REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CRESCENT PARK 6-24 PROPERTY HOLDINGS, INC.,	C.T.A. CASE NO. 8202
Petitioner,	Members:
- versus -	UY, *Chairperson and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 24 2013, 1:50 p.m.

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DECISION

Fabon-Victorino, J.:

The instant Petition for Review dated December 16, 2010 pertains to petitioner Crescent Park 6-24 Property Holdings Inc.'s claim for refund or issuance of tax credit certificate in the amount of P45,158,928.12, allegedly representing its unutilized input VAT incurred in the 4th quarter of the taxable year 2008 attributable to its zero-rated sales.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200811152, with principal office address at the 7th Floor, SSHG Law Centre, 105 Paseo de Roxas, Makati City.[1]

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 81; Exhibit "A".

It was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by it.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise, with BIR Certificate of Registration No. 9RC0000236971 dated July 15, 2008 and Taxpayer's Identification Number 007-080-781-000 VAT.[3]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue charged with the administration and enforcement of national internal revenue laws, with the power to grant claims for refund or tax credit of erroneously or illegally collected taxes under the Tax Code. She holds office at the BIR National Office Building, Diliman, Quezon City.

On October 18, 2008, petitioner purchased from 6-24 Property Holdings Inc. (6-24 PHI) two (2) parcels of land located at 30th and 31st Streets, Bonifacio Global City, Taguig City, each consisting of 1,600 square meters or an aggregate area of 3,200 square meters for a total amount of P376,324,401.00 with corresponding VAT of P45,158,928.12.[4]

On the same date, petitioner and 6-24 PHI entered into a long term lease agreement whereby the purchased parcels of land were leased by petitioner to 6-24 PHI for the purpose of building and/or maintaining thereon a PEZA-registered information technology building or facility, valid for twenty five years with automatic renewal for another twenty five years.

6-24 PHI is a domestic corporation engaged in leasing of building spaces and registered with the Philippine Economic Zone Authority (PEZA) with Registration Certificate

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[2] Exhibit "A-1"
[3] Par. 4, Summary of Admitted Facts, JSFI, docket, Volume I., p. 82; Exhibit "B".
[4] Exhibit "C".

No. 07-03-F (IT) as an Ecozone Facilities Enterprise and operating at E-Square Information Technology Park, Bonifacio Global City, Taguig City[5] .

On July 26, 2010, petitioner filed with the BIR Revenue District Office (RDO) No. 47 - East Makati, an application (BIR Form 1914) and letter request for issuance of tax credit certificate of its alleged unutilized input VAT attributable to its zero-rated sales incurred in 4th quarter of 2008 in the amount of P45,158,928.12.[6]

On December 16, 2010, petitioner filed with this Court the instant Petition for Review.

On February 14, 2011, respondent filed her Answer[7] interposing the following special and affirmative defenses:

> 14. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 15. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
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> 16. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P**45,158,928.12**, as alleged unutilized input VAT for the 4th quarter of 2008 arising from lease of lands to 6-24 PHI which is allegedly subject to zero-rated sale of services, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in

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[5] Exhibits "D", "D-1" and "D-3".
[6] Par. 3, Supplemental Joint Stipulation of Facts, docket, Volume II, p. 671.
[7] Docket, Volume I, pp. 45-47.

relation to Section 113 and 237 of the 1997 Tax Code.

17. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

18. Petitioner's sales of goods and services to various alleged clients do not qualify as effectively zero-rate VAT.

19. Petitioner failed to comply with the conditions/requirement under Section 112(A)(B)(C) of the 1997 Tax Code.

20. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

21. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).**

During the trial, petitioner presented Atty. Ma. Cristina Samson and Mylene Bautista.

Atty. Samson testified by way of Judicial Affidavit[8], that she is petitioner's Legal Counsel and a member of the Board of Directors of both petitioner and 6-24 PHI. According to her, petitioner was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by it.

On October 18, 2008, petitioner purchased from 6-24 PHI, a domestic corporation engaged in leasing of building spaces, two (2) parcels of land, each with an area of about 1,600 square meters or an aggregate area of 3,200 square meters, located at 30th and 31st Streets, Bonifacio Global City, Taguig City for P376,324,401.00 with corresponding VAT of P45,158,928.12. The two parcels of land were covered by Transfer Certificate of Title (TCT) Nos. 1787-P and 1789-P issued by the Registry of Deeds of Taguig City.

Atty. Samson claimed that she witnessed the signing of the Deed of Absolute Sale between petitioner and 6-24 PHI, through their representatives, namely, Ho Shung Fung and Jacques A. Dupasquier, for petitioner, and Ramon D. Rufino and Jacques A. Dupasquier for 6-24-PHI. She was also part of the team that secured TCT Nos. 1787-P and 1789-P covering the subject parcels of land from the Registry of Deeds of Taguig City.

6-24 PHI imposed a VAT on the sale of the subject parcels of land since petitioner is not a PEZA registered enterprise and that selling of land is not part of the PEZA registered activities of 6-24 PHI.

On the same day of purchase, she also witnessed the signing of the long term lease agreement by the same representatives whereby petitioner leased to 6-24 PHI the purchased parcels of land for the purpose of building and/or

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[8] Exhibits "EE" and "EE-1"

maintaining thereon a PEZA registered information technology building or facility. The lease agreement was for 25 years with automatic renewal for another 25 years.

Petitioner treated the rental on the subject lands as VAT zero-rated since 6-24 PHI is a PEZA registered enterprise qualified for purposes of VAT zero-rating of its transactions with its local suppliers of goods, properties and services as indicated in PEZA Certificate No. 2006-0627.[9]

After incurring input VAT on the purchase of the land, petitioner, through its tax consultant, Eleanor L. Roque, filed with RDO No. 47, East Makati, an application for tax credit certificate/refund of its unutilized VAT input tax in the amount of P45,158,928.12 together with all supporting documents.[10]

On cross-examination, Atty. Samson admitted that both companies have the same set of board of directors and that sale of land is not a PEZA registered activity of 6-24 PHI. However, the lease of petitioner's purchased property to 6-24 PHI is zero-rated since the latter is a PEZA registered enterprise. In addition, she clarified that the subject refund is pertaining to the sale of the two parcels of land and not on the subsequent lease of the same.

Per Atty. Samson, the land was paid in cash but in two installments. However, the rental on the land was paid monthly in accordance with the Lease Agreement. The Deed of Sale was only for the land and not the building already existing at the time of purchase. Precisely, the Lease Agreement was executed to allow its owner 6-24 PHI to continue operating within the land.

Petitioner also presented Mylene A. Bautista, who testified by way of judicial affidavit[11] that as the Accountant of the Asset Manager of petitioner, she reviews the financial position and compliance of petitioner with the generally accepted accounting standards and has custody of the

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[9] Exhibit "D-1".
[10] Exhibit "E-1".
[11] Exhibits "FF", "FF-1".

quarterly tax returns for 2008 to 2010 filed by petitioner with the BIR.[12]

Witness Bautista reiterated that petitioner is entitled to a refund in the amount of P45,158,928.12 for its unutilized input VAT incurred on its purchase of lands from 6-24 PHI in 2008. The said input VAT remained unutilized and was not set off against any output tax liability of petitioner[13].

The same witness admitted that since she was employed by petitioner only on November 2008, thus, she was not the one who prepared the entries in petitioner's quarterly tax returns for 2008 to March 2010.[14] In any event, she reviewed all the documents pertaining to transactions of petitioner for the same period all of which were in her custody.

On recall, Bautista, through her Judicial Affidavit,[15] basically corroborated the testimony of Atty. Samson on the sale and execution of the Deed of Absolute Sale of Land on Installment.[16] As indicated in the invoice issued by 6-24 PHI to petitioner[17], the selling price is P376,324,401.00 with a corresponding VAT of P45,158,928.12. On October 20, 2008, petitioner paid 6-24 PHI the amount of P84,000,982.14 plus the corresponding VAT of P10,080,117.86 or a total of P94,081,100.00.[18] On October 23, 2008, petitioner paid 6-24 PHI the amount of P252,002,947.32 plus VAT of P30,240,353.68 or a total of P282,243,301.00.[19] The remaining balance however, was paid through inter-company payable/receivable offsetting.

The VAT on the purchase of subject lands in the amount of P45,158,928.12 was recognized and reported by petitioner in its 2008 4th quarter VAT return.[20] The said input tax was not utilized against any output tax but only carried over to the succeeding quarterly VAT returns until

[12] Exhibits "F", "G", "K" to "DD".
[13] Exhibits "BB" and "CC".
[14] Exhibits "F" to "X".
[15] Exhibits "KK' and "KK-1".
[16] Exhibit "C".
[17] Exhibit "HH".
[18] Exhibit "II-1".
[19] Exhibit "II-2".
[20] Exhibit "L".

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the same was deducted as a VAT Refund/TCC claimed in the 2010 4th quarter VAT return[21] following petitioner's filing of a claim for refund for the same amount. The input tax was never applied against petitioner's output tax since it had only VAT zero-rated sales.

She further testified that petitioner did not impose VAT on the rental income received from 6-24 PHI since the latter is a PEZA-registered enterprise entitled to VAT zero rating on its purchases. Hence, petitioner subjected its billings and receipts of rentals from 6-24 PHI as VAT zero-rated. Only the rentals received from 6-24 PHI was reported in the VAT Returns filed by petitioner since the latter does not have any other source of revenue. However, the rentals for the 4th quarter of 2008 were received by petitioner only in February 2009[22] thus, it was reported in the 1st quarter of 2009 VAT return in the amount of P8,013,060.00.[23]

She further explained that petitioner only reported the rentals for the 4th quarter of 2008 in the VAT return for the 1st quarter of 2009 since it is engaged in the sale of service and as such, revenue from sale of service is required to be reported in the VAT returns in the period that it is actually or constructively received as supported by the official receipts. Thus, the rentals received in the subsequent periods were reported in the VAT returns covering the period when the said rentals were received.[24]

After formal offer of evidence, petitioner rested its case as indicated in the Resolutions dated March 23, 2012[25] and July 4, 2012.[26]

During the hearing for the reception of evidence for respondent, her counsel manifested that respondent would not present evidence as there was no final report from the examiner of the case.[27]

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[21] Exhibit "CC".
[22] Exhibit "GG-1".
[23] Exhibit "O".
[24] Exhibits "R", "T", "V", "W", "X", "Y", "Z", "AA", "BB" and "CC".
[25] Docket, Volume II, pp. 637-638.
[26] Docket, Volume II, pp. 661-664.
[27] Minutes of the hearing held on May 15, 2012, docket, Volume II, p. 654.

In compliance with the Court's directive, petitioner filed its Memorandum[28] on November 14, 2012, while respondent on November 23, 2012.[29]

STATEMENT OF ISSUES

The parties submitted the following issues[30] for the determination of the Court:

a. Whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of FORTY FIVE MILLION ONE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED TWENTY EIGHT PESOS and 12/100 (P45,158,928.12) on its unutilized input VAT attributed to its zero rated sale of services in 2008.

b. Whether petitioner is a VAT-registered entity;

c. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;

d. Whether the input taxes being claimed are due or paid;

e. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

f. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

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[28] Docket, Volume II, pp. 703-717.
[29] Docket, Volume II, pp. 721-728.
[30] Issues, JSFI, docket, Volume I, p. 83.

g. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made.

The RULING OF THE COURT

Pertinent to petitioner claimed entitlement to a refund in the amount of P45,158,928.12, allegedly representing its unutilized input VAT incurred in the 4th quarter of the taxable year 2008 attributable to its zero-rated sales is *Section 112 of the NIRC of 1997*, as amended, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person

> making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

First, the Court must determine whether the instant Petition for Review was seasonably filed to merit this Court's consideration.

Pursuant to Section 112 and as expounded in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (Aichi),[31] a VAT-registered person, such as petitioner, may within two (2) years from the close of the taxable quarter when the relevant sales were made, apply with respondent a claim for refund or issuance of tax credit certificate of creditable input tax attributable to such sales.

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[31] G.R. No. 184823, October 6, 2010.

It is admitted that the instant case pertains to a claim for refund of input VAT incurred in the 4th quarter of 2008. It is equally admitted that petitioner reported the alleged zero-rated sales only when the lease payments were received in the 1st quarter of 2009. Hence, the two-year prescriptive period should be reckoned from the end of the 1st quarter of 2009 or on March 31, 2009 when the alleged zero-rated sales were made. Counting from said date, petitioner had two years or until March 31, 2011 to file its administrative claim. Evidently, petitioner seasonably filed its administrative claim on July 26, 2010.

Section 112 of the NIRC of 1997, as amended, also provides that respondent had one hundred twenty (120) days from filing to act on the claim. Upon receipt of the adverse decision or expiration of 120-day period, petitioner had thirty (30) days to elevate the case to this Court.

In the instant case, the 120-day period ended on November 23, 2010. Thus, petitioner had 30 days or until December 23, 2010 to file its judicial claim for refund. Clearly, the instant Petition for Review was also filed on time on December 16, 2010.

Going now to the merits of the relief sought, Section 112(A) of the NIRC of 1997, as amended, provides the requisites for entitlement to a refund/tax credit, namely:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

On the first requisite, petitioner claims that it is entitled to a refund of its unutilized input VAT for the 4th quarter of 2008 arising from the purchase of land from 6-24 PHI attributable to its zero-rated sales, in accordance with Section 108(B)(3) of the NIRC of 1997, as amended by Republic Act No. 9337, to wit:

> **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

A scrutiny of petitioner's amended Quarterly VAT Returns reveals that it reflected unutilized input VAT in the amount of ₱45,158,928.12[32] for the 1st quarter of 2008 and VAT zero-rated sales/receipts in the following amounts:

Exhibit	Period	Zero-rated sales
O	1st Quarter 2009	₱ 8,013,060.00
R	2nd Quarter 2009	17,221,433.40
V	3rd Quarter 2009	5,367,600.00
T	4th Quarter 2009	8,051,400.00
X	1st Quarter 2010	11,271,960.00
Z	2nd Quarter 2010	8,453,970.00
AA	3rd Quarter 2010	8,453,970.00
CC	4th Quarter 2010	8,453,970.00
DD	1st Quarter 2011	8,876,668.50

[32] Line 21F, Exhibits "F" and "L".

From the foregoing, it is evident that the reported unutilized input VAT for the 4th quarter of 2008 allegedly attributable to the zero-rated receipts declared in the 1st quarter of 2009 to 1st quarter of 2011 is the subject of the present claim.

However, evidence shows that petitioner did not declare any zero-rated sales in its Quarterly VAT Return for the 4th quarter of 2008 when the input tax subject of refund was incurred and declared[33] since as explained by its own witness, Mylene A. Bautista, the rental payments for the 4th quarter of 2008 were received only in February 2009.[34] Thus, petitioner declared its zero-rated sales only in the subsequent taxable quarters. Similarly, the rentals received in the subsequent periods were reported in the VAT returns in which the said rentals were received.

Under Section 108(A) of the NIRC of 1997, as amended, and implemented by Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 04-2007, sales of services or lease of properties are recognized as sales for VAT purposes upon receipt of payment, to wit:

> **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> (A) *Rate and Base of Tax.*—There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon recommendation of the Secretary of Finance, shall effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions have been satisfied: xxx
>
> The phrase **'sale or exchange of services'** means the performance of all

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[33] Exhibits "F" and "L".
[34] Exhibit "KK", Item 30 of the Testimony Proper

> kinds of services in the Philippines for others for a fee, remuneration or consideration...
>
> xxx xxx xxx
>
> The term **'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, **rental** or royalty, including the amount charged for materials supplied with services and deposits and advance payments actually or constructively **received** during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax. (Emphasis supplied.)
>
> **SECTION 9.** ***VAT on the Sale of Services and Use or Lease of Properties***. – Sec. 4.108-1 of RR No. 16-2005 is hereby amended to read as follows:
>
>> **SEC. 4.108-1.** ***VAT on the Sale of Services and Use or Lease of Properties.*** – Sale or exchange of services, as well as the use or lease of properties, as defined in Sec. 108(A) of the Tax Code shall be subject to VAT, equivalent to twelve percent (12%) of the gross receipts (excluding VAT) starting February 1, 2006. (Emphasis supplied.)

Applying the above provisions to the instant case, petitioner was correct in declaring its zero-rated sales only in the subsequent taxable quarters in which the said rentals were received.

This notwithstanding, petitioner's claim must still fail for its failure to establish that the alleged sale of services to 6-24 PHI should be subject to zero-rating.

Record shows that petitioner submitted a Certification of Registration from the PEZA for the year 2008 to prove that its client 6-24 PHI is a special economic zone enterprise.[35] But note that the period covered by the instant claim for refund is taxable year 2009, *i.e.,* when petitioner reported its alleged zero-rated sales upon which the claimed input VAT may be attributed. In other words, petitioner should have presented a Certification by PEZA that would prove that 6-24 PHI was a duly registered PEZA enterprise for the year 2009. In view of petitioner's failure to prove that 6-24 PHI was registered as a PEZA enterprise in the year 2009, petitioner's sales thereto shall be denied VAT zero-rating.

In view of the foregoing findings, the Court sees no further need to address whether petitioner complied with the other requisites to be entitled to the claim for refund.

WHEREFORE, the Petition for Review dated December 16, 2010 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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[35] Exhibit "D-1".

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.

ERLINDA P. UY
Chairperson

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice