REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZENOREX MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 10729**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 3 1 2025 3:05 p.m.

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DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** filed on February 2, 2022, prays that judgment be rendered:

1. Declaring the assessment under the Final Decision on Disputed Assessment (FDDA) void for violating petitioner's right to due process and consequently ordering respondent to cancel the deficiency taxes assessed against petitioner and refrain from enforcing and collecting the deficiency taxes based on such assessment;

2. Declaring the right of the government and/or the Bureau of Internal Revenue (BIR) to collect the deficiency taxes barred by prescription and, consequently, ordering respondent to cancel the deficiency taxes assessed against petitioner and refrain from enforcing and collecting the deficiency taxes; and,

3. In the event that the Court finds that respondent has not violated petitioner's right to due process, declaring the assessment under the FDDA void for lack of legal and factual bases and consequently, ordering respondent to cancel the deficiency taxes assessed against petitioner.[1]

THE PARTIES

Petitioner **Zenorex Marketing Corporation** is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business located at 2510 Cityland 10, Tower I, Ayala Avenue Salcedo Village, Makati City.[2] It is registered with the BIR Revenue District Office (RDO) No. 50, under Taxpayer's Identification Number 004-508-460-000.[3]

Respondent is the **Commissioner of Internal Revenue**.[4] He is the head of the BIR, a government agency tasked with the assessment and collection of all national internal revenue taxes, fees, and charges, and the officer tasked to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 19, 2012, respondent issued the electronic *Letter of Authority* (LOA) No. eLA201000078660 for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011. The same was received by petitioner on September 24, 2012.[6]

Respondent thereafter sent its *First Notice* dated October 5, 2012 to petitioner directing the latter to present its records to the BIR.[7] In this regard, petitioner submitted various documents to the BIR as shown in the *Transmittal* dated November 21, 2012.[8]

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[1] Statement of the Case, Pre-Trial Order dated October 5, 2022, Docket – Vol. VI, pp. 3358 to 3359.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. VI, p. 3242.
[3] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3242.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. VI, pp. 3242 to 3243.
[6] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; Exhibit "P-4", Docket – Vol. 8, p. 4162; and Exhibits "R-1", BIR Records (Exhibit "R-18"), p. 72.
[7] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; Exhibit "P-5"; Docket – Vol. 8, p. 4163; and Exhibit "R-3", BIR Records (Exhibit "R-18"), p. 194.
[8] Exhibit "P-6", Docket – Vol. 8, p. 4164.

On January 30, 2013, respondent issued the *Letter Notice* No. 050-RLF-11-00-00299[9] pursuant to Revenue Memorandum Order (RMO) No. 13-2012. Petitioner received the said *Letter Notice* on February 1, 2013.[10] In the *Letter Notice*, the BIR found a discrepancy in the amount of ₱4,869,139.07 against petitioner, and directed the latter to reconcile the said discrepancies by presenting its documentary evidence before the BIR RDO No. 50 on February 4, 2013.[11]

Petitioner submitted additional documents as evidenced by the *Transmittal* dated February 22, 2013[12] and March 4, 2013.[13]

Respondent then issued against petitioner the *Preliminary Assessment Notice* (PAN) dated December 16, 2014 (with attached *Details of Discrepancies*), which was received by petitioner on December 18, 2014.[14]

Petitioner then received on January 9, 2015 a *Formal Assessment Notice* (FAN), assessing petitioner of alleged deficiency taxes for taxable year (TY) 2011 in the total amount of ₱7,161,103.80, inclusive of interest, surcharge and compromise penalties.[15]

On February 6, 2015, petitioner filed with the BIR its administrative protest dated February 4, 2015 against the FAN.[16] It then received the BIR letter dated March 3, 2015, stating that the docket will be forwarded to the BIR RDO No. 50 "*for reinvestigation*".[17]

In a letter dated March 2, 2016,[18] the BIR reiterated the assessment for petitioner's alleged failure to submit all the required and valid supporting documents in relation to protest.

Thereafter, respondent issued electronic LOA No. LOA-050-2021-00000006 dated January 14, 2021, which was received by petitioner on January 29, 2021,[19] authorizing Revenue Officer (RO) Karleli Djhoana

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9 Exhibits "P-22-1", Docket – Vol. 8, p. 4227; and Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 368.
10 Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243.
11 Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243.
12 Exhibit "P-21", Docket – Vol. 8, p. 4198.
13 Exhibit "P-22", Docket – Vol. 8, p. 4225.
14 Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; Exhibits "P-2" to "P-2-6", Docket – Vol. 8, pp. 4152 to 4158; and Exhibit "R-6", BIR Records (Exhibit "R-18"), pp. 441 to 447.
15 Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; Exhibits "P-1" to "P-1-6", Docket – Vol. 8, pp, 4145 to 4151; and Exhibits "R-7", "R-8", "R-8-A", "R-9", "R-10", "R-11", "R-12", and "R-13", BIR Records (Exhibit "R-18"), pp. 459 to 470.
16 Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; and Exhibit "P-25", Docket – Vol. 8 pp. 4278 to 4283.
17 Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244; and Exhibit "P-26, Docket – Vol. 8, p. 4284; and Exhibit "R-5", BIR Records (Exhibit "R-18"), p. 666.
18 Exhibit "P-27", Docket – Vol. 8, p. 4285.
19 Par. 14, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244.

Balico and Group Supervisor (GS) Erlinda de Leon for the continuation of the audit of petitioner's tax liabilities for TY 2011.[20]

On December 27, 2021, petitioner received the FDDA dated December 23, 2021 issued by respondent,[21] denying in part petitioner's administrative protest, and assessing petitioner with deficiency taxes for TY 2011 in the total amount of ₱11,239,211.03.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on February 2, 2022.[22] The case was initially raffled to the Third Division of this Court.

Within the period granted by the Court,[23] respondent filed on May 2, 2022 his *Answer*.[24]

On May 12, 2022, respondent transmitted the entire *BIR Records* of this case, consisting of 754 pages contained in one folder.[25]

The Pre-Trial Conference was set and held on August 9, 2022.[26] Prior thereto, petitioner's *Pre-Trial Brief* was filed on August 3, 2022,[27] while respondent filed his *Pre-Trial Brief* on August 4, 2022.[28]

On September 7, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[29] which was admitted and approved by the Court in its Resolution dated September 14, 2022,[30] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 5, 2022 was then issued.[31]

In the trial that ensued, both parties presented their respective testimonial and documentary evidence.

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[20] Exhibit "P-28", Docket – Vol. 8, p. 4286; and Exhibit "R-14", BIR Records (Exhibit "R-18"), p. 707.
[21] Par. 15, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244; Exhibit "P-3", Docket – Vol. 8, pp. 4159 to 4161; and Exhibit "R-16", "R-16-A" and "R-16-B", BIR Records (Exhibit "R-18"), pp. 747 to 749.
[22] Docket – Vol. I, pp. 6 to 87.
[23] Respondent's *Motion for Extension of Time To File Answer* dated March 31, 2022, Docket – Vol. VI, pp. 3016 to 3019; and Resolution dated April 7, 2022, Docket – Vol. VI, p. 3022.
[24] Docket – Vol. VI, pp. 3025 to 3061.
[25] *Compliance* dated May 11, 2022, Docket – Vol. VI, pp. 3023 to 3024.
[26] Notice of Pre-Trial Conference dated May 19, 2022, Docket – Vol. VI, pp. 3107 to 3108; and Minutes of the hearing held on, and Order dated, August 9, 2022, Docket – Vol. VI, pp. 3237, and 3240 to 3241, respectively.
[27] Docket – Vol. VI, pp. 3143 to 3189.
[28] Docket – Vol. VI, pp. 3194 to 3212.
[29] Docket – Vol. VI, pp. 3242 to 3274.
[30] Docket – Vol. VI, p. 3302.
[31] Docket – Vol. VI, pp. 3358 to 3372.

Petitioner offered the testimony of the following witnesses, namely: (1) Ms. Cheryl R. Samonte,[32] its Accounting Manager; and (2) Mr. Mark Anthony V. Pojol,[33] the Court-commissioned Independent Certified Public Accountant (ICPA).[34]

The *Report* of the ICPA was submitted on December 12, 2022.[35]

On March 8, 2023, petitioner filed its *Formal Offer of Evidence*,[36] to which respondent submitted his *Comment and/or Opposition [to Petitioner's Formal Offer of Evidence dated March 8, 2023]* on April 4, 2023.[37] On May 9, 2023, petitioner filed its *Motion to Admit (the attached Reply to the Comment and/or Opposition dated 04 April 2022)*,[38] which was granted by the Court per the Minute Resolution dated May 19, 2023,[39] thereby admitting the said *Reply*.

In the meantime, pursuant to the Notice of Resolution dated June 13, 2023, this case was transferred to the Second Division of this Court.

In the Resolution dated August 2, 2023,[40] the Court admitted petitioner's exhibits, *except* the following:

1. Exhibits "P-430", "P-431", "P-432" and "P-433", for failure to comply with Section 3(b) in relation to Section 10(c) of the Judicial Affidavit Rule;

2. Exhibits "P-5", "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-6-5 to P-6", "P-6-7", "P-7", "P-7-1", "P-8 to P-8-1", "P-8-2 to P-8-3", "P-8-4 to P-8-5", "P-8-6 to P-8-7", "P-8-8 to P-8-9", "P-8-10 to P-8-11", "P-8-12 to P-8-13", "P-8-14 to P-8-15", "P-8-16 to P-8-17", "P-8-18 to P-8-19", "P-8-20 to P-8-21", "P-8-22 to P-8-23", "P-21", "P-21-1", "P-21-2", "P-21-3", "P-21-4", "P-21-5", "P-21-6", "P-21-7", "P-21-8", "P-21-9 to P-21-11", "P-21-12", "P-21-13 to P-21-15", "P-21-16", "P-21-17", "P-21-18", "P-21-19", "P-21-20", "P-21-

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32 Exhibit "P-430" (not marked), Docket – Vol. VI, pp. 3455 to 3482; and Minutes of the hearing held on, and Order dated, November 29, 2022, Docket – Vol. 7, pp. 3888 to 3889.

33 Exhibit "P-432" (not marked), Docket – Vol. 7, pp. 3911 to 3923; and Minutes of the hearing held on, and Order dated, February 16, 2023, Docket – Vol. 7, pp. 3928 to 3930.

34 *Oath of Commission* dated October 26, 2022, Docket – Vol. VI, p. 3433; and Minutes of the hearing held on, and Order dated, October 26, 2022, Docket – Vol. VI, pp. 3431 and 3434 to 3435, respectively.

35 Exhibit "P-439" (not marked), Docket – Vol. 7, pp. 3892 to 3904.

36 Docket – Vol. 7, pp. 3931 to 3964.

37 Docket – Vol. 7, pp. 3973 to 3979.

38 Docket – Vol. 7, pp. 3982 to 4021.

39 Docket – Vol. 7, p. 4023.

40 Docket – Vol. 7, pp. 4025 to 4027.

21", "P-21-22", "P-21-23", "P-21-24", "P-21-25", "P-22", "P-22-22", "P-22-3 to P-22-6-1", "P-22-7 to P-22-12", "P-22-13", "P-22-14", "P-22-15", "P-22-16", "P-22-17", "P-22-18", "P-22-19", "P-22-20", "P-22-21", "P-22-22", "P-22-23", "P-22-24", "P-22-25", "P-22-26", "P-22-27", "P-22-28 to P-22-29", "P-23", "P-23-1 to P-23-3", "P-24", "P-24-1", P-24-2", "P-24-3", "P-24-4", "P-27", "P-29-1", "P-30", "P-30-1-1", "P-30-2", "P-30-3", "P-30-4", "P-30-5", "P-30-6-1", "P-30-7", "P-30-8", "P-45", "P-45-1", "P-45-2", "P-45-3", "P-45-4", "P-45-5", "P-45-6", "P-45-7", "P-46", "P-47 to P-47-1", "P-47-2 to P-47-3", "P-47-4 to P-47-5", "P-47-6 to P-47-7", "P-47-9", "P-47-10 to P-47-11", "P-47-12", "P-47-13", "P-47-14 to P-47-15", "P-47-16", "P-47-17", "P-47-18", "P-47-18-1", "P-47-19", "P-47-20", "P-47-21 to P-47-22", "P-47-24", "P-47-25 to P-47-26", "P-47-27", "P-47-28 to P-47-29", "P-47-30", "P-47-31", "P-47-32", "P-47-33", "P-47-34", "P-47-35", "P-47-36", "P-47-37", "P-47-38 to P-47-39", "P-47-40-1", "P-47-40-2", "P-47-40-3", "P-47-40-4", "P-47-41", "P-47-42 to P-47-43", "P-47-44", "P-47-45" to P-47-46", "P-47-47", "P-47-48", "P-51", "P-51-1", "P-51-3", "P-51-4", "P-51-5", "P-51-6 to P-51-7", "P-51-8 to P-51-11", "P-52", "P-52-1", "P-52-2", "P-52-3", "P-52-4", "P-52-5", "P-52-6", "P-52-7", "P-52-8", "P-52-9", "P-52-10", "P-52-11", "P-52-12", "P-52-13", "P-52-14", "P-52-15", "P-52-16-1", "P-52-16-2", "P-52-17", "P-52-18", "P-52-19", "P-52-20", "P-52-21", "P-52-22", "P-52-23", "P-52-24", "P-52-25", "P-52-26", "P-52-27", "P-52-28", "P-52-29", "P-52-30", "P-52-31", "P-52-32", "P-52-33", "P-52-34", "P-52-35", "P-52-36", "P-52-37", "P-52-38", "P-52-39", "P-52-40", "P-52-41", "P-52-42", "P-52-43", "P-52-44", "P-52-45", "P-52-46", "P-52-47", "P-52-48", "P-52-49", "P-52-50", "P-52-51", "P-52-52", "P-52-53", "P-52-54", "P-52-55", "P-52-56", "P-52-57", "P-52-58", "P-52-59", "P-52-60", "P-52-61", "P-52-62", "P-52-63", "P-52-64", "P-52-65", "P-52-66", "P-52-67", "P-52-68", "P-52-70", "P-53", "P-54" and "P-55", for failure to identify and to submit the duly marked exhibits;

3. Exhibits "P-30-1", "P-30-6", "P-47-8", "P-47-23", "P-47-40", "P-49-1", "P-49-2", "P-49-3", "P-49-4" and "P-52-16" for (a) failure to identify; (b) failure to submit the duly marked exhibits; and (c) failure to present the originals for comparison; and,

4. Exhibits "P-51-2" and "P-52-69", for not being found in the records.

On August 24, 2023, petitioner filed its *Motion for Partial Reconsideration (Re: Resolution dated August 2, 2023)*,[41] to which respondent posted his *Comment and/or Opposition [to Petitioner's Motion for Partial Reconsideration (Re: Resolution dated April 2, 2023)]* on September 4, 2023.[42] In the Resolution dated September 29, 2023,[43] the Court gave petitioner a period of 10 days from notice within which to file the following: (a) judicial affidavits in compliance with Section 3(b) of the Judicial Affidavit Rule; (b) exhibits that were actually marked during the commissioner's hearing and not merely photocopies of the duly marked exhibits; and, (c) original and/or certified true copies of those exhibits which were provisionally marked. Petitioner filed its *Compliance* on October 13, 2023.[44]

For his part, respondent offered the testimonies of Revenue Officers Karleli Djhoana T. Balico and Jose Eric Almosara.[45]

The *Formal Offer of Evidence [For the Respondent]* was filed on November 3, 2023,[46] to which petitioner filed its *Comment (Re: Formal Offer of Evidence dated October 31, 2023)* on November 20, 2023.[47]

In the Resolution dated November 28, 2023,[48] the Court partially granted petitioner's *Motion for Partial Reconsideration (Re: Resolution dated August 2, 2023)*, and admitted Exhibits "P-5", "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-6-5 to P-6", "P-6-7", "P-7", "P-7-1", "P-8 to P-8-1", "P-8-2 to P-8-3", "P-8-4 to P-8-5", "P-8-6 to P-8-7", "P-8-8 to P-8-9", "P-8-10 to P-8-11", "P-8-12 to P-8-13", "P-8-14 to P-8-15", "P-8-16 to P-8-17", "P-8-18 to P-8-19", "P-8-20 to P-8-21", "P-8-22 to P-8-23", "P-21", "P-21-1", "P-21-2", "P-21-3", "P-21-4", "P-21-5", "P-21-6", "P-21-7", "P-21-8", "P-21-9 to P-21-11", "P-21-12", "P-21-13 to P-21-15", "P-21-16", "P-21-17", "P-21-18", "P-21-19", "P-21-20", "P-21-21", "P-21-22", "P-21-23", "P-21-24", "P-21-25", "P-22", "P-22-22", "P-22-3 to P-22-6-1", "P-22-7 to P-22-12", "P-22-13", "P-22-14", "P-22-15", "P-22-16", "P-22-17", "P-22-18", "P-22-19", "P-22-20", "P-22-21", "P-22-22", "P-22-23", "P-22-24", "P-22-25", "P-22-26", "P-22-27", "P-22-28 to P-22-29", "P-23", "P-23-1 to P-23-3", "P-24", "P-24-1", P-24-2", "P-24-3" to "P-24-4", "P-27", "P-29-1", "P-30", "P-30-1-1", "P-30-2", "P-30-3", "P-30-4", "P-30-5", "P-30-6-1", "P-30-7", "P-30-8", "P-45", "P-45-1", "P-45-2", "P-45-3", "P-45-4", "P-45-

[41] Docket – Vol. 7, pp. 4028 to 4062.
[42] Docket – Vol. 8, pp. 4068 to 4075.
[43] Docket – Vol. 8, pp. 4079 to 4081.
[44] Docket – Vol. 8, pp. 4093 to 4095.
[45] Exhibit "R-17", Docket – Vol. VI, pp. 3094 to 3103; and Minutes of the hearing held on, and Order dated, October 3, 2023, Docket – Vol. 8, pp. 4082 to 4084, Exhibit "R-20", Docket – Vol. VI, pp. 3217 to 3235.
[46] Docket – Vol. 8, pp. 4536 to 4553.
[47] Docket – Vol. 8, pp. 4561 to 4581.
[48] Docket – Vol. 8, pp. 4584 to 4590.

5", "P-45-6", "P-45-7", "P-46", "P-47 to P-47-1", "P-47-2 to P-47-3", "P-47-4 to P-47-5", "P-47-6 to P-47-7", "P-47-9", "P-47-10 to P-47-11", "P-47-12", "P-47-13", "P-47-14 to P-47-15", "P-47-16", "P-47-17", "P-47-18", "P-47-18-1", "P-47-19", "P-47-20", "P-47-21 to P-47-22", "P-47-24", "P-47-25 to P-47-26", "P-47-27", "P-47-28 to P-47-29", "P-47-30", "P-47-31", "P-47-32", "P-47-33", "P-47-34", "P-47-35", "P-47-36", "P-47-37", "P-47-38 to P-47-39", "P-47-40-1", "P-47-40-2", "P-47-40-3", "P-47-40-4", "P-47-41", "P-47-42 to P-47-43", "P-47-44", "P-47-45" to P-47-46", "P-47-47", "P-47-48", "P-51 to P-51-2", "P-51-3", "P-51-4", "P-51-5", "P-51-6 to P-51-7", "P-51-8 to P-51-11", "P-52", "P-52-1", "P-52-2", "P-52-3", "P-52-4", "P-52-5", "P-52-6", "P-52-7", "P-52-8", "P-52-9", "P-52-10", "P-52-11", "P-52-12", "P-52-13", "P-52-14", "P-52-15", "P-52-16-1", "P-52-16-2", "P-52-17", "P-52-18", "P-52-19", "P-52-20", "P-52-21", "P-52-22", "P-52-23", "P-52-24", "P-52-25", "P-52-26", "P-52-27", "P-52-28", "P-52-29", "P-52-30", "P-52-31", "P-52-32", "P-52-33", "P-52-34", "P-52-35", "P-52-36", "P-52-37", "P-52-38", "P-52-39", "P-52-40", "P-52-41", "P-52-42", "P-52-43", "P-52-44", "P-52-45", "P-52-46", "P-52-47", "P-52-48", "P-52-49", "P-52-50", "P-52-51", "P-52-52", "P-52-53", "P-52-54", "P-52-55", "P-52-56", "P-52-57", "P-52-58", "P-52-59", "P-52-60", "P-52-61", "P-52-62", "P-52-63", "P-52-64", "P-52-65", "P-52-66", "P-52-67", "P-52-68", "P-52-69", "P-52-70", "P-54" "P-55", "P-430", "P-431", "P-432", "P-433", P-434", "P-435", "P-436", "P-437" and "P-438"; but still denied the admission of Exhibits "P-30-1", "P-30-6", "P-47-8", "P-47-23", "P-47-40", "P-49-1", "P-49-2", "P-49-3", "P-49-4", "P-51" and "P-52-16", for failure to submit the originals for comparison.

On January 3, 2024, the *Memorandum Ex Abudante Ad Cautelam (For the Respondent)* was filed;[49] and the *Memorandum (For Petitioner)* was submitted on January 12, 2024.[50]

In the Resolution dated April 1, 2024,[51] the Court admitted all of respondent's exhibits, and submitted the present case for decision.

THE STIPULATED ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows, *viz.*:

I. Whether this Honorable Court has jurisdiction over the subject matter of the Petition; and,

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[49] Docket – Vol. 8, pp. 4596 to 4644.
[50] Docket – Vol. 8, pp. 4658 to 4705.
[51] Docket – Vol. 8, pp. 4708 to 4710.

II. Whether petitioner is liable to pay the assessed delinquency taxes amounting to ₱11,239,211.03 for TY 2011.[52]

Petitioner's arguments

In support of the *Petition for Review*, petitioner forwards the following contentions:

First, petitioner argues that the assessment is invalid due to respondent's failure to issue a Notice of Informal Conference (NIC) in violation of the petitioner's right to due process.

Second, respondent's right to collect the deficiency taxes under Section 222 (c) of the NIRC of 1997, as amended, has already prescribed.

Third, assuming without admitting that the assessment is valid, the same has no legal and factual bases as required under Section 228 of the NIRC of 1997, as amended, and is thus void.

Respondent's counter-arguments

Respondent contends that the Court has no jurisdiction over the subject matter due to late filing of the *Petition for Review*; that assuming this Court has jurisdiction over the subject matter, the income tax, value-added tax, expanded withholding tax, documentary stamp tax and compromise penalty assessments are valid because petitioner was, in fact, accorded with right to due process; and, that the deficiency tax assessments issued against petitioner are supported with factual and legal bases and thus, petitioner is liable to pay the assessed delinquency income tax, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST) and compromise penalty for TY 2011.

THE COURT'S RULING

The present *Petition for Review* must be dismissed.

Notably, respondent raises the issue of jurisdiction relative to the timeliness of the filing of the present *Petition for Review*. He claims that Memorandum Order (M.O.) No. 10-2022 and Administrative Circular (A.C.) No. 01-2022 issued by the Supreme Court (SC) are not applicable to petitioner. He points out the following: *first*, petitioner is not precluded

[52] Issues, JSFI, Docket – Vol. VI, p. 3244.

from filing its *Petition for Review* via registered mail and by electronic mail based on this Court's Memorandum dated January 9, 2022 and January 10, 2022; *second*, this Court even issued another Memorandum dated February 2, 2022, clarifying the reckoning period of five calendar days period referred to in this Court's *En Banc* Resolution No. 4-2021 within which to file the required number of hard copies and to pay the required filing fees relative to pleadings, motions and other court submissions filed by electronic mail from January 10, 2022 to January 31, 2022; and *third*, the said M.O. No. 10-2022 and A.C. No. 01-2022, being an administrative circular and order, cannot modify or amend a substantive law like the NIRC of 1997, as amended by Republic Act (R.A.) Nos. 10963 and 11534.

We rule on the matter.

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

> 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: xxx
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx
>
> 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.
>
> **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 the one hundred eighty (180)–day period; otherwise, the decision shall become final, executory and demandable.** *(Emphases and underscoring added)*

Based on the foregoing provisions, petitioner had 30 days from receipt of the assessment within which to file its administrative protest, and another

30 days from receipt of respondent's decision or from the lapse of the 180-day period, within which to file its *Petition for Review* with this Court.

Records show that petitioner received the FAN with attached *Details of Discrepancies* and *Assessment Notices* on January 9, 2015.[53] Petitioner then had 30 days from January 9, 2015 or until February 9, 2015[54] within which to file its administrative protest. Petitioner's protest to the FAN dated February 4, 2015 filed on February 6, 2015 was made within the said 30-day period.[55]

Thereafter, petitioner received the FDDA dated December 23, 2021, on December 27, 2021.[56] Thus, counting 30 days therefrom, petitioner had until January 26, 2022 within which to file its *Petition for Review* with the Court.

However, in view of the alarming number of Covid-19 infections, among others, the SC issued A.C. No. 01-2022 on January 10, 2022,[57] extending the filing periods of any and all pleadings and other court submissions falling due in the month of January 2022 **in all courts** until February 1, 2022. Thereafter, the SC issued M.O. No. 10-2022 dated January 12, 2022,[58] ordering the physical closure of courts in selected areas including the National Capital Region (NCR) as well as reiterated the extension of the filing periods of any and all pleadings and other court submissions falling due in the month of January 2022 until February 1, 2022.

The categorical language of A.C. No. 01-2022 issued on January 10, 2022, as echoed by M.O. No. 10-2022 leaves no room for doubt. The extension of the filing periods covers any and all pleadings and other court submissions falling due in the month of January 2022 in **all courts** until February 1, 2022 without any qualification or reservation. As such, the Court finds itself unable to subscribe to respondent's interpretation that the same is not applicable to the present *Petition for Review* filed by petitioner.

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[53] Exhibits "P-1" to "P-1-6", Docket – Vol. 8, pp, 4145 to 4151; and Exhibits "R-7", "R-7-A". "R-7-B", "R-8", "R-8-A". "R-8-B", "R-9", "R-9-A". "R-9-B", "R-10", "R-10-A". "R-10-B", "R-11", "R-11-A". "R-11-B", "R-12", "R-12-A". "R-12-B", "R-13", "R-13-A", and "R-13-B", BIR Records (Exhibit "R-18"), pp. 459 to 470.

[54] February 8, 2015 fell on Sunday.

[55] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; and Exhibit "P-25", Docket – Vol. 8 pp. 4278 to 4283.

[56] Par. 15, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244; and Exhibit "P-3", Docket – Vol. 8, pp. 4159 to 4161; and Exhibits "R-16", "R-16-A" and "R-16-B", BIR Records (Exhibit "R-18"), pp. 747 to 749.

[57] Extension of the deadline for the filing of any and all pleadings and other court submissions falling due in the month of January 2022 in all courts.

[58] Rising Cases of Covid 19 Infection/Physical Closure of Courts in Select Areas.

Moreover, this Court's Memoranda dated January 9, 2022[59] and January 10, 2022[60] were issued prior to the physical closure of courts as declared in M.O. No. 10-2022 dated January 12, 2022. It must be noted that the filing of pleadings and other court submissions by registered mail and or by electronic mail presupposes that the courts are not physically closed. This can be inferred from this Court's Memorandum dated January 9, 2022 which requires that all essential offices or services maintain necessary skeleton staff; and this Court's Memorandum dated February 2, 2022[61] in relation to this Court's *En Banc* Resolution No. 4-2021 dated February 24, 2021,[62] which allows the personal and electronic filing/service of pleadings effective February 1, 2022.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[63] This is what is known as the plain-meaning rule or *verba legis*. As the subject SC administrative circular and order are clear, plain, and free from ambiguity, they must be given its literal meaning and applied without attempted interpretation.

Respondent further argues that the SC M.O. No. 10-2022 and A.C. No. 01-2022, being an administrative circular and order, cannot modify or amend a substantive law like the NIRC of 1997, as amended by RA Nos. 10963 and 11534.

Section 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that an appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court.

Following the foregoing, considering that the appeal to this Court of the present case shall be governed by Rule 42 of the Rules of Court particularly the Rules of Civil Procedure, it now becomes apparent that the matter falls within the "rule-making power" of the Supreme Court as

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[59] Extension of the deadline for the filing of any and all pleadings and other court submissions falling due in the month of January 2022 in all courts.

[60] Extension of the deadline for the filing of any and all pleadings and other court submissions falling due in the month of January 2022 in all courts.

[61] Resumption of Personal Filing of Pleadings, Motions, and Other Court Submissions.

[62] Pleadings, Motion and Other Court Submissions Filed by Email.

[63] *Amores vs. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29, 2010, citing *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, June 8, 2006.

explicitly provided under ***Section 5 (5), Article VIII of the 1987 Constitution***, which states that the Supreme Court has the power to promulgate rules concerning pleadings, practice and procedure in all courts.

Correspondingly, the power to make rules necessarily includes the power to suspend or relax its application where there is a clear need to protect the rights of the parties. In proper cases, the rigidity of procedural rules may be relaxed or suspended in the interest of substantial justice. The power of the Court to except a particular case from its rules whenever the purposes of justice so require cannot be questioned.[64]

Our exceptional situation of dealing with the past pandemic in such a way that precautionary measures must be observed to preserve life, and considering the paramount public interest involved, taken altogether, were sufficient compelling circumstances that warranted the issuance of A.C. No. 01-2022 and M.O. No. 10-2022.

Further, this is in line with the spirit and purpose of the Bayanihan to Heal As One Act[65] and the Bayanihan to Recover As One Act[66] whereby the legislature vested upon the President the power to move statutory deadlines and timeliness for the filing and submission of any document, the payment of taxes, fees and other charges required by law,[67] and pursuant thereto, respondent likewise released various BIR issuances concerning the extension and/or suspension of deadlines for the filing of returns and payments of taxes.

Apropos, it must be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in instant case.[68]

In view of the foregoing disquisitions and considering that February 1, 2022[69] was declared a special non-working day under Presidential Decree (PD) No. 1236 dated October 29, 2021,[70] petitioner had until February 2,

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64 *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006
65 Republic Act No. 11469.
66 Republic Act No. 11491
67 Section 4, paragraph (z) of R.A. No 11469; Section 4, paragraph (tt) of R.A. No. 11491.
68 *Arnold Ginete, et al., v. Hon. Court of Appeals, et. al.*, G.R. No. 127596, September 24, 1998.
69 Chinese New Year.
70 Declaring the regular holidays and special (working/non-working) days for the year 2022.

2022 within which to file the judicial claim. Thus, the present *Petition for Review* filed by petitioner on February 2, 2022[71] was clearly made within the 30-day reglementary period to appeal.

In any event, this Court still finds that it has no jurisdiction to take cognizance of the present *Petition for Review*.

Jurisprudence has consistently held that jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court as an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. xxx [I]t is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[72]

Perforce, the rule is that, for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the respondent to warrant a decision from which a petition for review may be taken to this Court.[73] Otherwise, the tax assessment becomes final, executory and enforceable for failure of the taxpayer to assail the same can no longer be contested,[74] thus depriving the Court of its jurisdiction to resolve the merits of the case.

Section 7(a)(1) of RA No. 1125[75], as amended by RA No. 9282[76], states as follows:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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; *(Emphases and underscoring added)*

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71 Docket – Vol. I, pp. 6 to 87.

72 *Bernadette S. Bilag, et. al. v. Estela Ay-ay, et. al.*, G.R. No. 189950, April 24, 2017

73 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, the Court of Tax Appeals, and the Court of Appeals,* G.R. No. 148380, December 9, 2005

74 *Ibid.*

75 AN ACT CREATING THE COURT OF TAX APPEALS.

76 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Based on the foregoing provision, it is plain that this Court has exclusive appellate jurisdiction, *inter alia*, over decisions of respondent in cases involving "disputed assessments". In other words, under Section 7(1) of RA No. 1125, as amended, this Court exercises exclusive appellate jurisdiction to review not the assessments themselves, but the *decisions involving disputed ones* arising under the NIRC of 1997, as amended.[77]

As a corollary, pursuant to the aforequoted Section 228 of the NIRC of 1997, as amended, an assessment may be protested (or disputed) administratively by filing a request of reconsideration or reinvestigation within 30 days from receipt thereof ***"in such form and manner as may be prescribed by implementing rules and regulations"***.

Implementing the said Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-99[78], as amended by RR No. 18-2013[79], provides, in part, as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –*
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[80] within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

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77 Refer to *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.
78 SUBJECT: 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.
79 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment
80 That is, the *"Formal Letter of Demand and Final Assessment Notice"*.

> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation,** specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, **(ii) date of the assessment notice,** and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, **otherwise, his protest shall be considered *void and without force and effect*.**
>
> xxx xxx xxx. *(Emphases and underscoring added)*

The afore-quoted provision of RR No. 12-99, as amended by RR No. 18-2013, states that *"the taxpayer **SHALL** state in his protest xxx"*. Jurisprudence and statutory construction teach us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[81]

Perforce, Section 228 of the NIRC of 1997, as amended, mandates, among others, that the filing of the protest (either via a request for reconsideration or reinvestigation) must be in the form and manner as prescribed by the corresponding implementing rules and regulations, which in this case is the above-referred RR No. 12-99, as amended by RR No. 18-2013. Section 3 thereof, in turn: (1) requires that the taxpayer state in the protest the following: (i) the nature of the protest, whether it is a request for reconsideration or a request for reinvestigation, (ii) the date of the assessment notice, and (iii) the legal basis or bases of the protest; and, (2) states that the non-compliance with the said requirement would render the said protest **"considered *void and without force and effect.*"**

Applying the foregoing rules, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper, Incorporated*,[82] emphatically underscored the paramount importance of a valid protest in establishing this Court's jurisdiction. It stressed that Section 228 of the NIRC of 1997, as amended, requires that administrative protests against assessments conform to RR No. 12-99, as amended by RR No. 18-2013. These provisions mandate that a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a *request for reconsideration or reinvestigation*, **in such form and manner** as may be prescribed by implementing rules and regulations. Failing which, there is no administrative protest to speak of, and no decision on a disputed assessment to assail. In other words, when a petition for review is filed before this

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[81] *UCPB General Insurance Company, Inc. vs. Hughes Electronics Corporation,* G.R. No. 190385, November 16, 2016.

[82] *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated,* G.R. No. 239464, May 10, 2021

Court, without validly contesting the assessment, the appeal is premature, and the Court has no jurisdiction.

In this case, a careful perusal of petitioner's supposed protest dated February 4, 2015[83] reveals that while the petitioner indicated a certain form of legal basis to support some of its arguments against the FAN, it failed to state the nature of the protest and the date of the assessment notice. Nowhere is it stated whether its protest is a request for reconsideration or a request for reinvestigation, as required under the aforequoted provisions of Section 3 of RR No. 12-99, as amended by RR No. 18-2013.

Nevertheless, even assuming that this Court is justified in disregarding the aforementioned requirement, it cannot determine whether the protest is a *request for reconsideration* or a *request for reinvestigation* since, as there is no request for re-evaluation either *"on the basis of existing records without need of additional evidence"* or *"on the basis of newly discovered or additional evidence that the taxpayer intends to present"*.

An examination of the Protest dated February 4, 2015 shows that the petitioner refuted the assessment concerning **unsupported** expenses by providing a breakdown or reconciliation with the corresponding official receipt numbers for each line of expense. The petitioner also indicated in its protest that it had previously submitted the breakdown of expenses to the BIR. In support of this claim, petitioner attached to the Protest, as Annex "A", the transmittal dated November 21, 2012.

On its face, it would appear that the petitioner intended to request for reconsideration on the basis of existing records without need of additional evidence. However, upon reviewing the Transmittal dated November 21, 2012[84], there is no indication that official receipts, cash vouchers, sales invoices supporting the petitioner's claims were transmitted. This was further corroborated by the testimony of the petitioner's witness, Ms. Cheryl R. Samonte, during cross-examination, who confirmed that only schedules were transmitted on November 21, 2012.[85]

This omission would reasonably lead the BIR to interpret the petitioner's request as one for reinvestigation, with the expectation that supporting documents would be submitted at a later time. Consequently, in its Letter dated March 3, 2015[86], the respondent informed the petitioner that

[83] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3243; and Exhibit "P-25", Docket – Vol. 8 pp. 4278 to 4283.
[84] Exhibit "P-6", Docket – Vol. 8, p. 4164.
[85] TSN dated November 29, 2022, p. 7 to 9
[86] Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244; and Exhibit "P-26, Docket – Vol. 8, p. 4284; and Exhibit "R-5", BIR Records (Exhibit "R-18"), p. 666

the entire docket together with the Letter of Protest will be forwarded to Revenue District Office No. 50 – South Makati for reinvestigation and requested the petitioner to submit at the said district the necessary documents to support its claim/disagreements within 60 days from the date of filing of its protest letter pursuant to Section 3.1.5 of RR No. 12-99, as amended by RR 18-2013.

Had the petitioner intended to file a request for reconsideration, rather than reinvestigation, it could have made its position very clear that it is not seeking reinvestigation of the assessment made against it upon receipt of the Letter dated March 3, 2015 which effectively granted the petitioner's request for reinvestigation.

Based on the foregoing, it is clear that the petitioner's protest against the FAN fell short of the requirements of a valid protest. Consequently, there is no disputed assessment to speak of.

As such, the said protest is considered void and without force and effect. Correspondingly, while the assailed FDDA dated December 23, 2021[87] is denominated as such, it cannot be treated as a decision appealable to this Court, since it is not a decision of respondent involving a disputed assessment, pursuant to the aforequoted Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[88] **Although appeal is an essential part of our judicial process, it has been held, time and again, 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.**[89]

In view of the foregoing, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[90]

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[87] Par. 15, Summary of Admitted Facts, JSFI, Docket – Vol. VI, p. 3244; Exhibit "P-3", Docket – Vol. 8, pp. 4159 to 4161; and Exhibit "R-16", "R-16-A" and "R-16-B", BIR Records (Exhibit "R-18"), pp. 747 to 749.

[88] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

[89] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig,* G.R. No. 167732, July 11, 2012

[90] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

WHEREFORE, premises considered, the present *Petition for Review* is **DISMISSED** on jurisdictional grounds.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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.

ROMAN G. DEL ROSARIO
Presiding Justice