUMENTS

Petitioner Lepanto's Arguments

Petitioner Lepanto argues that its LHDs and LPTs are not real properties under Article 415, paragraph 5 of the Civil Code in view of the absence of the following requisites: (1) that the machineries must be essential or principal to the industry; (2) that the industry or works must be carried in a building or permanently on a piece of land; and, (3) that the machinery must be placed by the owner of the land or building. Moreover, the LHDs and LPTs are personal properties under Article 416 of the Civil

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[14] Petition for Review, *Rollo*, pp. 7 to 10.
[15] Resolution dated May 14, 2014, *Rollo*, pp. 330 to 331.
[16] *Rollo*, pp. 332 to 341.
[17] *Rollo*, pp. 351 to 381.
[18] *Rollo*, unpaginated.

Code as they can be transported from place to place without impairment of the real property to which they are fixed.

Petitioner Lepanto further asserts that the LHDs and LPTs are not machineries within the meaning of Section 199(O) of the LGC, as amended. Under said section, the machineries must be immobilized by destination before they can be considered as real property. Considering that the LHDs and LPTs were not immobilized by destination, and in the absence of the requisites under Article 415(5) of the Civil Code, the same could not be treated as real properties.

Petitioner Lepanto also maintains that Local Finance Circular No. 2-09 dated August 20, 2009 is not in conflict with Article 415(5) of the Civil Code and Section 199(O) of the LGC. The circular was issued to clarify the non-taxability of mobile equipment such as dump trucks, excavator, bulldozers, payloaders, and etc., used in mining operations and classify them as personal properties for purposes of real property taxation. The circular enjoys the presumption of regularity and has the force and effect of law. A collateral attack on a presumably valid law is not allowed.

Petitioner Lepanto also questions the CTA Second Division's reliance on **Republic vs. Court of Appeals, Henrico Vero, et al.**[19] In contrast with *Republic*, there was no direct proceeding filed to challenge the validity of the Local Finance Circular, neither was there a categorical finding in a direct proceeding that voided the subject circular.

Finally, petitioner Lepanto asserts that this Honorable Court has jurisdiction over the present Petition for Review. The principle of exhaustion of administrative remedies does not apply as the issue raised herein is a pure question of law. Petitioner Lepanto is not questioning the reasonableness of the amount of assessment but rather, the validity of the imposition and assessment of RPT on petitioner's mobile equipment.

Respondents' Counter-Arguments

Respondents posit that the LPTs and LHDs are real properties based on the laws of the land and not merely on some administrative circulars. LPTs and LHDs fall under Article 415(5) of the Civil Code for they are

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[19] G.R. No. 79732, November 8, 1993.

specialized loading machine manufactured for the underground mining industry. The LHD machine are actually, directly and exclusively used to meet the needs of the mining industry.

Respondents further contend that Local Finance Circular No. 2-09 blatantly amended Article 415 of the Civil Code when it changed the definition of machineries.

THE RULING OF THE COURT EN BANC

At the outset, the Court *En Banc* finds it necessary to first resolve the question of jurisdiction.

Section 252 of the LGC, *as amended,* states:

> "Sec. 252. *Payment Under Protest.*
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the **<u>provincial, city treasurer or municipal treasurer,</u>** in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.
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> (b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.
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> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer **<u>may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code</u>**.
>
> xxx xxx xxx" (*Emphasis supplied*)

Corollary thereto, Sections 226 to 231 of the LGC specify the administrative remedies available to a real property owner who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property, *viz.*:

> "SEC. 226. Local Board of Assessment Appeals. — Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, **within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals** of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal." *(Emphasis Supplied)*
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> "SEC. 229. Action by the Local Board of Assessment Appeals. — (a) **The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal.** The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.
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> (b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.
>
> (c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. **The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals**, as herein provided. The decision of the Central Board shall be final and executory." *(Emphasis Supplied)*
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> "SEC. 231. Effect of Appeal on the Payment of Real Property Tax. — Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal."

Pursuant to the afore-quoted provisions, a taxpayer must first pay the real property tax assessment before filing a written protest with the treasurer concerned. The treasurer has sixty (60) days from receipt of the protest to decide the same. Upon the denial of the protest or the lapse of the 60-day period, the taxpayer is afforded the remedy of filing an appeal with the LBAA, and later on with the CBAA.

In the case at bar, records show that petitioner Lepanto wrote a letter dated January 21, 2010 requesting respondents Municipal Assessor and Municipal Treasurer to refrain from imposing RPT on its loader equipment, invoking Local Finance Circular No. 2-09 which treated as personal property mobile equipment such as dump trucks, excavators, bulldozers, payloaders and similar equipment used in mining operations.

On June 8, 2010, petitioner Lepanto received a letter from respondent Municipal Assessor denying its request with an attached notice of assessment. Instead of appealing the denial to the LBAA as provided under Sections 252 and 226 of the LGC, as amended, petitioner Lepanto directly filed an Appeal with the RTC of Abatan, Benguet, questioning the denial of its request for cancellation of tax assessment by invoking Section 195 of the LGC, as amended.

In filing the Appeal directly with the RTC, Petitioner Lepanto erroneously invoked Section 195 of the LGC, as amended, which states:

> "SEC 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

It is settled that Section 195 of the LGC provides for the procedure for protesting a local business tax assessment. On the other hand, as afore-stated, the procedure for protesting real property tax assessment is laid down in Sections 252 and 226 of the LGC. Here, the subject notice of assessment demands the payment of real property taxes on petitioner Lepanto. It is indubitable that petitioner Lepanto should have filed an appeal with the LBAA under Sections 252 and 226 of the LGC, instead of filing a direct appeal with the RTC pursuant to Section 195 of the LGC.

To justify its direct Appeal with the RTC, petitioner Lepanto contends that the issue herein, <u>which pertains to the exemption of its LHDs and LPTs from real property tax</u>, is a pure question of law that justifies its direct resort to the RTC. The Court *En Banc* finds the same bereft of merit.

In *National Power Corporation v. Province of Quezon and Municipality of Pagbilao,*[20] the Supreme Court emphasized that a claim for tax exemption, whether full or partial, is a question of fact as it pertains to the correctness of the assessment and not on the authority of the local assessor to assess RPT. This pronouncement was reiterated in the more recent case of *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals*,[21] where the Supreme Court held:

> "Moreover, a claim for exemption from payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, **but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance**, by the LBAA. This may be inferred from Section 206 of RA No. 7160 or the LGC of 1991 which states that:
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>> SEC. 206. Proof of Exemption of Real Property from Taxation. — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.
>>
>> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property

[20] G.R. No. 171586, January 25, 2010.
[21] G.R. No. 169234, October 2, 2013.

> shall be proven to be tax exempt, the same shall be dropped from the assessment roll. (Emphasis supplied)
>
> In other words, by providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim.
>
> Therefore, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon."

The remedy under Section 252 of the LGC, as amended, is available when there is a question as to the reasonableness or correctness of the amount assessed as it involves a question of fact. It is thus clear that petitioner Lepanto's appeal, which involves a question of fact, falls within the exclusive jurisdiction of the LBAA and cannot be entertained by the RTC.

On this note, the Court *En Banc* affirms the pronouncement of CTA – Second Division in the Separate Concurring Opinion of Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas, to wit:

> "Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. The failure to appeal within the statutory period shall render the assessments final and demandable.
>
> Considering that the real property tax assessments have become final and collectible for failure of Lepanto to pay real property taxes under protest and appeal before the LBAA within the mandated period, the CTA is devoid of jurisdiction over this case."

To reiterate, the LBAA and not the RTC has jurisdiction to rule on the correctness of the subject assessment. It is evident that the RTC never acquired jurisdiction over petitioner Lepanto's appeal impugning the denial of its request letter for the cancellation of the subject real property tax assessment. Being a question of jurisdiction, such issue may be raised at any time, even on appeal before this Court, and even for the first time before the Supreme Court.

Relevantly, a decision rendered without jurisdiction is a total nullity and may be struck down anytime, even on appeal before the Supreme Court.[22] If the Court has no jurisdiction over the nature of an action, it may dismiss the same *ex mero motu* or *motu propio.*[23]

Considering that the assessment had become final and executory for petitioner Lepanto's failure to pay under protest and file an appeal with the LBAA as mandated under Sections 252 and 226 of the LGC, as amended, the subject assessment issued by respondent is now beyond review by the RTC, the CTA- Second Division and even by this Court *En Banc*.

With the above conclusion reached, the Court *En Banc* finds it unnecessary to discuss the other issues raised by petitioner Lepanto for being moot and academic.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, for lack of jurisdiction, Civil Case No. 6410-CV-117 of the RTC of Abatan, Buguias, Benguet and CTA AC No. 96 are hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

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[22] *Bungcayao, Sr. vs. Fort Ilocandia Property Holdings*, G.R. No. 170483, April 19, 2010.
[23] *Danao vs Tappa*, G.R. No. 181303, September 17, 2009.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice