REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO,
Respondents.

CTA EB NO. 2737
(CTA Case No. 8683)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 18 2025 3:52 p.m.

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration [re: Decision dated 23 January 2025]"[1] (**MR**), filed on 12 February 2025, with respondent Spouses Emmanuel D. Pacquiao's (**EDP**'s) and Jinkee J. Pacquiao's (**JJP**'s) (collectively, **respondents**'/**Spouses Pacquiao**'s) "Comment/Opposition [To: Petitioner's Motion for Reconsideration (Re: Decision dated 23 January 2025)]"[2] (**Comment/Opposition**), filed on 10 March 2025.

[1] *Rollo*, pp. 328-349.
[2] Id., pp. 355-385.

Petitioner seeks the reconsideration of the Court *En Banc*'s Decision dated 23 January 2025[3] (**assailed Decision**). The dispositive portion thereof reads:

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> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on 30 March 2023 is hereby **DENIED** for lack of merit. Accordingly, the Special Third Division's Decision dated 29 September 2022 and Resolution dated 17 February 2023, in CTA Case No. 8683 entitled *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. Commissioner of Internal Revenue*, are **AFFIRMED**.
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> **SO ORDERED.**
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> ...

In support of the instant MR[4], petitioner forwards the arguments below.

Firstly, petitioner insists that the Court in Division lacks jurisdiction over respondents' original petition. Petitioner argues that the Final Decision on Disputed Assessment[5] (**FDDA**) was validly served on respondent EDP through his authorized representative and receiving clerk, Erwin Jamora (**Jamora**). Consequently, petitioner contends that respondents' petition was filed beyond prescribed thirty (30)-day period for appeal from the date of service, and is therefore time-barred.

In support of the claim that the original petition was filed out of time, petitioner consistently emphasizes that it was respondent EDP who represented his address to be at Batasan Complex; hence, the Bureau of Internal Revenue (**BIR**) notices were served at said address. In fact, prior to the service of the FDDA, both the Preliminary Assessment Notice[6] (**PAN**) and the Formal Letter of Demand[7] (**FLD**) were served to the same address. Respondents acknowledged receipt of the PAN and the FLD at that address and never questioned or disputed such service in any manner.

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3 Id., pp. 244-320.
4 Supra at note 1.
5 Exhibit "P-60-1", Division Docket, Volume V, pp. 2473-2488; Exhibit "R-1", BIR Records, Folder 2, pp. 150-165.
6 Exhibit "R-42", BIR Records, Folder 2, pp. 60-63.
7 Exhibit "R-19", id., pp. 106-112.

Secondly, petitioner contends that a Special Power of Attorney (**SPA**) expressly authorizing the receiving clerk to accept notices is unnecessary. According to petitioner, a person designated as a 'receiving clerk' is, by virtue of such designation, inherently authorized to receive documents on behalf of his or her employer. This authority is implied, as it may be inferred from, among others, the employer's acquiescence to the representative's acts of a similar nature, with actual or constructive knowledge thereof. Moreover, respondents never raised any objection when Jamora received previous BIR notices, thereby establishing that respondents were promptly and adequately informed of the communications he received.

Petitioner further submits that service is deemed complete when received by a person of suitable age and discretion, as was the case here when the FDDA[8] was received by Jamora. In any event, petitioner argues that, assuming *arguendo* Jamora was not in fact authorized to receive documents from the BIR, respondents are now estopped from questioning his authority, having previously accepted service through him without objection.

Third, petitioner submits that respondents were afforded due process when they received a Notice of Informal Conference (**NIC**), as confirmed by the witness who testified that said NIC was served through respondents' counsel. Respondents' own categorical admission in their Protest[9] to the FLD[10], wherein they expressly acknowledged receipt of the NIC, support this claim.

Fourth, respondents were sufficiently informed of the factual and legal bases of the deficiency income tax (**IT**) assessment, as evidenced by the fact that they were able to file an intelligent protest that exhaustively set forth arguments refuting the assessment.

Lastly, petitioner contends that the subject assessment is supported by legal basis and is not based on unverified information. It was respondents themselves who declared that they would no longer be submitting additional documents, even after petitioner issued a subpoena for the verification of the reported figures. Due to respondents' failure to produce the requested documents, the Revenue

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8 Exhibit "P-60-1"/Exhibit "R-1", supra at note 5.
9 Exhibit "P-75", Division Docket, Volume XI, pp. 5130-5148.
10 Exhibit "R-19", supra at note 7.

Officers (**ROs**) were compelled to determine respondent EDP's income based on best possible sources.

In their Comment/Opposition[11], respondents urge the Court *En Banc* to deem petitioner's MR as *pro forma*, arguing that it is a mere rehash of the arguments already raised in previous submissions before the Court in Division and *En Banc*, and thus fails to present any compelling reason for the reversal or modification of the assailed Decision.

Respondents also echo the Special Third Division's ruling in its Decision dated 29 September 2022[12], which held that it validly acquired jurisdiction over this case, citing the Supreme Court's Resolution dated 21 January 2019.[13] In said Resolution, the Supreme Court dismissed petitioner's "Petition for *Certiorari* (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)" dated 02 October 2018[14] (**Second Petition for *Certiorari***), docketed as G.R. No. 242265, on the ground that petitioner failed to sufficiently establish grave abuse of discretion committed by the Court of Tax Appeals' (**CTA**'s) First Division in issuing the 2015 Resolution re: Jurisdiction[15] and 2018 Resolution re: Bond and Jurisdiction.[16] Furthermore, respondents contend that it is petitioner who is guilty of forum shopping, having failed to disclose the pendency of G.R. No. 242265 in the Verification and Certification on Non-Forum Shopping dated 29 March 2023[17] attached to the present Petition for Review.

Respondents further argue that both the Court in Division and *En Banc* correctly held that the service of the FDDA[18] on Jamora on 20 May 2013 does not constitute valid service on them, due to petitioner's failure to comply with the rules governing service of notices to taxpayers. For an assessment to become final and executory, it must be clearly established that the person liable for the payment of tax actually received the assessment.

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11 Supra at note 2.

12 Division Docket, Volume XIII, pp. 1034-1082, with exhibits. Penned by Associate Justice Erlinda P. Uy, (Ret.), with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

13 Division Docket, Volume X, p. 4910.

14 Id., pp. 4083-4321, with annexes.

15 See Resolution dated 27 January 2015, id., Volume IV, pp. 1748-1765.

16 See Resolution dated 27 July 2018, id., Volume VII, pp. 3403-3440.

17 *Rollo*, p. 42.

18 Exhibit "P-60-1"/Exhibit "R-1", supra at note 5.

Lastly, respondents assert that constructive service could not have taken place, as there must first be an attempt to personally serve the notice personally on the taxpayer or a duly authorized representative who then refuses to receive it. Respondents argue that such refusal could not have occurred in this case, as neither they nor their authorized representative, Atty. Jason L. Fernandez (**Atty. Fernandez**), were present at the Batasan Complex when then Group Supervisor Virma C. Clemente (**Clemente**) of BIR's National Investigation Division (**NID**) and her team attempted to serve the FDDA.[19] Thus, the essential precondition for constructive service—refusal to accept despite personal service—was absent.

We resolve.

After a careful perusal of the present MR[20] and the arguments raised therein, We find the same bereft of merit.

To be sure, the present MR is not *pro forma* just because it reiterated the arguments earlier passed upon.[21] However, the Court *En Banc* is nevertheless constrained to summarily deal with reiterations of previously settled arguments following the Supreme Court's ruling in the case of *Ortigas and Company Limited Partnership v. Judge Tirso Velasco and Dolores V. Molina.*[22]

To recall, the Special Third Division granted respondents' Amended Petition for Review[23] and thereby, cancelled the subject deficiency Income Tax (**IT**) assessment in the aggregate amount of ₱2,229,020,905.50, inclusive of interests and surcharges, for the taxable years (**TYs**) 2008 and 2009.

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[19] Exhibit "P-60-1"/Exhibit "R-1", supra at note 5.

[20] Supra at note 1.

[21] *Security Bank and Trust Company, Inc. v. Rodolfo M. Cuenca,* 396 Phil. 108 (2000); *Department of Agrarian Reform v. Vicente K. Uy,* 544 Phil. 308, 329 (2007); and *Valencia (Bukidnon) Farmers Cooperative Marketing Association, Inc., Represented by the Board of Directors of Farmers Cooperative Marketing Association (FACOMA) as Trustees, Herein Represented by David M. Porticos, Board Chairman v. Heirs of Amante P. Cabotaje, Namely: Esther M. Cabotaje, et al.,* G.R. No. 219984, 03 April 2019.

[22] G.R. Nos. 109645 and 112564, 04 March 1996.

[23] Division Docket, Volume III, pp. 1229-1402.

The Special Third Division ruled that: (1) it has jurisdiction over the case, rejecting petitioner's claim that respondents, Spouses Pacquiao, were validly served the FDDA on 20 May 2013 through Jamora, as his authority to receive the document on their behalf was not established (instead, the only valid service occurred on 02 July 2013, when a copy was delivered by the BIR's NID to Atty. Fernandez, respondents' counsel), and since the Petition for Review before Court in Division was filed on 01 August 2013—within the 30-day period from 02 July 2013—jurisdiction was properly acquired; (2) respondents were not duly served with the NIC, rendering the assessment void for violating their right to due process; (3) respondents were not duly informed of the factual and legal bases of the deficiency IT assessment, as petitioner merely relied on unspecified "best possible sources" without identifying the documents used to compute the alleged deficiency taxes; and (4) the deficiency IT assessment lacks sufficient basis, as it primarily relies on news articles that the Court deemed "hearsay evidence, twice removed", and thus without any probative value, noting further that while a tax assessment is presumed correct and regular, it must be declared void if unsupported by sufficient evidence.

Petitioner later filed an MR, but the Special Third Division likewise denied the same for lack of merit.

In compliance with the Court *En Banc*'s Resolution dated 22 May 2023[24], respondent filed their Comment[25], wherein they argued that the present Petition for Review should be dismissed on the ground of forum shopping. They further contended that petitioner failed to substantiate his or her claims during the trial.

In support of their position, respondents asserted that: (1) petitioner's evidence did not comply with the established rules on the service of notices to taxpayers; (2) petitioner failed to present the NIC and proof of its service on respondents; (3) petitioner's FLD failed to specify the factual basis of the deficiency IT assessment; and (4) petitioner failed to produce evidence to support the findings contained in the FLD.

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24 *Rollo*, pp. 110-111.
25 Id., pp. 112-186, with annexes.

In the assailed Decision, the Court *En Banc* ruled that: (1) the present Petition for Review was timely filed on 30 March 2023; and (2) petitioner did not commit forum shopping in filing the present Petition for Review, as the issuance of the Special Third Division's assailed Decision and Resolution rendered the pending Petitions for *Certiorari* before the Supreme Court *ipso facto* moot, thereby justifying petitioner's pursuit thereof.

Meanwhile, as to the merits of the case, the Court in Division validly acquired jurisdiction. The reckoning point for the 30-day period to file an appeal before the Court in Division is the service of the FDDA[26] on respondents' counsel, Atty. Fernandez, on 02 July 2013—not the earlier service on Jamora on 20 May 2013.

It is important to emphasize that an FDDA is not a court-issued document; hence, Section 6[27], Rule 13 of the Rules of Court on personal service does not apply. The proper legal basis is Revenue Regulations (**RR**) No. 12-99[28], specifically Section 3.1.7[29], which mandates personal service on the taxpayer or their duly authorized representative, or service by registered mail.

In this case, the existence of an implied agency authorizing Jamora to receive the FDDA on behalf of respondents was never sufficiently established. Even if it were argued that Jamora subsequently received

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26 Exhibit "P-60-1"/Exhibit "R-1", supra at note 5.

27 The version of Section 6, Rule 13 prior to the amendment by A.M. 19-10-20-SC, or the 2019 Amendments to the 1997 Rules of Civil Procedure, is the version applicable to the instant case. Section 6, Rule 13 reads: "SEC. 6. *Personal Service.* — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein."

28 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.

29 3.1.7. *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer **<u>or his duly authorized representative</u>** who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof). (Emphasis and underscoring supplied)

the Preliminary Collection Letter[30] (**PCL**), this does *not* make him an authorized representative for purposes of receiving the FDDA, as the circumstances surrounding the two (2) instances of service differ—respondent EDP was present at the premises when the PCL was served, but was not present when the FDDA was served.

In *Violeta Tudtud Banate, et al. v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc. and Teofilo Soon, Jr.*[31], the Supreme Court stressed that apparent authority is determined solely by the acts or conduct of the principal—not by the acts of the agent, to wit:

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> Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, **apparent authority is determined only by the acts of the principal and not by the acts of the agent.** There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment.
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> ...

The existence of apparent authority must be assessed based on the acts of the principal, which in this case is respondents, Spouses Pacquiao. Here, there was no acquiescence on the part of respondents, as it was not sufficiently proven through any overt act that a specific directive was given authorizing Jamora to receive the FDDA.

Assuming *ex gratia in argumenti* that Jamora acted as an agent, his actions cannot bind respondents in the absence of a written authority expressly granting such power. For an agency relationship to be valid and binding, there must be an actual intent on the part of the principal to appoint the agent—an intent that must be reasonably inferred from the principal's words or conduct—as well as a corresponding intent on the part of the agent to accept the appointment and act accordingly. In

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30 Exhibit "P-1". Division Docket. Volume I. p. 234.

31 G.R. No. 163825, 13 July 2010; Citations omitted, emphasis supplied and italics in the original text.

this case, no such intent to authorize the receipt of the FDDA was established.

In view of the foregoing, the only valid service of the FDDA[32] was upon Atty. Fernandez, respondents' counsel. Accordingly, the filing of the Petition for Review[33] on 01 August 2013 was timely.

As held in *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[34], when a taxpayer denies receipt of an assessment notice from the BIR, the burden of proof rests on the BIR to establish that the notice was indeed properly served, *viz*:

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> **Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion **and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee** (*Republic vs. Court of Appeals, 149 SCRA 351*).
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> ...

As applied to the present case, the burden rested on petitioner to prove that the FDDA was properly served on either respondents or their duly authorized representative. In the absence of sufficient evidence—as is the case here—respondents' claim must be sustained.

Moreover, in *Republic of the Philippines v. The Court of Appeals, and Nielson & Company, Inc.*[35], the Supreme Court held that while a mailed letter is generally presumed to have been received by the addressee in the regular course of mail, this is merely a disputable

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32 Exhibit "P-60-1"/Exhibit "R-1", supra at note 5.
33 Division Docket, Volume I, pp. 6-171, with annexes.
34 G.R. No. 157064, 07 August 2006; Emphasis supplied and italics in the original text.
35 G.R. No. L-38540, 30 April 1987; Emphasis supplied.

presumption that must be supported by evidence to establish actual receipt, as follows:

> ...
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> ... As correctly observed by the respondent court in its appealed decision, while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still **this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**
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> ...

More importantly, the Court *En Banc* noted that the subject deficiency IT assessment is void due to a violation of respondents' right to due process. The FLD failed to provide sufficient detail on how petitioner computed respondents' gross income. The computation was based on newspaper clippings, boxing purse, pay-*per*-view share, and closed-circuit sales share—sources that were neither verified nor shown to be accurate. As a result, respondents were not adequately informed of the factual and legal bases of the deficiency tax assessment, amounting to a denial of due process.

Furthermore, a taxpayer must be given an opportunity to examine the supporting documents forming the basis of the assessment. In this case, that opportunity was conspicuously absent, as petitioner failed to sufficiently explain the methodology used to compute gross income and did not reference or provide copies of the exhibits allegedly relied upon.

To reiterate, and for emphasis, as held in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[36], Section 228[37] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, expressly requires that taxpayers be informed in writing of the law and the facts on which the assessment is based. This requirement is *mandatory* and *cannot* be presumed. Failure to comply with this requirement renders the assessment void, *viz*:

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[36] G.R. No. 215957, 09 November 2016; Citations omitted and emphasis supplied.

[37] **SEC. 228**. *Protesting of Assessment*.

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> **The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.**
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> The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
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> **The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.**
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> ...
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> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, **due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence"**.
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> ...

We cannot subscribe to petitioner's contention that respondents were sufficiently informed of the factual and legal bases of the subject deficiency IT assessment merely because they were able to file an intelligent protest. The fact that respondents submitted an intelligent protest does not cure the lack of proper notice on the part of petitioner. More importantly, it would be improper to use the very act of filing an intelligently crafted protest against the interests of the party who successfully made it.

As a final point, as to petitioner's argument that the assessment has legal basis and is not based on unverified information—and that the ROs were compelled to estimate respondents' income based on best possible sources due to respondents' failure to submit documents—cannot be sustained. As previously held, reliance on newspaper clippings, which are likely selected arbitrarily and remain unverified, seriously undermines the credibility of the assessment. Both the legal and factual bases of a tax assessment must be clearly and specifically stated. Any uncertainty regarding the source of the data on which the tax liability is based constitutes violation of a direct provision of law and results in prejudice to the taxpayer.

All told, the Court *En Banc* finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing considerations, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration [re: Decision dated 23 January 2025]" filed on 12 February 2025, is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I maintain my Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice