REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

INTERNATIONAL EXCHANGE BANK, Petitioner,	**C.T.A. CASE NO. 7343**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 1 8 2007

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DECISION

CASTAÑEDA, JR., *J*.:

This is a Petition for Review filed by petitioner International Exchange Bank due to the denial by respondent Commissioner of International Revenue of its request for reconsideration of the decision denying its administrative protest against the demand for payment of deficiency interest and surcharge for alleged late payment of creditable/expanded withholding and documentary stamp taxes, relative to the foreclosure sale of a real property in year 2000, which was later redeemed by its mortgagor/owner.

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The facts as admitted by the parties and borne by the records of the case are as follows:

International Exchange Bank (petitioner) is a commercial banking corporation duly organized and existing under Philippine laws, with principal office address at 142 Amorsolo Street, Legaspi Village, Makati City.[1]

Commissioner of International Revenue (respondent) is the official authorized under Section 4 of the National International Revenue Code of 1997 (1997 Tax Code) to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court.[2]

On January 27, 1997, Lippo Incorporated (Lippo), as security for the loan of Mr. William Siy and/or Willsan Plastic and Printing Manufacturing in the sum of Ten Million (P10,000,000.00), mortgaged in favor of petitioner its real property covered by TCT No. 221251 of the Register of Deeds in Manila, as evidenced by a real estate mortgage contract between them.[3]

Due to the failure of Lippo to pay the aforesaid loan, petitioner extra-judicially foreclosed the real estate mortgage. Petitioner, as the highest bidder, purchased the same at the public auction sale held on March 8, 1999, for which petitioner was issued a Certificate of Sale.[4]

The Certificate of Sale was registered with the Register of Deeds on April 15, 1999.[5]

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[1] Paragraph 2, Joint Stipulation of Facts and Issues, Docket, page 156.
[2] Paragraph 3, Joint Stipulation of Facts and Issues (JSFI), Docket, page 156.
[3] Paragraph 4, JSFI, Docket, page 156.
[4] Paragraph 5, JSFI, Docket, page 156; BIR Records, pages 183-184.
[5] Paragraph 6, JSFI, Docket, page 157.

On March 22, 2000, before the lapse of the redemption period, Lippo filed a complaint for the declaration of nullity of foreclosure sale (with application for writ of preliminary injunction) before the Regional Trial Court (RTC) of Manila, Branch 26.[6]

On April 26, 2000, after the redemption period lapsed, petitioner consolidated its title over the subject property. Consequently, the Registry of Deeds of Quezon City issued a new title (Transfer Certificate Title N-212412) in petitioner's name.[7]

On May 17, 2000, the RTC of Manila granted Lippo's petition for preliminary injunction and ordered the issuance of a writ of preliminary injunction.[8]

On October 25, 2000, petitioner filed with the BIR the appropriate returns and paid the expanded withholding tax (EWT) in the amount of P712,500.00 and documentary stamp tax (DST) in the amount of P142,500.00 due from the foreclosure sale.[9]

On October 28, 2002, Regional Director Ruperto Somera of the BIR Revenue Region No. 6 of Manila issued a Preliminary Assessment Notice (PAN) requiring petitioner to pay the amounts of P521,905.00 and P110,054.01, representing alleged increments for late payment of EWT and DST, respectively, in connection with the extra-judicial foreclosure sale.[10]

In a letter dated January 21, 2003 addressed to Director Somera, petitioner requested for the recall and/or cancellation of the aforesaid PAN

[6] Docketed as Civil Case No. 00-96863; paragraph 7, JSFI, Docket, page 157.
[7] RTC Judgment in Civil Case No. 00-96863, March 11, 2003, page 2; BIR Records, pages 23-24, and 174.
[8] Paragraph 8, JSFI, Docket, page 157; BIR Records, pages 51-52.
[9] Paragraph 9, JSFI, Docket, page 157; BIR Records, pages. 28-36.
[10] Paragraph 10, JSFI, Docket, page 157; BIR Records, page 168.

and posited the view that petitioner is not liable for any tax in connection with the foreclosure sale on the ground that the transfer of beneficial ownership over the foreclosed property was never effected or consummated. It also argued that by reason of the injunction issued, petitioner was prohibited and prevented from consolidating title over the foreclosed property. Besides, by virtue of the redemption by Lippo of the subject property, there is no transaction that is subject to tax.[11]

In its Decision dated March 11, 2003, based on the Compromise Agreement executed between the parties, the RTC of Manila allowed Lippo to redeem the subject property after payment of the redemption price, or the amount equivalent to the outstanding balance of the loan secured by the subject property.[12]

Pursuant to the order of the RTC of Manila dated March 11, 2003, a Certificate of Redemption was executed by petitioner in favor of Lippo on March 14, 2003.[13]

In reply to petitioner's letter dated January 21, 2003, Regional Director Somera wrote petitioner a letter dated July 4, 2003, reiterating the BIR position that the imposition of penalties and interest for late payment of taxes was proper. The Regional Director also requested petitioner to immediately settle its tax liabilities.[14]

On August 4, 2003, petitioner filed an administrative protest with respondent, who indorsed the same to the RDO of Manila. Subsequently, on

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[11] Paragraph 11, JSFI, Docket, page 158.
[12] Paragraph 12, JSFI, Docket, page 158.
[13] Paragraph 13, JSFI, Docket, page 158.
[14] BIR Records, page 163.

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October 22, 2003, the Regional Director of BIR Revenue Region No. 6, Manila sent petitioner a letter and informed the latter that its protest was ιeferred to the Chief of BIR Legal Division, who rendered an opinion in favor of the imposition of the deficiency taxes, penalty and surcharge. Again, the Regional Director requested petitioner to settle its tax liability.[15]

On January 20, 2004, petitioner filed with the BIR Appellate Division a Motion for Reconsideration. However, in a Decision promulgated on August 31, 2005, respondent denied petitioner's request for reconsideration of the denial by the RDO of Manila of its protest and ordered petitioner to pay the deficiency interest and surcharge for late payment of expanded withholding and documentary stamp taxes due on the foreclosure sale of the subject property, plus increments that have accrued until the actual date of payment.[16]

Hence, on October 18, 2005, petitioner filed before this Court a Petition for Review.

The parties agreed to submit the following issues[17] for this Court's resolution:

> "1. Whether or not petitioner realized any profit or gain arising from the foreclosure sale and the subsequent redemption of the property by 'Lippo', that would result to the payment of expanded withholding tax and documentary stamp taxes?
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> 2. Whether or not there was a valid foreclosure sale, exchange or disposition of the property in favor of petitioner that is subject to expanded withholding tax and documentary stamp tax, notwithstanding that there are legal issues raised before the Regional Trial Court of

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[15] BIR Records, page 162.
[16] Paragraph. 16, JSFI, Docket, page 159; BIR Records, pages 229-233.
[17] Joint Stipulation of Facts and Issues, Docket, page 160.

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Manila assailing the validity of the foreclosure sale itself and the presence of legal impediments (writ of Preliminary Injunction was issued by the said court) prohibiting petitioner from consolidating title over the foreclosed property.

3. Whether or not petitioner should be made liable for payment of the expanded withholding tax and documentary stamp tax in the instant case, despite an express provision in the Judgment based on Compromise Agreement requiring 'Lippo' to assume the taxes attendant to the redemption of the Subject Property?

4. Whether or not the institution of an action for the annulment of the foreclosure sale will stop the running of the one year period of redemption.

5. Whether or not revenue regulations no. 4-99 is applicable in the case at bar."

Inasmuch as first and third issues are interrelated, they will be discussed jointly.

Petitioner's arguments that it has no income or gain from the sale of the foreclosed property and as such, should not be made liable to pay the expanded withholding tax and documentary stamp tax, is untenable. Capital gains tax is a tax on the presumed gain. This is affirmed by the High Tribunal in the case of ***Vive Eagle Land, Inc. and Virgilio O. Cervantes vs. Court of Appeals and Genuine Ice Co., Inc.***[18], declaring that "A capital gains tax is a final tax assessed on the presumed gain derived by citizens and resident aliens, as well as estates and trusts, from the sale or exchange of real property." And there is presumed gain realized from the extra-judicial foreclosure sale. In foreclosure sale of mortgage, the consideration would be gr

[18] *G.R. No. 150308, November 26, 2004.*

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the satisfaction fully or partly of the pre-existing indebtedness secured by the mortgage.[19]

Based on the facts of the case, the Certificate of Sale covering the foreclosed property was registered with the concerned Register of Deeds on April 15, 1999, as required by Act 3135. Section 3(1) of Revenue Regulations No. 4-99 specifically provides that the mortgagor should exercise his redemption right within one year from the issuance of the Certificate of Sale with the Register of Deeds. It likewise states the instance where no capital gains tax shall be imposed, which is only if the mortgagor redeems the foreclosed property within one year from the issuance of the Certificate of Sale.

Equally significant to the issue of the exercise of the right of redemption in extra-judicial sales are Section 6 of Act 3135,[20] as amended by Act 4118 and Rule 39 of the Rules of Court.

Section 6 of Act 3135 states that:

> "SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act."

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[19] Vitug and Acosta, Tax Law and Jurisprudence, 2nd Ed., page 138-140.

[20] "An Act To Regulate the Sale of Property Under Special Powers Inserted In or Annexed To Real-Estate Mortgages."

It should be noted that the above-mentioned Section 464 to 466 of the Code of Civil Procedure became part of Rule 39 of the Rules of Court.[21] Pertinent to the case is Section 33 of Rule 39, which reads:

> "**SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.***— If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.
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> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor."

From the foregoing, redemption may be made within one year from the registration of the Certificate of Sale with the Register of Deeds. Here, the registration of the Certificate of Sale of the foreclosure in favor of petitioner was made on April 15, 1999, the period of redemption is considered to have expired on April 15, 2000. Accordingly, petitioner's liability to pay the corresponding taxes on the foreclosed property attached and became due long before the alleged subsequent redemption by Lippo. Clearly, petitioner is

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[21] *Philippine National Bank vs. Court of Appeals, G.R. No. L-60208, December 5, 1985.*

liable for the payment of the capital gains tax on the presumed gain and the documentary stamp tax under the aforesaid provisions.

As regards the issue of the effect of the Compromise Agreement on the transaction, it must be pointed out that the Compromise Agreement actually has no bearing on the redemption period. Since the redemption period lapsed without Lippo exercising its redemption rights, petitioner is deemed to have consolidated ownership over the subject property.

Moreover, even though one of the terms of the Compromise Judgment in allowing Lippo to redeem the subject property was that the latter should bear all costs attendant to the redemption of the property, including applicable taxes, the taxes referred to are taxes incidental to the redemption of the property and not those which became due and were paid before the Compromise Judgment was rendered.

The second and fourth issues will be resolved together since the matters covered are closely related.

The Compromise Judgment of Manila RTC Branch 26, dated March 11, 2003, was based on the Compromise Agreement of Lippo and petitioner. The said Compromise Judgment is a judgment on the merits as the parties have validly entered into stipulations and the evidence was duly considered by the trial court that approved the agreement.[22] Inasmuch as it never mentioned nor hinted that the foreclosure sale is void, this Court will not venture to render a different opinion doubting its validity in the absence of evidence to the contrary. Je

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[22] *Spouses Aromin v. Floresca, et al.*, G.R. No. 160994, July 27, 2006.

Anent the question of whether the institution of an action for the annulment of the foreclosure sale and preliminary injunction stopped the running of the period of redemption and/or prohibited petitioner from consolidating title over the foreclosed property; the answer is "No."

As earlier stated, the mortgagor may redeem the property within one year from the time of the foreclosure sale. Failure to exercise such right of redemption, ownership of the foreclosed property is transferred upon the expiration of the redemption period. Hence, considering that no redemption was made, the tax liability (particularly, EWT and DST) legally accrued as of that moment, regardless of whether the creditor (petitioner) was prevented at a later date by the court to consolidate its title over the foreclosed property.

In the case of ***People's Financing Corporation et al. vs. Court of Appeals, et al.***[23], the High Tribunal explained that the one year redemption period is not suspended by the institution of an action to annul a foreclosure sale. The pertinent portions of the Decision are hereunder quoted for ready reference, to wit:

> **"It is not correct to say that the restraining order issued on February 11, 1980 by the trial court (which ultimately dismissed the complaint four years later) had the effect of suspending the running of the redemption period.** As we held through chief Justice Concepcion in *Sumerariz vs. Development Bank of the Philippines*, **'there is no statute or decision which supports plaintiff's contention that the period of one year to redeem land sold at the sheriff's sale was suspended by the institution of an action to annul the foreclosure sale."** (*Emphasis supplied*)

[23] *G.R. No. 80791, December 4, 1990.*

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The Supreme Court likewise held in the case of ***Spouses Antonio S. Pahang and Lolita T. Pahang vs. Honorable Agustine A. Vestil***[24] that the filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the foreclosed property. The High Court explained, thus:

> "xxx. **In fine, the filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the property, nor bar the purchaser at public auction from procuring a writ of possession after the statutory period of redemption had lapsed**, without prejudice to the final outcome of such complaint to enforce the right of redemption." (*Emphasis supplied*)

Based on the aforequoted jurisprudence, neither the action to annul the foreclosure sale with prayer for the issuance of a preliminary injunction or the granting of the injunction prevented the expiration of the one-year period to redeem the foreclosed property. Ergo, after the lapse of the one-year redemption period, the mortgagor's right to redeem is barred, and the mortgagor is divested of its rights to the mortgaged property sold regardless of any separate pending case filed by the parties before the courts. Here, the fact that the subject property was later "redeemed" pursuant to the Compromise Agreement is irrelevant. The "redemption" was made long after April 15, 2000, which is the expiration date of the redemption period.

Petitioner became entitled to both the transfer and possession of the subject property as a matter of right from the time of the expiration of the period of redemption. Consequently, it also became liable for the payment of taxes relative to the foreclosure. When petitioner paid taxes in the amounts of

[24] *G.R. No. 148595, July 12, 2004.*

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₱712,500.00 and P142,500.00 as EWT and DST, respectively, due on the foreclosure sale of March 8, 1999; it indicated petitioner's knowledge or recognition of its tax liability. As correctly pointed out by respondent, if petitioner did not in fact consolidate ownership on said property, it would have nothing to alienate on the Compromise Agreement it entered into with Lippo. *Nemo dat quod non habet.* One cannot alienate things which one does not own.

Although the RTC of Manila eventually issued a Writ of Preliminary Injunction, the same was issued long after the expiration of the redemption period, specifically, on May 17, 2000 or a month and two days after the deadline. Petitioner had no legal impediment in consolidating its title over the subject property. In fact, consolidation of the title after the expiration of the redemption period is a matter of right and the issuance of a Certificate of Title in favor of the purchaser (petitioner) becomes ministerial upon the Register of Deeds.[25]

Regarding the last issue, it is well-settled that the power to promulgate rules is necessary to carry into effect the law as it has been enacted, subject to the limitation that such rules and regulations cannot amend or expand the statutory requirements or to embrace matters not covered by the statute. [26] A perusal of Revenue Regulations No. 4-99 shows that it is merely interpretative in nature and gives no real consequence more than what the Tax Code has already prescribed.[27] Thus, petitioner's obligation to file returns and pay taxes

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[25] *Union Bank of the Philippines vs. Court of Appeals et al., G.R. No. 133366, August 5, 1999.*
[26] *Land Bank of the Philippines vs. Court of Appeals, et al., G.R. No. 118712 and 118745, July 5, 1996.*
[27] *Commissioner of Internal Revenue v. Hon. Court of Appeals, G.R. No. 119761, August 29, 1996.*

within the prescribed period pursuant to the Tax Code and RR 4-99 must be complied.

Records indicate that petitioner filed tax returns and paid taxes on October 25, 2000; more than a year after the foreclosure sale and after the expiration of the redemption period. However, in the case of DST, Section 200(b) of the Tax Code requires the filing of return and, at the same time, payment of tax within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred. With respect to final withholding tax, Sec. 2.58 of RR 02-98 requires that "the withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year." Hence, albeit petitioner filed its tax returns and paid the due taxes, it is still liable for increments as provided under Sections 248 and 249 of the 1997 Tax Code for failure to file returns and pay taxes within the prescribed period. Sections 248 and 249 of the 1997 Tax Code provides that:

> "SEC. 248. Civil Penalties. —
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> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
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> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

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(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

SEC. 249. Interest. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid

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amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) Interest on Extended Payment. — If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

In the absence of proof to the contrary, this Court shall apply the rule that tax assessments are presumed correct and made in good faith in the absence of evidence contrariwise.[28]

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, respondent's August 31, 2005 Decision is hereby **AFFIRMED** with modifications and petitioner is hereby **ORDERED to PAY** surcharges and interests, computed as follows:[29]

	DST	EWT
Surcharge (Sec. 248)	P 35,625.00	P 178,125.00
Interest 5/11/00-4/30/02	64,429.01	318,780.00
Amount Due	P 100,054.01	P496,905.00

The compromise penalty, in the amounts of P10,000 for DST and P25,000 for EWT, are cancelled in the absence of a mutual agreement by the parties.[30] Petitioner is likewise **ORDERED to PAY** 20% delinquency interest

[28] *Commissioner of Internal Revenue v. Construction Resources of Asia and the Court of Tax Appeals, G.R. No. L-68230, November 25, 1986.*

[29] BIR Records, page 244.

[30] *Rightfield Property Ventures, Inc. (now known as Universal Rightfield Property Holdings, Inc.) v. Commissioner of Internal Revenue*, CTA Case No. 5972, October 16, 2003.

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from October 7, 2005, until fully paid pursuant to Section 249 of the Tax Code.[31]

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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
Chairperson

[31] BIR Records, page 244.

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CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice

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