REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COUNTRY BANK, RURAL BANK OF BONGABONG, INC., Petitioner,	**CTA EB NO. 2760** (CTA Case No. 10864)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 05 2024 4:12 pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking to reverse the Resolutions dated January 31, 2023[1] and May 05, 2023[2] of the Court of Tax Appeals Second Division ("Second Division"), granting respondent's "Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court" filed on October 21, 2022 and dismissing for lack of jurisdiction the original "Petition for Review" filed on May 23, 2022 before the court *a quo*.

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1 Issued by Associate Justices Erlinda P. Uy, Jean Marie A. Bacorro-Villena and Lanee S. Cui-David; Docket, pp. 349-364.

2 *Id.*, pp. 382-390.

The Parties

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines with office address at Poblacion, Bongabong, Oriental Mindoro, represented by Melvin H. Alinio, its Chief Operating Officer and Bank Manager.[3]

Respondent is the Bureau of Internal Revenue ("BIR") represented by Regional Director ("RD") Florante R. Aninag of Revenue Region 9A, CaBAMiRo, Sto. Tomas, Batangas, duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended. He holds office at BIR Revenue Region 9A, CaBAMiRo, Sto. Tomas, Batangas.[4]

The Facts

On February 09, 2021, Respondent issued a Preliminary Assessment Notice ("PAN") with Details of Discrepancies showing Petitioner's liability for deficiency income tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and compromise penalty in the total amount of Php5,226,763.31.[5]

Thereafter, on March 18, 2021, Respondent issued a Formal Letter of Demand ("FLD") demanding payment of deficiency taxes, including penalties and interests, for the taxable year 2018 in the total amount of Php5,309,330.67.[6] Allegedly, Petitioner "officially" received the FLD on April 14, 2021.[7] While according to Respondent, the FLD was received by Petitioner through its Branch Head on March 29, 2021.[8]

On May 14, 2021, Petitioner filed its protest to the FLD, addressed to RD Florante R. Aninag.[9]

On June 28, 2021, Respondent issued a Letter denying Petitioner's protest to the FLD for being allegedly filed out of time.[10]

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3 *Id.*, Petition for Review, par. 2.1, pp. 7-8.
4 *Id.*, Petition for Review, par. 2.2, p. 8.
5 *Id.*, Petition for Review, par. 4.7 and Annexes "J" & "K", pp. 10 and 44-48.
6 *Id.*, Petition for Review, par. 4.9 and Annex "L", pp. 10 and 49-64.
7 *Id.*, Petition for Review, par. 4.11, p. 11.
8 *Id.*, Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court, par. 10, p. 314.
9 *Id.*, Petition for Review, par. 4.12 and Annex "M", pp. 11 and 65-66.
10 *See* Docket, Petition for Review, Annex "P", pp. 71-72.

Later, on July 28, 2021, Warrants of Garnishment were issued against Petitioner's bank accounts in Banco De Oro ("BDO") and Development Bank of the Philippines ("DBP").[11] Petitioner was informed of the said Warrants of Garnishment by BDO and DBP on August 13, 2021 and August 16, 2021, respectively.[12]

On August 23, 2021, Petitioner wrote a Letter to RD Florante R. Aninag in response to the June 28, 2021 Letter.[13] While on August 31, 2021, counsel for Petitioner wrote another Letter addressed to Atty. Emelita R. Abo, Revenue District Officer of Revenue District Office No. 63, requesting for the lifting of the Warrants of Garnishment.[14]

On October 22, 2021, Respondent, through RD Florante R. Aninag, issued a Letter in relation to Petitioner's August 23, 2021 and August 31, 2021 Letters.[15]

On November 26, 2021, Petitioner wrote another Letter to RD Florante R. Aninag for the lifting of the Warrants of Garnishment in response to Respondent's October 22, 2021 Letter.[16]

On March 18, 2022, counsel for Petitioner filed an Affidavit-Complaint before the Presidential Anti-Corruption Commission praying for the removal from service of the involved BIR officers.[17]

On April 21, 2022, Petitioner received a Letter dated April 04, 2022, signed by RD Florante R. Aninag, denying its request for lifting of the Warrants of Garnishment.[18]

The Proceedings in the Second Division

On May 23, 2022, Petitioner filed a "Petition for Review" with the court *a quo* in its bid to reverse and set aside Respondent's Letter dated April 04, 2022.[19]

On May 30, 2022, summons was issued against Respondent.[20]

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[11] Docket, pp. 68 and 70.
[12] *Id.*, Petition for Review, Annexes "N" and "O", pp. 67 and 69.
[13] *Id.*, Petition for Review, par. 4.14 and Annex "P", pp. 11 and 71-72.
[14] *Id.*, Petition for Review, par. 4.16 and Annex "Q", pp. 11 and 73-74.
[15] *Id.*, Petition for Review, par. 4.20 and Annex "T", pp. 12 and 131.
[16] *Id.*, Petition for Review, Annex "U", pp. 132-133.
[17] *Id.*, Petition for Review, Annex "S", pp. 78-85.
[18] *Id.*, Petition for Review, par. 4.23 and Annex "B", pp. 12 and 26-27.
[19] *Id.*, pp. 7-22.
[20] *Id.*, p. 134.

On July 01, 2022, Respondent filed a "Motion for Extension of Time to File Answer"[21], which the court *a quo* granted in an Order dated July 05, 2022.[22]

On August 01, 2022, Respondent filed its "Answer"[23] *via* registered mail.

On August 05, 2022, Respondent filed a "Motion to Defer Transmittal of BIR Records"[24], which was granted in an Order[25] dated August 16, 2022.

On August 17, 2022, a Notice of Pre-Trial Conference[26] was issued.

On July 01, 2022, Respondent filed a "Motion for Extension of Time to File Answer"[27], which the court *a quo* granted in an Order[28] dated July 05, 2022.

On October 21, 2022, Petitioner filed the following: Pre-Trial Brief[29], Judicial Affidavit of Elberne B. Nuevo[30], Judicial Affidavit of Juliepher R. Bolor[31], and Judicial Affidavit of Melvin H. Alinio[32].

On October 21, 2022, Respondent filed a "Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court"[33].

On October 24, 2022, Respondent also filed his "Pre-Trial Brief *Ad Cautelam*"[34].

On November 04, 2022, Petitioner filed its "Comment/Opposition [to Respondent's Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court dated October 20, 2022]"[35].

On January 31, 2023, the Second Division promulgated the first Assailed Resolution, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, respondent's Motion for Early Resolution of the Issue of Jurisdiction of the

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21 *Id.*, pp. 136-140.
22 *Id.*, p. 141.
23 *Id.*, pp. 149-160.
24 *Id.*, pp. 143-146.
25 *Id.*, p. 148.
26 *Id.*, pp. 161-162.
27 *Id.*, pp. 136-140.
28 *Id.*, p. 141.
29 *Id.*, pp. 163-175.
30 *Id.*, pp. 286-291.
31 *Id.*, pp. 292-297.
32 *Id.*, pp. 298-310.
33 *Id.*, pp. 311-322.
34 *Id.*, pp. 327-332.
35 *Id.*, pp. 339-347.

> Honorable Court is **GRANTED**. Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[36]

Aggrieved, Petitioner filed a "Motion for Reconsideration"[37] on February 17, 2023, with Respondent's "Comment (on Petitioner's Motion for Reconsideration)" filed on March 20, 2023, which the Second Division denied in the Second Assailed Resolution, to wit:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED**.
>
> **SO ORDERED.**"[38]

The Proceedings in the Court of Tax Appeals En Banc

On May 29, 2023, Petitioner filed *via* registered mail a "Motion for Extension of Time to File Petition for Review"[39], which was granted in a Minute Resolution[40] dated June 07, 2023.

On June 14, 2023, Petitioner filed the present "Petition for Review"[41].

On July 04, 2023, a Minute Resolution[42] was issued directing Petitioner to submit within five (5) days from notice, the Secretary's Certificate and certified true copies of the Assailed Resolutions dated January 31, 2023 and May 05, 2023.

On July 18, 2023, Petitioner filed a "Submission".[43]

On July 28, 2023, the Court issued a Minute Resolution[44] noting Petitioner's "Submission" and directing Respondent to comment on the "Petition for Review" within ten (10) days from notice.

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36 *Id.*, Resolution dated January 31, 2023, p. 358.
37 *Id.*, pp. 359-364.
38 *Id.*, Resolution dated May 05, 2023, p. 389.
39 Rollo, pp. 1-7. Record shows that Petitioner received the May 05, 2023 Resolution on May 15, 2023; Docket, p. 381.
40 *Id.*, p. 17.
41 *Id.*, pp. 18-33.
42 *Id.*, p. 34.
43 *Id.*, pp. 35-37.
44 *Id.*, p. 60.

On August 16, 2023, Respondent filed his "Comment (Petition for Review)"[45] ("Comment").

The Court then issued a Minute Resolution[46] on September 04, 2023, submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of its petition – "whether the Court in Division erred in dismissing the petitioner's Petition for Review under Section 7(a)(1) of Republic Act No. 1125, as amended by R.A. No. 9282 of the decision of the CIR or its duly authorized representative for the reason that it is time-barred"[47].

The Arguments of Parties

First, Petitioner posits that the BIR's power to distraint and/or levy properties must yield to the taxpayer's constitutional right not to be deprived of property without due process.

Petitioner also points out that for the Court to declare as time-barred the taxpayer's petition without considering the peculiarity of the circumstances at bar is to give reward to Respondent's unlawful acts of graft and corruption.

Additionally, Petitioner contends that it was left in the dark as to which action of the Commissioner of Internal Revenue ("CIR") was appealable to the Court of Tax Appeals ("CTA").

Lastly, Petitioner avers that Respondent's Letter dated April 04, 2022 that declared with finality the decision denying the lifting of the Warrants of Garnishment is the one that is considered the CIR's appealable decision.

On the other hand, Respondent in his Comment maintains that the assessments issued against Petitioner is already final, demandable and immediately executory for Petitioner failed to appeal/protest within the period provided by the statute. As such, the assessments are no longer appealable before the CTA.

Respondent further submits that even assuming that the protest to the FLD was filed within the period allowed by law, the petition must be dismissed for it was filed out of time before the CTA. Respondent stresses that despite

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[45] *Id.*, pp. 61-71.
[46] *Id.*, p. 72.
[47] *Id.*, Petition for Review, The Issue, p. 23.

several denials through letters made by the BIR, Petitioner disregarded the same and only opted to file a petition from receipt of the April 04, 2022 Letter.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration" on May 05, 2023. Petitioner received said Resolution on May 15, 2023.[48] Pursuant to Rule 4, Section 2(a)(1)[49] in relation to Rule 8, Section 3(b)[50] of the Revised Rules of the Court of Tax Appeals[51] (RRCTA), Petitioner had fifteen (15) days from the date of receipt of the resolution or until May 30, 2023 within which to file its petition for review.

On May 29, 2023, Petitioner filed *via* registered mail a "Motion for Extension of Time to File Petition for Review"[52], praying for an extension of fifteen (15) days or until June 14, 2023 within which to file the petition. The same was granted in a Minute Resolution[53] dated June 07, 2023.

On June 14, 2023, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction over the case.

We now proceed to the merits of the case.

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48 *Id.*, p. 381.

49 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

50 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

51 A.M. No. 05-11-07-CTA, November 22, 2005.

52 Rollo, pp. 1-7.

53 *Id.*, p. 17.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the arguments in the instant Petition for Review are the same contentions in Petitioner's "Motion for Reconsideration" filed with the court *a quo* on February 17, 2023. These arguments had been fully and exhaustively resolved by the Court in Division in the Assailed Resolutions dated January 31, 2023 and May 05, 2023. Be that as it may, and if only to put Petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew.

The Court in Division correctly dismissed the case for lack of jurisdiction

The issue on jurisdiction is not novel. Basic is the rule that before any court decides a case on its merits, it must first make sure that it has jurisdiction over it. For jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[54]

Jurisdiction is defined as the power and authority 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 jurisdiction over the subject matter.[55] Verily, this Court cannot inquire into the validity of the assessment if it lacks jurisdiction to entertain the case.

In the case at bar, the basis for the dismissal of the Petition for Review filed by Petitioner is grounded on the fact that it was belatedly filed. The Second Division ruled that the thirty-day period under Section 11[56] of Republic Act ("RA") No. 1125[57], as amended by R.A. No. 9282[58] should be counted

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[54] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 04, 2015.

[55] *Perfecto Velasquez, Jr. v. Lisondra Land Incorporated, Represented by Edwin L. Lisondra*, G.R. No. 231290, August 27, 2020.

[56] SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts 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....

[57] An Act Creating The Court Of Tax Appeals, June 16, 1954.

[58] 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,

from Petitioner's receipt of the Warrants of Garnishment, or at the most lenient of interpretations, from its receipt of the October 22, 2021 Letter from the BIR.

Petitioner insists however that said thirty-day period should be counted from the receipt of the April 04, 2022 Letter.

We analyze.

In the case at bar, the following are the factual antecedents that eventually led to the filing by Petitioner of its *Petition for Review* before the court *a quo*:

- February 09, 2021 – The PAN was issued.
- March 18, 2021 – The FLD was issued. According to Respondent, it was received by Petitioner through its Branch Head on March 29, 2021, while Petitioner alleges that it "officially received" the FLD on April 14, 2021.
- May 14, 2021 – Petitioner filed its protest to the FLD.
- June 28, 2021 – Respondent issued a Letter denying Petitioner's protest to the FLD.
- July 28, 2021 – Warrants of Garnishment were issued.
- August 13, 2021 – Petitioner was informed by BDO of the Warrant of Garnishment.
- August 16, 2021 – Petitioner was informed by DBP of the Warrant of Garnishment.
- August 23, 2021 – Petitioner wrote a Letter to RD Florante R. Aninag in response to the June 28, 2021 Letter.
- August 31, 2021 – Petitioner wrote a Letter to Atty. Emelita R. Abo, Revenue District Officer of Revenue District Office No. 63 in response to the Warrants of Garnishment.
- October 22, 2021 – RD Florante R. Aninag issued a Letter in relation to Petitioner's August 23, 2021 and August 31, 2021 Letters.
- November 26, 2021 – Petitioner wrote a Letter to RD Florante R. Aninag in response to the October 22, 2021 Letter.
- March 18, 2022 – Petitioner filed an Affidavit-Complaint before the Presidential Anti-Corruption Commission.
- April 21, 2022 – Petitioner received a Letter dated April 04, 2022 from RD Florante R. Aninag in relation to Petitioner's November 26, 2021 Letter.
- May 23, 2022 – Petitioner filed a Petition for Review before the Second Division appealing the Letter dated April 04, 2022.

Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.

After a review of the documents supporting the facts above, it can be deduced that the Warrants of Garnishment, signed by Atty. Emelita R. Abo, OIC-Revenue District Officer on behalf of the CIR, should be considered as the decision appealable to this Court, and not the Letter dated April 04, 2022 from RD Florante R. Aninag denying Petitioner's November 26, 2021 Letter.

In cases where the validity of the Warrant of Garnishment is put in question, the thirty-day period under Section 11 of RA No. 1125, as amended shall be reckoned from the taxpayer's receipt of the Warrant of Garnishment. This is because said warrant directs the bank to seize the taxpayer's bank account to settle the BIR's assessment. It reiterates the alleged tax deficiency assessment due from a taxpayer, requesting its payment from the bank to which the warrant was served.

Such order or letter is tantamount to an outright denial of the taxpayer's protest to the assessment. It is a clear indication of the firm stand of the BIR against the reconsideration or reinvestigation of the disputed assessment. Simply put, it is a deemed rejection of the request to reconsider or reinvestigate.[59]

Petitioner was not left in the dark to guess as to which letter or action from the BIR constitutes the decision appealable to this Court since jurisprudence dictates that a warrant is equivalent to a denial of the protest.

In *Commissioner of Internal Revenue v. Algue, Inc.*[60], a Warrant of Distraint and Levy was treated as the CIR's final decision, to wit:

> "[A]s a rule the warrant of distraint and levy is 'proof of the finality of the assessment' and 'renders hopeless a request for reconsideration,' being 'tantamount to an outright denial thereof and makes the said request deemed rejected.'

Moreover, in *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[61], it was ruled that "[t]he warrant of distraint or levy issued by the Commissioner of Internal Revenue constitutes constructive and final denial of [the taxpayer's] protest".

Like a warrant of distraint or levy, a warrant of garnishment under Section 208 of the NIRC of 1997, as amended, is a civil remedy given to the government for collection of taxes. In the eyes of the BIR, the assessment stage had already ended and the collection stage begins.

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59 *See Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 09, 2005.
60 G.R. No. L-28896, February 17, 1988.
61 G.R. No. 225809, March 17, 2021.

It should be clear to the taxpayer that its protest had already been denied with the issuance of the warrant of garnishment. In the words of the Supreme Court in Commissioner of *Internal Revenue v. Isabela Cultural Corporation*[62], "[h]ow then could [the taxpayer] have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

Considering that Petitioner was notified of the Warrants of Garnishment by BDO and DBP on August 13, 2021 and August 16, 2021, respectively, and the Petition for Review was filed with the Second Division on May 23, 2022 or only after two hundred eighty-three (283) days from notice of the first Warrants of Garnishment served to BDO, it is without doubt that the petition was not timely filed.

Instead of appealing the Warrants of Garnishment with the CTA, Petitioner wrote a Letter on August 23, 2021 to RD Florante R. Aninag, while another letter was sent to Atty. Emelita R. Abo on August 31, 2021. Then, in response to the October 22, 2021 Letter from the BIR, Petitioner then wrote a third letter to RD Florante R. Aninag on November 26, 2021 and filed an Affidavit-Complaint before the Presidential Anti-Corruption Commission on March 18, 2022. It must be emphasized that these letters filed by Petitioner against the Warrants of Garnishment are **not part of the taxpayer's remedies under the NIRC of 1997, as amended** or pertinent BIR rules and regulations. As such, they cannot extend the decision already issued by the BIR on the assessment being disputed.

To reiterate, perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[63]

All in all, We see no reason to reverse the conclusion and ruling of the Second Division.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on June 14, 2023 is **DENIED** for lack of merit. Accordingly, the Resolutions dated January 31, 2023 and May 05, 2023 in CTA Case No. 10864 are **AFFIRMED**.

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[62] G.R. No. 135210, July 11, 2001.

[63] *Commisioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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