

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB No. 771
(CTA Case No. 7103)

Present:

-versus-

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.:

**COVANTA ENERGY PHILIPPINE
HOLDINGS, INC.,**

Respondent.

Promulgated:

JUL 19 2012

X- - - - -

DECISION

CASTAÑEDA, JR., J.:

Before Us is a Petition for Review assailing the Decision dated September 15, 2010 ordering Covanta Energy Philippine Holdings, Inc. to pay the reduced assessed amount of P601,404.77 representing its 2000 EWT liability, inclusive of interest and penalties, in addition to deficiency and delinquency interests, and the Resolution dated April 12, 2011 denying the *re*

Commissioner of Internal Revenue's Motion for Reconsideration both issued by the Court of Tax Appeals ("CTA") First Division in the case entitled, "Covanta Energy Philippine Holdings, Inc. vs. Commissioner of Internal Revenue", docketed as CTA Case No. 7103.

THE FACTS

Covanta Energy Philippine Holdings, Inc. ("CEPHI") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.¹

The Commissioner of Internal Revenue ("CIR") is a public official tasked to decide disputed assessments, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters arising under the National Internal Revenue Code ("NIRC").²

On January 23, 2004, the CIR issued final assessment notice with the corresponding demand letter ("FAN") which was received by CEPHI concerning its alleged calendar year 2000 value added tax ("VAT"), expanded withholding tax ("EWT"), compromise penalty on withholding tax ("WT") on compensation and documentary stamp tax ("DST") liabilities in the aggregate amount of P2,196,138.04, detailed as follows: *ju*

¹ Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7103, p. 86.

² Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7103, p. 87.

Value Added Tax	P 1, 252, 869.02
Expanded Withholding Tax	862, 804.35
Compromise Penalty on Withholding Tax on Compensation	1, 000.00
Documentary Stamp Tax	<u>79, 464.67</u>
	P 2, 196, 138.04 ³

On March 18, 2004, CEPHI through Mr. Manolito P. Manalo protested the FAN. It also submitted substantial documents in support of its protest.⁴

On November 19, 2004, CEPHI paid the amount of P34, 309.83 in the settlement of its DST liability.⁵

Due to CIR's failure to act on the protest, CEPHI filed a petition for review with the CTA's First Division on November 25, 2004.

In view of CEPHI's compliance with the tax amnesty law under R.A. 9480, on May 12, 2009, the Court in Division resolved to cancel and set-aside the assessment for VAT and DST deficiencies for the year 2000.⁶

In the Decision dated September 15, 2010, the Court in Division partially granted the petition, ordered CEPHI to pay its 2000 EWT liabilities, inclusive of interest and penalties in the reduced amount of P601,404.77, in addition to deficiency and delinquency interests and cancelled the compromise penalty of P1,000.00. The dispositive portion of the Decision dated September 15, 2010 reads:

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**.

The compromise penalty imposed on petitioner in the amount of P1,000.00 is hereby **CANCELLED**, while the assessment for deficiency expanded withholding tax (EWT) issued by respondent against petitioner for taxable year 2000 is **MODIFIED**. Petitioner is hereby **ORDERED TO PAY** deficiency expanded



³ *Ibid.*

⁴ Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7103, p. 88.

⁵ Joint Stipulation of Facts and Issues, Docket, CTA Case No. 7103, p. 91.

⁶ Docket, CTA Case No. 7103, pp. 889-890.

withholding tax in the amount of **P601,404.77**, inclusive of interest and penalties, computed as follows:

BASIC DEFICIENCY EWT			P 220,701.39
Add:	25% Surcharge	P 55,175.35	
	20% Deficiency Interest (up to October 18, 2005)	208,850.03	
	20% Delinquency Interest (P220,701.39 + P55,175.35 +P208,850.03) X 20% - from February 23, 2004 to October 18, 2005	160,159.04	424,184.42
TOTAL AMOUNT DUE			P 644,885.81
Less:	Voluntary payment of deficiency EWT per Exhibit "GGG"		
	Basic Tax	P 22,190.41	
	Interest up to October 18, 2005	21,290.63	43,481.04
AMOUNT STILL DUE			P 601,404.77

Additionally, petitioner is hereby **ORDERED TO PAY** respondent the following:

- (a) deficiency interests at the rate of twenty percent (20%) *per annum* on basic expanded withholding tax of P198,510.98 (P220,701.39 less P22,190.41) computed from October 19, 2005 until full payment thereof, pursuant to Section 249 (B) of the NIRC of 1997; and
- (b) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency tax of P601,404.77 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 19, 2005 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED.⁷

Dissatisfied, the CIR moved to reconsider the Decision dated September 15, 2010; however, the Court in Division denied the same for lack of merit as shown in the Resolution dated April 12, 2011.⁸ *gc*

⁷ Rollo, pp. 24-55. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.

⁸ Rollo, p. 70.

THE ISSUES

Unfazed, the CIR appealed to the Court *en banc* raising the following issues:

I. The deficiency tax assessment is rendered final, executory and unappealable.

II. The disputed assessments made are presumed valid and binding upon respondent. No concrete and sufficient evidence was provided to overcome such presumption as to the 2000 EWT imposed on rentals, professional fees paid to general professional partnerships, and professional fees paid to Tecumseh.⁹

On June 27, 2011, CEPHI filed its comment to the petition for review.¹⁰

On July 22, 2011, the Court in Division issued a Resolution ordering the parties to file their memoranda within a period of thirty (30) days from receipt thereof.¹¹

In the Resolution dated October 5, 2011, the Court noted that both the CIR and CEPHI signified that they will be adopting their arguments in the Petition for Review and Comment respectively, as their memorandum. Also on such date, the Court in Division deemed the case submitted for decision.

THE COURT'S RULING

**CEPHI'S TIMELY APPEAL AND
SUBMISSION OF RELEVANT SUPPORTING
DOCUMENTS DID NOT RENDER THE
ASSESSMENT ON ITS 2000 EWT
DEFICIENCY FINAL, EXECUTORY AND
DEMANDABLE.** 

⁹ Rollo, pp. 11, 16, 18 & 19.

¹⁰ Rollo, p. 82.

¹¹ Rollo, pp.100-101.

According to the CIR, CEPHI protested the assessment on March 18, 2004. The 180-day period within which the CIR is to act on the protest should be reckoned from March 18, 2004 until September 14, 2004. CEPHI is given a period of 30 days from September 14, 2004 or until October 14, 2004 within which to elevate the case before the CTA. When the Petition for Review was filed on November 25, 2004, the FAN became final, executory and unappealable because the appeal to CTA was undertaken beyond the reglementary period.

Also, this Court has no jurisdiction over the case because the deficiency tax assessments have already become final and executory due to CEPHI's failure to submit all relevant documents. Under Section 228 of the 1997 NIRC, all relevant documents in support of the protest on the assessment must be submitted within 60 days from the filing of the protest. CEPHI did not present all relevant documents such as journal vouchers and other supporting documents; thus, the FAN on its EWT deficiency has become final and executory. As regards with the withholding tax on compensation, CEPHI also failed to submit the alphalist of employees for taxable year 2000 and proof that it is willing to pay the compromise penalty.

CEPHI on the other hand, counters that the CIR acknowledged that it submitted substantial documents.

We disagree with the CIR's posture.

A taxpayer contesting the assessment of internal revenue taxes is allowed to avail of the following remedies specified in Section 228 of the 1997 NIRC: *Re*

"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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

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.

"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 (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 (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.

Under the law, a taxpayer is given a period of 30 days to administratively protest the assessment and 60 days from the filing of protest to submit relevant supporting documents. From receipt of an unfavorable ruling on the protest, the taxpayer may appeal before the CTA within a period of 30 days. In the event of inaction on the protest, the taxpayer may appeal within the same period from the lapse of the 180-day period.

Although CEPHI mentioned in the letter protest that it submitted documents when it filed its administrative protest on March 18, 2004, it also made known in the letter protest that it reserves the right to submit additional 

documents. This being the case, the Court in Division correctly recognized CEPHI's right to present additional evidence 60 days from protest under Section 228 of the 1997 NIRC, or until May 17, 2004. By law, the CIR is given 180 days to rule on the protest. CEPHI's appeal on November 25, 2004 was timely filed within 30 days from the expiration of the 180-day period pursuant to Section 228 as stated in the Resolution dated April 12, 2011. We quote:

In view of such reservation to submit additional documents consistently made by petitioner and in accordance with Section 228 of the NIRC, petitioner had 60 days from March 18, 2004, or until May 17, 2004 to submit any additional documents, if required or it subsequently deemed necessary. Thereafter, respondent had 180 days, or until November 13, 2004 to rule on the protest. Only upon the lapse of the 180-day period and within the subsequent 30 days or until December 13, 2004, that petitioner could exercise its option to appeal respondent's inaction before this Court. Thus, the instant Petition was seasonably filed on November 25, 2004.¹²

Moreover, on May 13, 2005, the parties have stipulated that CEPHI submitted substantial documents in support of numerous issues in its protest.¹³ CEPHI's compliance as to the presentation of pertinent document relative to its protest was likewise emphasized in the CIR's answer to the petition.¹⁴

In filing an administrative protest, the documents referred to in Section 228 of the 1997 NIRC are those which the taxpayer feels would be necessary to support the protest and not what the CIR feels should be submitted; otherwise, *je*

¹² Rollo, p. 67

¹³ Docket, CTA Case No. 7103, p. 88.

¹⁴ Docket, CTA Case No. 7103, p. 44.

the taxpayer would always be at the mercy of the BIR which may require production of such documents which taxpayer could not produce.¹⁵

Clearly, the assessment on CEPHI's 2000 EWT deficiency has not become final, executory and demandable due to its appeal with the CTA and submission of relevant supporting documents within the prescribed period.

PROFESSIONAL FEES PAID TO GENERAL PROFESSIONAL PARTNERSHIPS SUCH AS ACCRA, SYCIP AND SGV ARE NOT SUBJECT TO EWT.

CEPHI claims that the professional fees paid to several general professional partnerships ("GPPs") such as ACCRA Law Office ("ACCRA"), Sycip Gatmaitan Law and Hernandez Law Office ("Sycip") and SGV and Co. ("SGV") are non-taxable. However, the CIR opposes the admissibility of exhibits pertaining to official receipts on payment of professional fees to GPPs as proof of their contents. These official receipts are hearsay evidence because the officials or authorized representatives who prepared said documents were not presented as witnesses. Any evidence whether oral or documentary should be considered as hearsay when it is not based on the personal knowledge of a witness.

The CIR further alleges that CEPHI never presented as evidence the contract it entered with the three law firms to prove that there was sufficient justification for the payments of professional fees. 

¹⁵ *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, Telengtan Brothers and Sons, Inc.*, CTA EB Case No. 820, June 11, 2012 citing the case of *Business One, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6832, October 7, 2008. See *Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue*, CTA Case No. 5696, August 16, 2001.

CEPHI asserts that the CIR erroneously concluded that it should have presented the officers who prepared the official receipts to prove that the income payments to GPPs were non taxable.

The CIR's objection to the admissibility of CEPHI's exhibits is belated. She did not file any comment or objection to CEPHI's formal offer of evidence despite due notice.

The CIR failed to mention any law or regulation requiring that the exemption of income payments to GPPs from withholding tax is dependent upon the terms and conditions of contracts with GPPs.

The CIR's stance deserves scant consideration.

For tax purposes, a general professional partnership is an entity distinct and separate from the partners. Under Section 26 of the 1997 NIRC, income tax exemption only covers general professional partnership; while the partners in a general professional partnership are liable to income tax. Section 2.57.5 of Revenue Regulations 2-98 further states that exemption from withholding tax extends to income payments made to persons enjoying exemption from payment of income taxes.¹⁶ *jc*

¹⁶ *Goulds Pump Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7057, February 4, 2011; *Direct Container Lines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7616, September 10, 2009; *Metro, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6356, June 9, 2009; and *Sony Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6185, October 26, 2004 all citing *Rufino R. Tan v. Ramon R. Del Rosario, Jr., as Secretary of Finance and Jose U. Ong, as Commissioner of Internal Revenue*, G.R. Nos. 109289 and 109446, October 3, 1994, 237 SCRA 324.

The tax treatment of general professional partnerships and the partners is echoed in the case of *Rufino R. Tan v. Ramon R. Del Rosario, Jr., as Secretary of Finance and Jose U. Ong, as Commissioner of Internal Revenue*¹⁷ in this wise:

"Exempt partnerships," upon the other hand, are not similarly identified as corporations nor even considered as independent taxable entities for income tax purposes. A general professional partnership is such an example. Here, the partners themselves, not the partnership (although it is still obligated to file an income tax return [mainly for administration and data]), are liable for the payment of income tax in their individual capacity computed on their respective and distributive shares of profits. In the determination of the tax liability, a partner does so as an individual, and there is no choice on the matter. In fine, under the Tax Code on income taxation, the general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners.

Contrary to the CIR's allegation, CEPHI's witness Ms. Rowena V. Guinto verified that there are receipts issued proving payment of professional fees to GPPs and explained the EWT due on these fees.

In her supplemental sworn statement to questions propounded by Atty. Jerome B. Arnaldo marked as Exhibit "Q", Ms. Guinto stated that:

A: As shown in the summary under the heading "Non-Taxable Amount", we paid the total amount of P537,200.00 to General Professional Partnerships ("GPPs"). Specifically, these GPP's were the ACCRA Law Office, Sycip Salazar Gatmaitan & Hernandez Law Office, and SGV & Co. We also paid a total of P21,545.52 as reimbursements for our out-of-pocket expenses. Lastly, we paid a total of P1,565,715.45 to a non-resident foreign corporation for services performed outside the Philippines.

Q: You stated earlier that the EWT due on professional fees is only P91,742.27. How much of this amount has the Petitioner already paid? 

¹⁷ G.R. Nos. 109289 and 109446, October 3, 1994, 237 SCRA 324.

A: The Petitioner paid P48,131.31 so there is still a deficiency of P43,610.93.

Q: You mentioned that this summary was based on official receipts and invoices. I am showing to you **Exhibits "P-1" to "P-39"**. What is the relation do these exhibits have to the official receipts and invoices that you mentioned?

A: These are the official receipts and invoices that I was referring to. (Emphasis supplied.)¹⁸

These statements were affirmed during the hearing conducted last September 14, 2005:

ATTY. ARNALDO:

Your Honors, may we request that the Supplemental Sworn Statement be marked as Exhibit "Q" and that the witness's signature be marked as Exhibit "Q-1".

JUSTICE CASTAÑEDA:

All right. Mark them.

ATTY. ARNALDO:

Q: Again, I am presenting to you your Supplemental Sworn Statement Ms. Guinto. Do you reaffirm the contents of this Sworn Statement.

MS. GUINTO.

A: Yes.¹⁹

On the basis of the receipts duly proffered by CEPHI, the Court in Division correctly declared that the amount of P548,638.04 representing professional fees paid to general professional partnerships and out-of-pocket expenses is not subject to withholding tax. The Court in Division explained that: 

¹⁸ Exhibit "Q". See Docket, CTA Case No. 7103, p. 647-654. See Resolution dated April 12, 2011, Rollo, p. 68.

¹⁹ TSN dated September 14, 2005, pp. 15-16.

After careful examination of the pertinent supporting documents in relation to the above-quoted provisions of law and jurisprudence, this Court finds that the amount of P548,638.04 (P537,200.00 plus P11,438.04), representing professional fees paid to general professional partnerships and out-of-pocket expenses duly supported by pertinent documents, should not be subjected to withholding tax; while the remaining out-of-pocket expenses/reimbursements of P10,107.48 (P21,545.52 less P11,438.04) should be subject to 10% withholding tax. The details of the amount of P548,638.04 are as follows:

Payee	Exhibit	Amount	
		GPPs	Out-of-Pocket Expenses/Reimbursements
ACCRA Law Office	P-2	P30,000.00	
ACCRA Law Office	P-4	36,000.00	
ACCRA Law Office	P-7		P5,936.54
ACCRA Law Office	P-9	30,000.00	
ACCRA Law Office	P-11	30,000.00	
ACCRA Law Office	P-13	30,000.00	
ACCRA Law Office	P-15	30,000.00	
ACCRA Law Office	P-17	30,000.00	
ACCRA Law Office	P-19	36,000.00	P5,501.50
ACCRA Law Office	P-25	36,000.00	
ACCRA Law Office	P-28	36,000.00	
ACCRA Law Office	P-31	78,000.00	
ACCRA Law Office		(30,000.00)	
SGV & Co.	P-37	140,000.00	
Sycip Salazar	P-38	25,200.00	
TOTAL		P537,200.00	P11,438.04²⁰

jr

²⁰ Rollo, pp. 42-43.

Should the CIR treat the receipts showing payments by CEPHI to ACCRA, Sycip and SGV as objectionable, she should have made it known to the Court in Division within a reasonable period when CEPHI presented the same as its evidence. But the CIR failed to make a timely objection. Under Section 36, Rule 132 of the Revised Rules on Evidence, the purpose of making an objection is to warn and notify the court and the opposing counsel that a ruling is considered erroneous and, if not corrected, will be the basis of an appellate review.²¹ Due to the CIR's failure to make a timely objection on the proffered receipts, these pieces of documentary evidence are admissible.

**THE COURT IN DIVISION'S FINDINGS ON
CEPHI's 2000 EWT IMPOSED ON
PROFESSIONAL FEES PAID TO TECUMSEH
AND ON RENTALS ARE DULY
SUBSTANTIATED.**

Moreover, the CIR insists that the Memorandum Report dated December 28, 2004 prepared by revenue officers Dolores Sumera and Minerva Dimaano attest that the payment of professional fees of P1,565,715.45 made to Tecumseh Energy Services Corporation, a domestic corporation doing business in the Philippines, is a transaction subject to income tax or withholding tax on income earned within and without the Philippines. CEPHI was not able to dispute the allegation that Tecumseh is a non-resident foreign corporation and the payments made were for services rendered outside the Philippines. *je*

²¹ *People of the Philippines v. Cresencio Siccuan, et al.*, G.R. No. 113790, April 11, 1997, 271 SCRA 168.

In her Motion for Reconsideration, the CIR raised the same argument before the Court in Division. We reiterate the Court in Division's pronouncements on CEPHI's liability to 10% withholding tax on payments to Tecumseh Energy Services Corporation:

The same is true insofar as the amount of P1,565,715.45 allegedly paid to a non-resident foreign corporation for services performed outside the Philippines. Petitioner was unable to establish that the transaction involved a non-resident foreign corporation and the payments were for services rendered outside the Philippines. That being the case, it should be subject to a 10% withholding tax."²²

On account of rentals, the CIR relies again on the Memorandum Report dated December 28, 2004 declaring that the assessments of correct withholding taxes on rentals are lifted from various contracts of lease submitted by the taxpayer. The contracts of lease disclose that the total rental expenses in the year 2000 and advance rentals for the years 1999 and 2000 amounted to P6,660,413.23, P1,575,263.13 and P2,135,789.48, respectively.

The CIR's contention is unmeritorious.

Considering that the Court in Division's findings on CEPHI's EWT deficiency on rentals of P378,971.97 are based on the numerous contracts of lease²³, the same should be sustained. The Court in Division correctly computed CEPHI's 2000 EWT deficiency on rentals as follows: *gc*

²² Rollo, p. 69.

²³ Rollo, p. 52. See Exhibits "W-1", "W-2", "W-3", "W-4", "W-17", "W-18", "W-31", "W-33", "W-36" and "W-37."

Lessor	Period	Reference	Monthly Rental (Net of VAT)	Rental for Year 2000	Total
Camira Holdings	8/15/99-10/14/00	Exhibit W-1	P 85,000.00	P807,500.00	P1,258,832.73
	10/15/00 – 11/02/00		53,832.73	53,832.73	
	11/03/00-11/02/01		79,500.00	159,000.00	
	Advance Rental		230,500.00		
Trixie Brothers	9/03/99-11/02/00	Exhibit W-3	40,860.63	408,606.30	478,409.86
	11/03/00-11/02/01	Exhibit W-4	34,901.78	69,803.56	
Ofelia Chean	9/03/99-11/02/00	Exhibit W-17	114,366.32	1,143,663.20	1,339,038.98
	11/03/00-11/02/01	Exhibit W-18	97,687.89	195,375.78	
Federico Galang	6/13/00 – 6/13/01	Exhibit W-31	100,000.00	1,200,000.00	1,200,000.00
Pan American	7/25/99-7/24/00	Exhibit W-33	210,526.32		2,640,000.00
	Advance Rental			2,640,000.00	
	7/25/00-7/24/01		231,578.95		
Jobeliz Realty	9/01/99-2/28/00	Exhibit W-36			663,157.92
	3/01/00-8/31/00		52,631.58	315,789.48	
	9/1/00 – 2/28/01	Exhibit W-37	57,894.74	347,368.44	
	3/01/01 – 8/31/01				
TOTAL Rental subject to EWT					P7,579,439.49
X EWT Rate					5%
EWT Due on Rentals					P 378,971.97²⁴

²⁴ Rollo, p. 53.

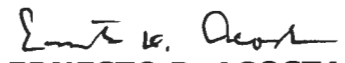
There being no cogent reason to disturb the findings of the Court in Division, CEPHI's 2000 EWT liability of P601,404.77, inclusive of interest and penalties, in addition to deficiency and delinquency interests remain.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The Court in Division's Decision dated September 15, 2010 and Resolution dated April 12, 2011 are **AFFIRMED**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

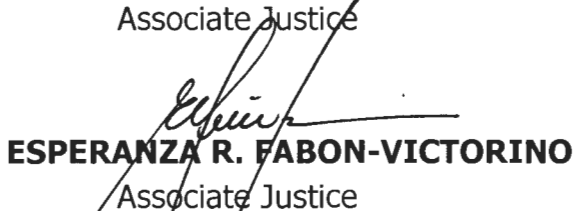

ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

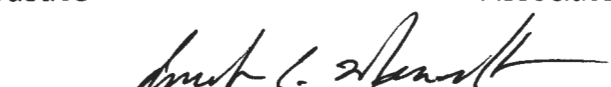

ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

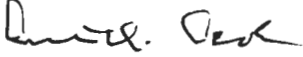

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice