REPUBLIC OF THE P HILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GRANDWORTH RESOURCES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1902
(CTA Case No. 8765)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ*.

Promulgated:

JAN 15 2020 1:06 p.m.

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DECISION

Fabon-Victorino, J.:

Before the Court is the Petition for Review[1] dated August 17, 2018 filed by Grandworth Resources Corporation, impugning the Decision[2] and Resolution[3] respectively dated April 17, 2018 and July 11, 2018, both rendered by the Court in Division in CTA Case No. 8765. The impugned Decision and Resolution dismissed petitioner's appeal for failure to elevate the Final Decision on Disputed Assessment (FDDA) in the form of an undated Preliminary Collection

[1] *Rollo*, pp. 7-43.
[2] Ibid. at pp. 51-66.
[3] Id. at pp. 68-72.

Letter (PCL) within 30 days from receipt thereof on November 14, 2012, either with respondent or with the Court in Division as decreed in Section 228 of the National Internal Revenue Code (NIRC), as amended, Revenue Regulations (RR) No. 12-99 and pertinent jurisprudence on the matter.

The facts follow.

Petitioner Grandworth Resources Corporation is a domestic corporation registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 000-715-414-000. It holds office at 6/F Jollibee Plaza Bldg., #10 Emerald Avenue, Pasig City.[4]

On the other hand, respondent is the Commissioner of Internal Revenue (CIR), legally vested with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, and approve and grant applications for tax refunds or tax credits pursuant to the provisions of the NIRC, as amended and other tax laws, rules and regulations.[5]

On June 23, 2009, petitioner received a Letter of Authority (LOA) No. 2008-00020379 dated June 10, 2009, authorizing Revenue Officer (RO) Mariano Flores and Group Supervisor (GS) Praxedio F. Tulio II to examine its books of account and other accounting record for all internal revenue taxes covering calendar year (CY) 2008.[6] With the LOA was the BIR's First Request for the Presentation of Record dated June 11, 2009.[7]

On July 7, 2009, petitioner submitted various documents listed in the BIR's First Request for the Presentation of Record.[8]

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[4] Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket (CTA Case No. 8765), p. 557.
[5] Par. 3, JSFI, ibid., at pp. 557-558.
[6] Exhibits P-3 and P-64.
[7] Ibid.
[8] Exhibits P-4 and P-64.

On July 22, 2009, petitioner received from the BIR a Second Request for the Presentation of Record,[9] to which petitioner complied by submitting the requested documents on August 11, 2009.[10]

Two days thereafter, or on August 13, 2009, petitioner received a Third and Final Notice from the BIR again requiring the presentation of books of accounts and other related record.[11] On August 20, 2009,[12] petitioner submitted documents specified on the said request.

On November 13, 2009, petitioner received a letter dated November 10, 2009 about the reassignment of its case from RO Flores to RO Ferrari Llamzon.[13]

On November 17, 2009, petitioner received a Revalidation Notice issued by OIC-Regional Director Jonas P. Amora, BIR Revenue Region No. 7 - Quezon City, informing it of the revalidation of LOA No. 2008-00020379 dated June 10, 2009 and the reassignment of the case to RO Llamzon.[14]

On January 27, 2010, LOA No. 2009-00012492 was issued, authorizing RO Alan Bueno and GS Maria Cecilia M. Masangya to examine petitioner's books of account and other accounting record for all internal revenue taxes for CY 2008.

On February 10, 2010, petitioner filed with BIR RDO No. 43B - West Pasig a letter dated February 8, 2010, stating that a prior LOA had already been issued to it for the same kind of taxes and period and had submitted the required documents.[15] It also sought clarification on the variance between the RDOs mentioned in the first and the subsequent LOA.[16]

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9 Exhibits P-5 and P-64.
10 Exhibits P-6 and P-64.
11 Exhibits P-7 and P-64.
12 Exhibits P-8 and P-64.
13 Exhibits P-9 and P-64.
14 Exhibits P-10 and P-64.
15 Exhibits P-12 and P-64.
16 Ibid. Under the first LOA, petitioner was registered under RDO No. 43A - *East* Pasig whereas the subsequent LOA mentioned that it was registered under RDO No. 43B - *West* Pasig.

On September 14, 2011, petitioner received a Notice of Informal Conference (NIC) dated July 18, 2011, on the results of the investigation conducted on its 2008 internal revenue tax liabilities and inviting it for an informal conference.[17]

On January 10, 2012, petitioner received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated December 21, 2011,[18] to which it filed a reply on January 25, 2012.[19]

On April 2, 2012, petitioner received the Formal Letter of Demand No. 43A-B294-08, with attached Details of Discrepancies and the corresponding Assessment Notices, all dated January 13, 2012 (FAN/FLD),[20] for deficiency Income Tax, VAT, and EWT, inclusive of interest, in the aggregate amount of ₱7,628,784.47 for TY 2008.[21]

On May 2, 2012, petitioner protested the FLD/FAN, seeking reconsideration of the assessment.[22]

On November 14, 2012, petitioner received an undated Preliminary Collection Letter (PCL), demanding payment of its tax liabilities in the amount of ₱7,628,784.47, as stated in the FAN, within ten (10) days from receipt thereof.[23]

On July 12, 2013, petitioner sent a letter to RD Amora, reiterating its earlier position in its protest letter of May 2, 2012.[24]

On July 15, 2013, petitioner received a Warrant of Distraint and/or Levy (WDL) dated May 23, 2013, signed by Ruth Vivian G. Gadia, Chief of the Collection Division, BIR Revenue Region No. 7 – Quezon City.[25]

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17 Exhibits P-13 and P-64.
18 Exhibits P-14 and P-64.
19 Exhibits P-15 and P-64.
20 Par. 4, JSFI, docket (CTA Case No. 8765), p. 558.
21 Ibid.
22 Exhibits P-16 to P-17-1; and P-64.
23 Exhibits P-18 and P-64.
24 Exhibits P-19 and P-64.
25 Exhibits P-20 and P-64.

On July 30, 2013, petitioner sent a letter dated July 29, 2013 to RD Amora, pertaining to its receipt of the WDL and prayed that it be quashed and cancelled in view of its pending request for reconsideration and reinvestigation on its alleged tax liabilities for TY 2008.[26]

On August 14, 2013, petitioner filed through registered mail an administrative appeal with respondent.[27]

On January 9, 2014, the amount of ₱7,628,784.47 garnished from petitioner's account with Metropolitan Bank & Trust Company – Ortigas Emerald Branch (Metrobank) was credited to the BIR's account.[28]

On February 7, 2014, petitioner filed a Petition for Review before the Court in Division for the nullification of the subject assessment issued against it.

On May 14, 2015, petitioner filed a Motion for Leave to Admit attached Amended Petition for Review,[29] with prayer for refund or issuance of a tax credit certificate (TCC) in its favor the amount of ₱7,628,784.47, hinged on the BIR's alleged illegal and erroneous assessment and collection of deficiency IT, VAT and EWT for TY 2008.

In the Resolution[30] dated July 23, 2015, the Court in Division denied petitioner's motion to admit Amended Petition for Review. On August 13, 2015, petitioner filed a Motion for Reconsideration which was denied in the Resolution[31] dated November 2, 2015.

On December 2, 2015, petitioner filed a Motion for Leave to Admit (attached Verified Amended Petition for Review).[32] The motion was denied by the Court in Division in its Resolution dated February 16, 2016. [33]

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26 Exhibits P-21 and P-64.
27 Exhibits P-22 and P-64.
28 Par. 5, JSFI, docket (CTA Case No. 8765), p. 558.
29 Docket (CTA Case No. 8765), pp. 716-737. Embodied in petitioner's Motion for Leave to Admit Amended Petition for Review is its Motion to Defer filing of Memorandum.
30 Ibid. at pp. 774-777.
31 Id. at pp. 792-795.
32 Id. at pp. 796-819.
33 Id. at pp. 861-865.

On March 10, 2016, petitioner filed a Motion for Reconsideration (Re: Resolution dated February 16, 2016),[34] which was denied in the Resolution[35] dated May 6, 2016.

On July 21, 2016, petitioner filed through registered mail its Memorandum (With Motion to Re-Open Trial).[36] This was also denied by the Court in Division in its Resolution[37] dated September 20, 2016 for lack of merit.

On October 7, 2016, petitioner filed a Motion for Reconsideration (Re: Resolution dated September 20, 2016),[38] which the Court in Division denied per Resolution[39] dated February 9, 2017.

Petitioner elevated its case to the Supreme Court via a Petition for Certiorari (With Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction),[40] citing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court in Division in denying it the opportunity to fully ventilate its case on the merits, as well as obtain complete relief from respondent's purported invalid deficiency tax assessment for TY 2008.

In a Minute Resolution[41] dated June 19, 2017, the Supreme Court dismissed the Petition for Certiorari for failure of petitioner to sufficiently show that the questioned resolutions were tainted with grave abuse of discretion.

On April 17, 2018, the Court in Division rendered the impugned Decision,[42] disposing the case in the following fashion:

> **WHEREFORE**, the Present Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

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34 Id. at pp. 866-876.
35 Id. at pp. 881-883.
36 Id. at pp. 945-983.
37 Id. at pp. 993-997.
38 Id. at pp. 999-1011.
39 Id. at pp. 1018-1020.
40 Id. at pp. 1023-1049.
41 Id. at p. 1310.
42 See Note 2.

SO ORDERED.

The Court in Division ratiocinated that under Section 228 of the NIRC, as amended, and as implemented by RR No. 12-99, the taxpayer, such petitioner, had thirty (30) days from receipt of the FDDA issued by respondent's subordinate, to elevate its appeal to the FDDA either with Court in Division, or with respondent, lest the assessment shall become final, executory, and demandable. Since petitioner received the undated PCL on November 14, 2012, it had thirty (30) days or until December 14, 2012 to elevate such PCL either to respondent or with the CTA in Division. Given that petitioner belatedly filed an administrative appeal with respondent on August 14, 2013, the disputed assessments became incontrovertible and could no longer be assailed via a petition for review before the Court in Division.

Petitioner sought,[43] but failed,[44] to obtain a reversal of the impugned Decision, hence, the present recourse.

Petitioner maintains that the persons with legal competence to issue FDDAs are the Regional Director, Assistant Commissioner-Large Taxpayer's Service and Assistant Commissioner-Enforcement and Advocacy Service.[45] Since the subject PCL was impermissibly issued by a mere revenue district officer, who is not among the individuals enumerated in Revenue Memorandum Circular (RMC) No. 11-2014, the undated PCL it received on November 12, 2014 could not be deemed an FDDA appealable either with respondent or the Court in Division.

Further, the RDO's issuance of the PCL was not for the purpose of deciding its administrative protest but mainly to safeguard against prescription of respondent and his subordinates' right to collect internal revenue taxes. It is for this reason that the PCL could not be considered as the BIR's

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43 Petitioner's *Motion for Reconsideration* dated May 3, 2018, docket (CTA Case No. 8765), pp. 1334-1343.

44 See Note 3.

45 Petitioner cites Revenue Memorandum Circular (RMC) No. 11-2014 in support of its position.

FDDA which could be the legally assailed before respondent or with the Court in Division.

For petitioner, it is the WDL issued by respondent's subordinate that should be deemed as respondent's appealable action that could be challenged before with respondent or with the Court in Division. Given that it received said WDL on July 15, 2013, it had thirty (30) days, or until August 14, 2013 to elevate the same before respondent, or the Court in Division. Therefore, it seasonably lodged its administrative appeal with respondent on August 14, 2013, preventing the subject assessment from attaining immutability.

And since respondent garnished petitioner's bank deposits on January 9, 2014, or after the filing of its administrative appeal with respondent, such action is appealable with the Court in Division. Thus, it had another thirty (30) days, or until February 10, 2014[46] to seek judicial redress with the Court in Division. In fine, it also timely instituted its Petition for Review on February 7, 2014, vesting the Court in Division with competence to hear and determine the present case, argues petitioner.

On the merits of the case, petitioner claims that a taxpayer has a period of fifteen (15) days from receipt of the PAN within which to file its response/reply thereto, lest the its right to due process in relation to the assessment enshrined in Section 228 of the NIRC, as amended, as implemented RR No. 12-99 is violated. Since petitioner received the PAN on January 10, 2012, it had fifteen (15) days or until January 25, 2012 to file a response/reply to the PAN. Hence, respondent's precipitate issuance of the FAN/FLD on January 13, 2012 or barely three (3) days from petitioner's receipt of the PAN is offensive of its right to due process.

Also flawed is respondent and his agents' neglect to satisfactorily establish the factual and legal bases of the FAN/FLD, particularly its finding on alleged: 1) undeclared sales of ₱62,525.03; 2) unsupported input tax credits of ₱15,471.23; and 3) the periods covered by the deficiency

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[46] February 8, 2014 fell on a Saturday.

VAT and EWT assessments. All said, the deficiency tax assessments are void and without legal consequence, justifying their cancellation and withdrawal.

Respondent failed to file his comment/opposition to the instant petition, despite notice.[47]

THE RULING OF THE COURT

The instant petition must fail.

Basic is the rule that an invalid assessment yields no valid fruit.[48] However, to legally pronounce the nullity of the assessments in question, the Court in Division must foremost possess the requisite legal competence to adjudicate the present controversy.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[49] Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties.[50] The *rationale* for this is not that difficult to perceive - To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[51]

The exclusive appellate jurisdiction of the Court in Division over respondent's or his subordinates' decision on

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[47] Records verification dated January 7, 2019, *rollo*, p. 77.

[48] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018; *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014; *Commissioner of Internal Revenue vs. Reyes*, G.R. No. 159694, January 27, 2006.

[49] *Foronda-Crystal vs. Son*, G.R. No. 221815, November 29, 2017.

[50] See *Heirs of Concha, Sr. vs. Spouses Lumocso*, G.R. No. 158121, December 12, 2007.

[51] See *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

disputed assessments is found in Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, which states:

> 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 disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

On the other hand, an assessment is converted into a disputed assessment after the taxpayer had seasonably filed its protest at administrative level pursuant to Section 228 of the NIRC, as amended.[52] In turn, the adverse action taken by respondent or his agents on the taxpayer's administrative protest to the FAN/FLD is the matter that may be the proper subject of review by the Court in Division.[53]

In the recent case of *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.,*[54] the Supreme Court expounded on the options conferred to the taxpayer in challenging the BIR's decision on disputed assessment in this wise:

> 1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may

52 See *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.
53 See *Commissioner of Internal Revenue vs. Villa,* G.R. No. L-23988, January 2, 1968.
54 G.R. No. 221780, March 25, 2019.

appeal to the CTA within 30 days from the lapse of the 180-day period.

Thus, when an adverse decision or action was taken by respondent's subordinate on a taxpayer's administrative protest against the assessment, the latter has thirty (30) days from receipt thereof to challenge the same before the Court in Division, or in the alternative before respondent. Conversely, failure of the taxpayer to avail either of these legal remedies will render the assessment final, executory, and demandable.[55]

Among the actions tantamount to a denial of a taxpayer's protest was exemplified in *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals, et al.*,[56] where it was ruled that the letter issued by the BIR calling for the payment of deficiency taxes, alongside a warning that it would enforce its authority to collect in the event that the same are not paid, after the taxpayer had filed its administrative protest is deemed a final decision on a taxpayer's protest.

More importantly, no less than petitioner acknowledged the tenet that collection letters demanding for payment of tax liabilities, issued by the BIR after the taxpayer had filed its administrative protest to the FAN/FLD is equivalent to a denial of protest,[57] hence, appealable either with respondent or with the Court in Division.

In this case, on April 2, 2012, petitioner received the FAN/FLD with Details of Discrepancy dated January 13, 2012, to which it timely protested on May 2, 2012. On November 14, 2012, it received an undated PCL bearing the following notation:

> To avoid the accumulation of interest and surcharges, it is requested that *you pay the aforesaid tax liability/ies within ten (10) days from receipt hereof at the Revenue District Officer, RDO 43A – East Pasig, Pasig City*. However, if payment had already been made, please send

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55 See Section 228 of the NIRC, as amended and Section 3, RR No. 12-99, as amended by RR No. 18-13.

56 G.R. No. L-25289, June 28, 1974.

57 Par. 51, petitioner's Memorandum (With Motion to Re-Open Trial) dated July 21, 2016, docket (CTA Case No. 8765), p. 957.

> or bring to us your copies of the receipts of payment together with this letter to be the bases for cancelling/closing your liability/ies. *Otherwise, we shall be constrained to enforce the collection hereof thru the administrative summary remedies provided for by law, without further notice.*

Perusal of the PCL shows that the BIR reiterated its demand for payment of deficiency taxes stated in the FAN/FLD dated January 13, 2012, with warning that failure to do so would result in its implementation of remedies for collection of taxes. This clearly reveals rejection of petitioner's administrative protest. Consistent with the above observations, petitioner had 30 days, or until December 14, 2012 to appeal such PCL either with respondent, or with the Court in Division. Given that petitioner belatedly raised its appeal with respondent on August 14, 2013, the assessments in question became immutable and further scrutiny by the Court in Division on the merits thereof is no longer possible.

Petitioner argues that the subject PCL is not a valid FDDA since it was issued by a mere revenue district officer, or a person not authorized to issue the same under RMC No. 11-2014.

The argument is implausible.

It is a well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward).[58]

Since RMC No. 11-2014 was issued only on February 18, 2014, and there being no express mention that the same may be conferred retroactive effect, it cannot be made to operate on the subject PCL received by petitioner on

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[58] *Republic of the Philippines vs. Larrazabal, Sr.,* G.R. No. 204530, July 26, 2017; and *Spouses Lintag vs. National Power Corporation,* G.R. No. 158609, July 27, 2007.

November 14, 2012, which is prior to the efficacy of such revenue issuance.

Petitioner theorizes that the PCL in question is not a FDDA since the purpose for which it was issued was to protect respondent against the adverse effects of prescription and not as a definitive action on its administrative protest.

The Court is not persuaded.

Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered. Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.[59]

To be emphasized is the fact that the documents[60] relied upon by petitioner to shore up its stance were not formally offered[61] as evidence in the proceedings below, for which reason the same may not be utilized by the Court in Division in adjudicating the present case. Simply put, petitioner's theory remained as such, in the absence of any convincing proof to support them, and may not be the basis in deciding a case, or in granting a relief.[62]

On a final note, an assessment that becomes final, executory and demandable, such as the instant case could no longer be subject of an appeal to the Court of Tax Appeals. The Court of Tax Appeals can no longer amend, modify, much less set aside such final assessment.[63] And

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59 See *Sabay vs. People of the Philippines,* G.R. No. 192150, October 1, 2014; and *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

60 Memorandum dated July 19, 2013, BIR Record, p. 506; Memorandum dated February 5, 2013, BIR Record, p. 459; and Letter dated November 15, 2012, BIR Record, p. 458.

61 Petitioner's Formal Offer of Evidence dated December 10, 2014, docket (CTA Case No. 8765), pp. 612-637.

62 See *Spouses Guidangen vs. Wooden,* G.R. No. 174445, February 15, 2012.

63 See *Dayrit vs. Cruz,* G.R. L-39910, September 26, 1988.

since the assessments in question had become final and unappealable, there is now no reason why the BIR should not enforce its authority to collect the deficiency tax as stated in the assessment notices.[64]

WHEREFORE, the Petition for Review dated August 17, 2018 filed by Grandworth Resources Corporation is **DENIED**. The impugned Decision dated April 17, 2018 and Resolution dated July 11, 2018 both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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64 See *Commissioner of Internal Revenue vs. Tulio,* G.R. No. 139858, October 25, 2005.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice