CTA Form No. 8

22-000380-0045

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

**FIRST DIVISION**

**CTA CASE NO. 10947**

**WELTEL CORPORATION,**
Petitioner,

\- versus -

**NOTICE OF DECISION**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo St., Legazpi Village
Makati City

**ATTY. RAMON B. LORENZO**
**ATTY. ROWELL B. VICENTE**
**ATTY. NORHAISAH A. CALBE**
Bureau of Internal Revenue - Revenue Region No. 6
5th Floor, BIR Building I, Solana Street
Intramuros, Manila

**ATTY. ALQUIN B. MANGUERA**
Unit 707, Tower I, Mezza Residences I
Aurora Boulevard corner Araneta Avenue
Quezon City

***GREETINGS:***

You are hereby notified by these presents that on **April 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 5, 2025.**

**Atty. Maria Johoanna F. Chan-Te**
Executive Clerk of Court II

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

**FIRST DIVISION**

**WELTEL CORPORATION,**
*Petitioner,*

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 10947**

*Members:*

**DEL ROSARIO,** *P.J., Chairperson,*
**BACORRO-VILLENA,** *and*
**CUI-DAVID,** *JJ.*

Promulgated:

APR 30 2025 3:15PM

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# DECISION

***CUI-DAVID, J.:***

Before the Court is a *Petition for Review*[1] seeking to nullify the tax assessment and Warrant of Distraint and/or Levy (WDL) issued against petitioner in the amount of ₱4,448,294.05, representing deficiency income tax and value-added tax (VAT) for taxable year (TY) 2011. The petition also prays for the refund of the garnished amount of ₱229,400.36.

## THE PARTIES

Petitioner Weltel Corporation is a corporation duly organized under the laws of the Philippines, with principal office at 1877-A Sergio H. Loyola Street, Sampaloc, Manila.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith.

[1] Docket, pp. 7–22.
[2] Docket, p. 313, *Joint Stipulation of Facts and Issues* (JSFI), 1. Joint Stipulated Facts, par. 1.1.

Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

## THE FACTS

On June 13, 2014, OIC-Regional Director Arceli L. Francisco of Revenue Region No. 6-Manila issued Letter of Authority (LOA) SN: eLA201100069196 (LOA-032-2014-00000166),[4] authorizing the examination of petitioner's books of accounts and other records to determine any unpaid income tax and VAT for TY 2011.[5]

Several months after receiving the LOA, petitioner, through its corporate officer, Marifel S. Quevada (Ms. Quevada), requested more time to submit the required documents for the tax investigation. Consequently, petitioner executed an undated Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[6] (Waiver), stipulating that the assessment, if warranted, would not be issued later than December 31, 2015. The Waiver was notarized on November 6, 2014.[7]

On November 10, 2020, six (6) years after the execution of the Waiver, Regional Director Jethro M. Sabariaga (RD Sabariaga) issued a Preliminary Assessment Notice (PAN),[8] which was received by petitioner's officer Mr. Avelino A. Belen, Jr. (Mr. Belen),[9] on November 17, 2020. The PAN indicated the following deficiency assessments for income tax and VAT, amounting to ₱2,186,470.89 and ₱2,237,212.15, respectively, inclusive of 50% surcharges and interests:

| Type | Basic Tax | 50% Surcharge | 20% Interest (04/16/2012 to 12/31/2017) | 12% Interest (01/01/2018 to 11/25/2020) | Total |
|---|---|---|---|---|---|
| IT | 730,892.83 | 365,446.41 | 835,420.51 | 254,711.14 | ₱2,186,470.89 |
| VAT | 736,921.24 | 368,460.62 | 875,018.27 | 256,812.01 | ₱2,237,212.14 |
| **TOTAL** | ₱1,467,814.07 | ₱733,907.03 | ₱1,710,438.78 | ₱511,523.15 | ₱4,423,683.03 |

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3 *Id.*, JSFI, 1. Joint Stipulated Facts, par. 1.2.
4 *Id.* at 314, JSFI, 1. Joint Stipulated Facts, par. 1.4; BIR Records, p. 21, Exhibits "P-5" & "R-5".
5 *Id.*, JSFI, 1. Joint Stipulated Facts, par. 1.5.
6 Docket, p. 42, Exhibit "P-6"; BIR Records, p. 82, Exhibit "R-11".
7 Docket, p. 314, JSFI, 1. Joint Stipulated Facts, par. 1.5.
8 Docket, pp. 43–47, Exhibit "P-7"; BIR Records, pp. 115–119, Exhibit "R-14".
9 *Id.*, JSFI, 1. Joint Stipulated Facts, par. 1.6; Docket, pp. 43–47, Exhibit "P-7".

The PAN stated that the 50% surcharge was imposed under Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, due to petitioner's failure to report sales, receipts or income exceeding 30% of the declared amount per return, constituting *prima facie* evidence of a false or fraudulent return. The 20% interest per annum was imposed under Section 249 (B) of the NIRC of 1997, as amended, while a 12% interest rate was applied starting 2018 under Revenue Regulations (RR) No. 21-2018.[10]

On December 15, 2020, RD Sabariaga issued Final Assessment Notices (FAN) Nos. 32-11-69196-2020-530(IT)[11] and 32-11-69196-2020-530(VT),[12] as well as a Formal Letter of Demand[13] (FLD), all covering the alleged deficiency income tax and VAT for TY 2011, amounting to ₱2,198,725.86 and ₱2,249,568.20, respectively, inclusive of surcharges and interests computed up to January 15, 2021:[14]

| Type | Basic Tax | 50% Surcharge | 20% Interest (04/16/2012 to 12/31/2017) | 12% Interest (01/01/2018 to 11/25/2020) | Total |
|---|---|---|---|---|---|
| IT | 730,892.83 | 365,446.41 | 835,420.51 | 266,966.11 | ₱2,198,725.86 |
| VAT | 736,921.24 | 368,460.62 | 875,018.27 | 269,168.06 | ₱2,249,568.20[15] |
| **TOTAL** | ₱1,467,814.07 | ₱733,907.03 | ₱1,710,438.78 | ₱536,134.17 | ₱4,448,294.06[16] |

On October 28, 2021, petitioner was served a WDL dated October 14, 2021,[17] for the collection of the alleged deficiency income tax and VAT for TY 2011, amounting to ₱2,198,725.86 and ₱2,249,568.20, respectively, inclusive of surcharges, or a total of ₱4,448,294.05.[18]

Pursuant to the WDL dated October 14, 2021, petitioner's bank deposits amounting to ₱229,400.36 with the Bank of the Philippine Islands (BPI), España UST Branch, were garnished.[19]

[10] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code of 1997, as amended under Section 75 of Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)," September 14, 2018.
[11] Docket, p. 48, Exhibit "P-8"; BIR Records, p. 143, Exhibit "R-16".
[12] Docket, p. 49, Exhibit "P-9"; BIR Records, p. 142, Exhibit "R-17".
[13] Docket, pp. 51–53, Exhibit "P-10"; BIR Records, pp. 137–141, Exhibit "R-18".
[14] *Id.* at 314–315, JSFI, 1. Joint Stipulated Facts, par. 1.7; BIR Records, Exhibit "R-22", p. 162.
[15] Copied verbatim from FLD, BIR Records, p. 141, Exhibit "R-18". Actual sum is ₱2,249,568.19.
[16] Copied verbatim from FLD, BIR Records, p. 141, Exhibit "R-18". Actual sum is ₱4,448,294.05.
[17] *Id.* at 315, JSFI, 1. Joint Stipulated Facts, par. 1.8; BIR Records, Exhibit "R-22", p. 162.
[18] *Id.*
[19] *Id.* at 315, JSFI, 1. Joint Stipulated Facts, par. 1.9.

On November 24, 2021, petitioner filed an appeal letter dated November 22, 2021, addressed to respondent, seeking: (a) the lifting of the WDL dated October 28, 2022 [sic]; (b) the cancellation of FAN representing alleged deficiency income tax and VAT for TY 2011; and (c) the return of the garnished amount from petitioner's bank deposits with BPI.[20]

Respondent, through RD Sabariaga, issued a Decision dated May 24, 2022,[21] denying petitioner's appeal. Petitioner received the Decision on July 5, 2022.[22]

On August 3, 2022, petitioner filed this *Petition for Review*,[23] which was raffled to the Second Division.

On August 16, 2022, the Second Division directed petitioner to state the names of its witness/es, provide a summary of their intended testimonies, and attach their respective judicial affidavits, in compliance with Section 6 (a) and (b), Rule 7 of the Revised Rules of Court, within five (5) days from notice.[24]

On September 8, 2022, petitioner filed a *Manifestation and Compliance*[25] stating the nature of the testimony of its sole witness, Ms. Quevada, and submitting her Judicial Affidavit.[26] On September 20, 2022, the Second Division noted petitioner's *Manifestation and Compliance* and deemed it sufficient compliance with its Resolution dated August 18, [sic] 2022.[27]

On September 19, 2022, *Summons* was served on respondent.[28]

On October 18, 2022, respondent filed a *Motion for Extension of Time to File Answer*,[29] which the Court granted on October 21, 2022.[30]

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[20] *Id.* at 315, JSFI, 1. Joint Stipulated Facts, par. 1.10; BIR Records, pp. 194–198, .
[21] *Id.* at 315, JSFI, 1. Joint Stipulated Facts, par. 1.11; Docket, pp. 23–26, Exhibit "P-1".
[22] Docket, p. 8, Petition for Review, par. 4.
[23] *Supra* note 1.
[24] Docket, pp. 75–76, Resolution.
[25] *Id.* at 77–79.
[26] *Id.* at 80–85.
[27] *Id.* at 138, Resolution.
[28] *Id.* at 139.
[29] *Id.* at 140–143.
[30] *Id.* at 145, Order.

On November 17, 2022, respondent filed an *Answer (With Motion to Dismiss)*[31] within the extended period. In compliance with the directive of the Second Division,[32] petitioner filed its *Comment/Opposition (Re: Motion to Dismiss)*[33] on December 22, 2022.

On November 23, 2022, respondent filed a *Compliance*, submitting a folder of BIR Records comprising 392 pages.[34]

On February 23, 2023, the Second Division denied respondent's *Motion to Dismiss* incorporated in his Answer.[35]

On February 27, 2023, a *Notice of Pre-Trial Conference*[36] was issued, setting the pre-trial conference for August 23, 2023.

Petitioner filed its *Pre-Trial Brief*[37] on May 3, 2023, while *Respondent's Pre-Trial Brief*[38] was filed on August 18, 2023.

On May 29, 2023, the case was transferred to the First Division.[39]

On January 16, 2024, the Court issued a Pre-Trial Order,[40] formally terminating the pre-trial proceedings.

The trial commenced, during which both parties presented their testimonial and documentary evidence.

Petitioner presented its corporate secretary, Ms. Quevada, as its lone witness.[41] On February 12, 2024, petitioner filed its *Formal Offer of Documentary Evidence*,[42] to which respondent submitted his *Comment/Opposition [Re: Petitioner's Formal Offer of Evidence dated 12 February 2024]*[43] on February 21, 2024. In the Resolution dated April 5, 2024,[44] the Court admitted all of petitioner's offered exhibits.

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31 *Id.* at 146–162.
32 *Id.* at 256–257.
33 *Id.* at 258–267.
34 *Id.* at 253–254.
35 *Id.* at 276–281, Resolution.
36 *Id.* at 282–283.
37 *Id.* at 284–292.
38 *Id.* at 296–302.
39 *Id.* at 295. Notice of Resolution.
40 *Id.* at 355–374.
41 *Id.* at 80–85, Judicial Affidavit, Exhibit "P-14"; 375–377, and 378–379, Minutes of the hearing held on, and Order dated February 8, 2024, respectively.
42 *Id.* at 384–388.
43 *Id.* at 390–392.
44 *Id.* at 401–402.

Respondent presented Revenue Officers (ROs), Aldwin I. Alaan[45] and Minda A. Cayago (Cayago).[46] Thereafter, *Respondent's Formal Offer of Evidence*[47] was filed on June 4, 2024, to which petitioner filed a *Comment (Respondent's Formal Offer of Evidence)*[48] on June 11, 2024. The Court admitted all of respondent's offered evidence in a Resolution dated July 31, 2024.[49]

On August 27, 2024, petitioner filed its *Memorandum*,[50] while respondent filed his *Memorandum*[51] on September 9, 2024.

On October 2, 2024, the case was submitted for decision.[52]

## THE ISSUES

As stipulated by the parties, the issues for the Court's resolution are:[53]

1. Whether the Court has jurisdiction over the instant Petition; and

2. Whether petitioner is liable for deficiency income tax and VAT for taxable year 2011 in the amount of ₱4,448,294.06, inclusive of surcharges, penalties, and interests.

### *Petitioner's arguments:*

Petitioner argues that it is not liable for deficiency income tax and VAT for TY 2011 because respondent's right to assess has prescribed. It asserts that there was no agreement between the parties to extend the three (3)-year period to assess, apart from the Waiver executed by petitioner, which extended the period to assess until December 31, 2015. Thus, petitioner contends that the assessment, as embodied in the FAN/FLD dated December 15, 2020, had already prescribed.

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45 *Id.* at 166–173, Judicial Affidavit of Revenue Officer Aldwin I. Alaan, Exhibit "R-29"; 404–406, Order dated May 30, 2024.
46 *Id.* at 192–196, Judicial Affidavit of Revenue Officer Minda A. Cayago, Exhibit "R-30"; 404–406, Order dated May 30, 2024.
47 *Id.* at 412–422.
48 *Id.* at 428–431.
49 *Id.* at 440–441.
50 *Id.* at 442–460.
51 *Id.* at 462–477.
52 *Id.* at 479.
53 *Id.* at 368, Pre-Trial Order, vis-à-vis 316, JSFI, 2. Joint Statement of Issues to be Tried or Resolved.

Petitioner disagrees with the application of the 10-year prescriptive period for assessing its deficiency taxes. It submits that this period applies only when the returns filed are false with intent to evade tax or are fraudulent. Petitioner claims that a mere understatement of income or overstatement of expenses for a single year, as in this case, does not warrant the finding that petitioner's tax returns for TY 2011 are false with intent to evade taxes.

Citing *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,[54] (*Mcdonald's*) petitioner argues that a false return, within the meaning of Section 222(a) of the NIRC of 1997, as amended, refers to a return that contains an error or misstatement, provided that such error or misstatement was deliberate or willful. It emphasizes that respondent failed to present any competent witness who had conducted a detailed investigation and perused petitioner's financial records.

Further, petitioner asserts that the FAN/FLD were not properly served, rendering the assessment void. It refutes respondent's claim that the FAN/FLD were received by one "Raezhell Querudo", arguing that she is not an officer, employee, or an authorized representative of petitioner. Petitioner claims that respondent failed to present a witness to testify regarding the service of the FAN/FLD or to identify the person who allegedly received them. Petitioner concludes that the issuance of a WDL based on a void assessment is also invalid.

***Respondent's arguments:***

Respondent insists that the Court lacks jurisdiction over the petition because petitioner failed to file a protest within 30 days from the date of receipt of the FAN/FLD, thereby rendering the assessment final, executory, and demandable.

Respondent admits that while the BIR has three (3) years to issue an assessment, reckoned from the last day prescribed by law for filing the return or from the actual filing date if filed beyond the prescribed period, Section 222(a) of the NIRC of 1997, as amended, provides an exception where the prescriptive period extends to 10 years in cases involving a 30%

[54] G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*]

underdeclaration of sales, receipts or income; or an overstatement of deductions.

Respondent points out that petitioner's revenue as per its tax return was ₱1,796,809.00. However, based on a computerized matching conducted by the BIR using third-party information, respondent discovered an understatement of revenue amounting to ₱4,643,810.45, reflecting a 38.69% underdeclaration.

Citing *Aznar v. Court of Tax Appeals*[55] (*Aznar*), respondent states that a false return implies a deviation from the truth, whether intentional or not. As such, respondent maintains that the FAN/FLD are not barred by prescription.

Respondent also contends that the FAN/FLD were served to a clerk or person in charge at petitioner's registered address. Respondent asserts that "Raezhell Querudo," named in the Affidavit of Service of FAN/FLD, is the same person as "Raezhell Quevada," who signed as "daughter."

## THE COURT'S RULING

The *Petition for Review* is meritorious.

### ***Petitioner timely filed the instant Petition for Review.***

Section 7(a)(1) of Republic Act (RA) No. 1125,[56] as amended by RA No. 9282,[57] confers jurisdiction upon this Court over decisions of respondent and other matters arising under the NIRC of 1997, as amended, as follows:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the [CIR] in cases involving disputed assessments, refunds of internal revenue taxes, fees or other

[55] G.R. No. L-20569, August 23, 1974 [Per J. Esguerra, First Division].
[56] An Act Creating the Court of Tax Appeals, June 16, 1954.
[57] 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, March 30, 2004.

> 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;

The exclusive appellate jurisdiction of the Court is not limited to cases involving decisions of the CIR or matters related to assessments or refunds.[58] The second part of the provision covers other cases arising under the NIRC or laws administered by the BIR,[59] granting the CTA jurisdiction to determine the validity of the WDL.[60]

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling, or inaction of the [CIR] ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

The above provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[61] and Section 3(a), Rule 8[62] of the Revised Rules of the Court of Tax Appeals. In sum, this Court has exclusive jurisdiction to review by appeal respondent's decision and other matters arising under the NIRC of 1997, as amended. The appeal must be filed by the party adversely affected within

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58 *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division, et al.*, G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division].

59 *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

60 *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division]

61 SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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 Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action:

62 SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

30 days from receipt of such decision or from the occurrence of other matters arising under the Tax Code or its regulations.

In this case, petitioner received the Decision dated May 24, 2022, denying its request to lift the WDL on July 5, 2022.[63] Accordingly, petitioner had 30 days from said date, or until August 4, 2022, to file an appeal with the CTA. Since petitioner filed its *Petition for Review* on August 3, 2022, the appeal was timely filed.

***The FAN/FLD and, by extension, the WDL are void for being improperly served.***

Petitioner challenges the validity of the assessment, asserting non-receipt of the FAN/FLD. While petitioner admitted receipt of the PAN through Mr. Belen,[64] who was allegedly an officer of petitioner, it disputes the alleged receipt of the FAN/FLD by Raezhell Quevada, as she was not petitioner's authorized representative.

Records show that the FAN/FLD were personally served upon a certain "Raezhell Quevada,"[65] who identified herself as "daughter" in her designation.

Under Section 228[66] of the NIRC of 1997, as amended, when the BIR finds that taxes should be assessed, the taxpayer must be properly notified of its findings. The prescribed modes of service for assessment notices are set forth in Section 3.1.6 of RR No. 12-99,[67] as amended by RR No. 18-13,[68] which states:

> SEC. 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:*
>
> ....

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[63] Docket, p. 8, Petition for Review, par. 3.
[64] *Id.*, JSFI, 1. Joint Stipulated Facts, par. 1.6; BIR Records, pp. 115–119, Exhibit "R-14".
[65] BIR Records, pp. 137–143, Exhibits "R-16"–"R-18".
[66] 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:
[67] 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, September 6, 1999.
[68] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence. In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

**The notice may be left at the party's registered address, with his <u>clerk</u> or with a <u>person having charge thereof</u>**. If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein. If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue. (Emphasis supplied)

Section 3.1.6 of RR No. 18-13, as reiterated in RMO No. 40-2019,[69] requires that the notice be personally served on the taxpayer. If personal service is not practicable because the taxpayer is not present at the registered or known address, substituted service may be effected by leaving the notice with the taxpayer's clerk or a person in charge of the premises.

In this case, respondent failed to prove compliance with these requirements. Petitioner consistently maintained that Raezhell Quevada was neither an officer, employee, nor authorized representative of the corporation to receive the FAN/FLD.[70] This assertion was supported by the testimony of RO Cayago, who confirmed that the FAN/FLD were personally served to Raezhell Quevada, who merely identified herself as the "daughter" of petitioner's corporate officer.[71]

Upon clarificatory questioning by the Court, RO Cayago clarified that she had no personal knowledge of any action taken by petitioner upon receipt of the PAN and FAN/FLD.[72] Her

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[69] Prescribing Procedures for Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of RR No. 18-2013, issued on May 30, 2019, states:

**Guidelines and Procedures**

1. The assessment notice shall be served to the taxpayer through personal service by delivering personally a copy of the assessment notice at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
2. In case personal service is not possible, the assessment notice shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address.
   2.1 Substituted service shall be done as follows:
   2.1.1 The assessment notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
   2.1.2 If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

[70] Docket, p. 10, Petition for Review, par. 12; Docket, pp. 444 & 453, Memorandum, pars. 5 & 33, respectively.

[71] Docket, pp. 193–194, Judicial Affidavit of Revenue Officer Minda A. Cayago, Exhibit "R-30", A12–A15.

[72] TSN, May 30, 2024, Revenue Officer Minda A. Cayago, pp. 38–41.
JUSTICE FLORES: Would you be aware of any action that petitioner might have taken upon service of the PAN?
MS. CAYAGO: No, your Honors.

JUSTICE FLORES: You are Group Supervisor for only for the service?
MS. CAYAGO: No. The supervisor of Antonio Baluran. He had been under my supervision on that year, 2020 before he resigned.

JUSTICE FLORES: How about the FAN, are you aware of any action that petitioner might have taken upon service of the FAN?
MS. CAYAGO: We just forward this to the Assessment Division after the service.

JUSTICE VILLENA: Thank you, Justice Cora. So, you mean that you are not aware of any correspondence after the services of the PAN, the FAN to the taxpayer? I am assuming, you said that you only transmitting back?
MS. CAYAGO: Yes, your Honors.

JUSTICE VILLENA: Because you said your claim is that they were served in accordance with the Revenue Regulation?
MS. CAYAGO: Yes, your Honors.

JUSTICE VILLENA: Okay. As to Quevada, you have mentioned and attached to your JA the proof of receipt by Ms. Quevada?

knowledge of the service of the FAN/FLD was based solely on the Affidavit of Service executed by RO Antonio Baluran, Jr. (Baluran).

A closer examination of RO Baluran's Affidavit of Service reveals that the FAN/FLD were served to "Raezhell Querudo/Daughter" at 1631 Instruccion Street, Sampaloc, Manila,[73] an address different from petitioner's registered address at 1877-A SH Loyola Street, Sampaloc, Manila.

Pursuant to Revenue Memorandum Circular No. 11-2014,[74] assessment notices (e.g., PAN/FLD/FAN/FDDA) must first be served at the taxpayer's *registered* address before any attempt is made to deliver them to a *known* address. In this case, petitioner's registered address, as indicated in the LOA, PAN, and FAN/FLD, was 1877-A SH Loyola Street, not 1631 Instruccion Street. The delivery of the FAN/FLD to a different address, without prior attempt to deliver them at the registered address, constitutes a procedural violation that renders the assessment void.

In *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[75] (*Mannasoft*), the Supreme Court emphasized that assessment notices must be served to the taxpayer or its duly authorized representative, particularly in the case of juridical entities:

> It is undisputed that the NIC, the PAN, and the FAN bear indications that they were personally served. However, those who received them were not authorized representatives of petitioner. To recall, the NIC and the PAN appeared to have

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MS. CAYAGO: Yes, your Honors.

JUSTICE VILLENA: However, it appears that it is of another name.
MS. CAYAGO: Yes, it was typographical, ano, typed as Quevodo.

JUSTICE VILLENA: But you are not the one who actually saw her?
MS. CAYAGO: Yes, your Honors.
JUSTICE VILLENA: It was only reported to you?
MS. CAYAGO: Yes, your Honors.

JUSTICE VILLENA: There is no proof that she is the one of the Corporate Officers who may have been authorized?
MS. CAYAGO: It was reported to me by the Revenue Officer Antonio Baluran who served the notices.

JUSTICE VILLENA: Okay. So, that is the statement. Was that under oath?
MS. CAYAGO: Yes, your Honors.

JUSTICE VILLENA: That one by the server? Was the declaration that it was actually Ms. Quevada, the authorized officer of the petitioner?
MS. CAYAGO: It's just an Affidavit of Service.

73 BIR Records, p. 145, Exhibit "R-20", Affidavit of Service dated December 18, 2020.
74 Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as amended by RR 18-2013, February 18, 2014.
75 G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

> been served upon one "Ms. Gladys Badocdoc," whose indicated position was "Client Service Assistant." The FAN, on the other hand, was personally served upon a certain "Angelo Pineda," who was a reliever security guard at that time, and who was not even an employee of petitioner.
>
> Section 228 of the Tax Code explicitly provides that when the respondent finds that proper taxes should be assessed, the taxpayer must be properly notified of its findings. Moreover, under Section 3.1.4 of Revenue Regulations No. 12-99, **personal delivery must be acknowledged by the taxpayer or his duly authorized representative**, *viz.*:
>
> ....
>
> The very same provision even requires that **the signee-recipient must indicate their "designation and authority to act for and in behalf of the taxpayer,"** which further emphasizes that **personal delivery must be discriminate**.
>
> The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. **This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.**
>
> While Sections 3.1.1. and 3.1.2. of Revenue Regulations No. 12-99, which govern the NIC and the PAN, respectively, bear no similar qualifications for personal delivery as those found under Section 3.1.4, the Court deems it more in keeping with the spirit of the law that these should likewise be served only upon the taxpayer or, especially for juridical entities, their duly authorized representatives. (Emphasis supplied)

RR No. 12-99, as amended by RR No. 18-13, further provides that substituted service is only valid if the notice is left with a *clerk* or a *person in charge* at the taxpayer's *registered* or *known* address. In this case, the FAN/FLD were not only delivered to an unregistered address but also left with a person who was neither petitioner's *clerk* nor a *person in charge* of its premises. Raezhell Quevada merely identified herself as a "daughter" and did not claim to be an officer, employee, or person in charge of the premises.

Respondent's evidence failed to establish that the RO who served the FAN/FLD made any effort to verify Raezhell Quevada's authority to receive the FAN/FLD. The mere fact that she is related to one of petitioner's officers does not establish, even impliedly, that she was authorized to receive official notices on petitioner's behalf. This failure to confirm the authority of the recipient is a fatal defect in the service of the assessment.

Under well-established jurisprudence, service of crucial assessment notices, such as the FAN/FLD, must be made strictly to the taxpayer or its *duly authorized representative*, failing which the service is void.[76] Consequently, Raezhell Quevada's receipt of the FAN/FLD is devoid of legal consequence and does not constitute valid service. Accordingly, petitioner cannot be deemed to have been duly notified of the assessment.

Respondent's failure to strictly comply with the requirements under Section 228 of the NIRC of 1997, as amended, and its regulations, *i.e.*, RR No. 12-99, constitute a denial of petitioner's right to due process.[77] The Supreme Court has repeatedly declared that the BIR must strictly observe the prescribed procedure for issuing assessment notices to uphold taxpayers' constitutional rights.[78] Strict compliance with the requirements of substituted service is essential to ensure the taxpayer's right to due process.[79]

Since respondent failed to prove that the FAN/FLD were properly served on petitioner through valid substituted service, the deficiency assessment issued by the CIR is void.[80] Thus, the WDL, having been issued pursuant to a void assessment, is likewise invalid and without effect.

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[76] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division]; *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per CJ. Gesmundo, First Division].

[77] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per CJ. Gesmundo, First Division], citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010 [Per J. Mendoza, Second Division].

[78] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[79] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per CJ. Gesmundo, First Division].

[80] *Id.*

***Even assuming that the FAN/FLD were validly served, the BIR's right to assess petitioner has already prescribed.***

Petitioner argues that the assessment of deficiency taxes has prescribed as of April 2015, three (3) years after it filed its tax returns for TY 2011 in April 2012.[81] It claims that although it executed a Waiver on November 6, 2014, which extended the prescriptive period until *December 31, 2015*, the issuance of the FAN/FLD on *December 15, 2020*, was clearly beyond the allowed period.

On the other hand, respondent contends that the BIR Records reveal an understatement of revenue amounting to ₱4,643,810.45, equivalent to a 38.69% under-declaration. This exceeds the 30% threshold under Section 248(B) of the NIRC of 1997, as amended, and warrants the application of the ten-year prescriptive period under Section 222(a). Respondent further asserts that such substantial under-declaration constitutes *prima facie* evidence of a false, if not fraudulent, return, thereby justifying the extension of the assessment period.

The Court agrees with petitioner.

Under Section 203 of the NIRC of 1997, as amended, internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the return or from the day the return was actually filed, whichever is later, *viz.*:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

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[81] Docket, p. 13, Petition for Review, par. 20; Docket p. 447, Memorandum, par. 18.

An exception to the general three-year prescriptive period arises in cases involving (1) a false return, (2) a fraudulent return, or (3) failure to file a return. In such instances, the period to assess may be extended up to 10 years from the discovery of the falsity, fraud, or omission, referred to as the extraordinary assessment period under Section 222(a) of the NIRC of 1997, as amended:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

In *McDonald's,* the Supreme Court clarified the meaning of "false" and "fraudulent" returns and delineated the specific circumstances under which the extraordinary 10-year assessment period under Section 222(a) may validly be invoked:

> A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."
>
> It must be stressed, however, that a *false return* within the meaning of Section 222(a) does not refer to *false returns* in general. To be sure, **the extraordinary 10-year assessment period applies to a false return when:**
>
> (1) **the return contains an error or misstatement, and**
>
> (2) **such error or misstatement was *deliberate or willfull*.**
>
> Consequently, the Court's ruling in *Aznar* which applied the extraordinary 10-year assessment period under Section 222(a) to false returns in general, *i.e.*, regardless of whether the deviation is intentional or not, is abandoned.
>
> It shall be the CIR's burden to establish the existence of the above enumerated statutory requisites with clear and convincing evidence. (Emphasis supplied)

Thus, mere errors or unintentional misstatements in a return do not justify the application of the extraordinary 10-year period. In effect, the Supreme Court abandoned in *McDonald's* its earlier ruling in *Aznar*, which applied the 10-year period to any false return regardless of intent. *McDonald's* reiterated that "a valid extension of the basic assessment period to 10 years is conditioned upon concurrence of the *requisites under Section 222(a) of the 1997 Tax Code* and compliance with *due process requirements*," which the CIR bears the burden of proving with clear and convincing evidence.

In this case, respondent failed to comply with the *due process requirements* associated with the application of Section 222(a) when it applied the 10-year period. The PAN and FAN/FLD merely contained general references to Section 248(B) of the NIRC of 1997, as amended, and made general allegations of under-declaration without providing the factual basis or the computation used to determine whether the 30% threshold was exceeded.[82]

Below are the pertinent portions of the PAN and FAN/FLD:

> **<u>PRELIMINARY ASSESSMENT NOTICE</u>**
>
> ....
>
> The fifty percent (50%) surcharge has been imposed pursuant to the provisions of Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, on Income Tax and Value-Added Tax in view of your failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return which is a prima facie evidence of a false or fraudulent return.[83]
>
> <u>DETAILS OF DISCREPANCIES</u>
>
> ....
>
> <u>PERIOD OF PRESCRIPTION</u>
>
> The running of the three-year statute of limitation as provided under Section 203 of the NIRC of 1997, as amended, is not applicable with respect to your Income Tax and Value-Added Tax liabilities but rather to the ten (10) year prescriptive period pursuant to Section 222(A) of the same Code which states that: "In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the

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[82] *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

[83] Docket, p. 44, Exhibit "P-7"; BIR Records, p. 118, Exhibit "R-14".

tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...."[84]

**FORMAL LETTER OF DEMAND**

....

The fifty percent (50%) surcharge has been imposed pursuant to the provisions of Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, on Income Tax and Value-Added Tax in view of your failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return which is a prima facie evidence of a false or fraudulent return.[85]

DETAILS OF DISCREPANCIES
Demand No. 32-11-69196-2020-530

....

PERIOD OF PRESCRIPTION

The running of the three-year statute of limitation as provided under Section 203 of the NIRC of 1997, as amended, is not applicable with respect to your Income Tax and Value-Added Tax liabilities but rather to the ten (10) year prescriptive period pursuant to Section 222(A) of the same Code which states that: "In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission...."[86] (Emphasis on the original)

The Supreme Court emphasized that an assessment must not only be founded on factual and legal bases, but must also be clearly communicated to the taxpayer to enable the latter to effectively protest it.[87] In this case, respondent now claims that the computation supporting the assessment can be found in the BIR Records. However, there is no proof that this computation was ever properly communicated to petitioner.

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[84] Docket, p. 46, Exhibit "P-7"; BIR Records, p. 116, Exhibit "R-14-a".
[85] Docket, p. 52, Exhibit "P-10"; BIR Records, p. 140, Exhibit "R-18".
[86] BIR Records, p. 138, Exhibit "R-19"; Docket, p. 68.
[87] See *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ. Panganiban, First Division].

This omission deprived petitioner of the opportunity to refute the computation and to set up an intelligent protest.[88] Worse, as previously discussed, respondent failed to establish that the FAN/FLD were validly served, further undermining the validity of the deficiency assessment.

In *McDonald's,* the Supreme Court emphasized that due process in invoking the 10-year assessment period *requires* not only the issuance of a valid assessment notice with clear and adequate information to allow the taxpayer to file a proper protest, but also *disallows* the tax authorities from acting in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or that would otherwise mislead the taxpayer into believing that the basic three (3)-year period will be applied.

In *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[89] (*Inquirer*) the Supreme Court noted that the execution of waivers was meant to extend the basic three (3)-year prescriptive period. Citing *Inquirer*, the Supreme Court in *McDonald's* observed that "this only showed that the CIR, at the outset, did not intend to rely on the 10-year extended period as it did not find any ground to justify its application."[90]

As aptly explained in *McDonald's*:

> Similar to the Court's observations in *Inquirer* and *Unioil,* the timing of the waivers' execution and FLD/FAN's issuance and service reveals the CIR's primary objective to obviate the impending expiration of the *basic three-year assessment period* and that, in the first place, it had no intention to extend it. These considerations lead the Court to the conclusion that **the CIR invoked the 10-year period as a mere <u>afterthought</u>.** In the Court's view, **to go through the motions of limiting the audit and assessment within the basic three-year period, only to later on accuse the taxpayer of filing a false return, without so much as a justification therefor, is an arbitrary exercise of the power to assess. The taxpayer cannot be kept in the dark of such serious allegations. Otherwise, the State,** on account of the tax authorities' actions, **would be depriving the taxpayer of property without due process of the law.** (Emphasis supplied)

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[88] *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue,* G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].
[89] G.R. No. 213943, March 22, 2017 [Per J. Carpio, Second Division].
[90] *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue,* G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

Here, the execution of the Waiver extending the assessment period until *December 31, 2015*, demonstrates respondent's initial intention to obviate the impending expiration of the basic 3-year assessment period. Similar to *McDonald's,* citing the case of *Inquirer,* the use of waivers indicates that the CIR, at the outset, found no grounds to invoke the 10-year period.

Respondent's belated invocation of the 10-year prescriptive period appears to be a mere afterthought since the BIR was able to issue the PAN only on November 10, 2020, more than six (6) years after the execution of the Waiver on November 6, 2014.

Given these circumstances, respondent's reliance on the 10-year prescriptive period is improper. Since the assessment was issued beyond the prescribed three (3)-year period, and the 10-year period does not apply, the Court finds that the BIR's right to assess petitioner had already prescribed.

All told, the assessment issued against petitioner is void for having been made beyond the prescribed period and without compliance with due process. A void assessment bears no legal consequence and does not create any lawful tax liability.[91] Thus, petitioner is entitled to a refund of the amount garnished pursuant to the void assessment.

**WHEREFORE**, premises considered, the present *Petition for Review* is **GRANTED**.

Accordingly, the Formal Letter of Demand with Assessment Notices dated December 15, 2020 and the Warrant of Distraint and/or Levy dated October 14, 2021 are **CANCELLED** and **SET ASIDE**. Further, the Decision dated May 24, 2022 of respondent's authorized representative, Atty. Jethro M. Sabariaga, finding petitioner liable for deficiency income tax and value-added tax in the amount of ₱4,448,294.05 inclusive of increments for taxable year 2011, is **REVERSED** and **SET ASIDE**.

Respondent is **ORDERED to REFUND** in favor of petitioner the amount of ₱229,400.36, representing the garnished amount.

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[91] *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ. Panganiban, First Division].

Consequently, respondent or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting the amount of ₱4,448,294.05 from petitioner.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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# 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