Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

MILLENNIUM BUSINESS SERVICES, INC.,
Petitioner,

CTA EB CASE NO. 510
(CTA Case No. 7441)

-versus-

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 28 2010

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

[1]Rule 4 xxx xxx
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 Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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amended, of the Amended Decision[2] dated February 11, 2009, rendered by the former First Division of this Court[3] in CTA Case No. 7441, and its Resolution[4] dated May 22, 2009.

Petitioner seeks a reversal of both the aforesaid Amended Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Amended Decision dated February 11, 2009:

> *"**WHEREFORE**, respondent's Motion for Reconsideration is hereby **GRANTED**. The Decision dated December 9, 2008 is hereby **SET ASIDE**. Accordingly, petitioner's claim for refund or tax credit is hereby **DENIED** for insufficiency of evidence.*
>
> ***SO ORDERED.**"*

Resolution dated May 22, 2009:

> *"**WHEREFORE**, petitioner's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.*
>
> ***SO ORDERED.**"*

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Rule 8 xxx xxx

Sec. 4. *Where to appeal; mode of appeal.-*

(a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

(c) xxx.

[2] En banc Docket, pp. 50-56.

[3] Penned by Presiding Justice Ernesto D. Acosta, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

[4] En banc Docket, pp. 75-79.

The facts as narrated by this Court's former First Division are undisputed:

> Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and duly registered with the Bureau of Internal Revenue. It is principally engaged in the business of providing accounting and bookkeeping services.
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> Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds and/or the issuance of tax credit certificates for excess creditable withholding taxes.
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> On April 15, 2004, petitioner filed its annual income tax return for the calendar year ended December 31, 2003, declaring, among others, the following:

Sales/Revenues/Receipts/Fees	15,240,176.00
Less: Cost of Sales/Services	14,026,081.00
Gross Income from Operation	1,214,095.00
Add: Non-Operating &Other Income	62,960.00
Total Gross Income	1,277,055.00
Less: Deductions	649,327.00
Taxable Income	627,728.00
Tax Rate	32%
Tax Due	200,873.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	1,438,185.00
Creditable Tax Withheld for the First Three Quarters	1,057,316.00
Creditable Tax Withheld for the Fourth Quarter	284,307.00
Total Tax Credits/Payments	2,779,808.00
Total Amount Payable/(Overpayment)	(2,578,935.00)

> In a letter dated April 7, 2006 and received by the BIR on the same date, petitioner requested for a refund or issuance of tax credit certificate in the amount of ₱2,578,935.00 representing its overpaid creditable withholding tax for the calendar year ended December 31, 2003 pursuant to the provisions of Sections 204 and 229 of the Tax Code, as amended.
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> Alleging inaction on the part of the BIR, petitioner filed a Petition for Review with this Court on April 12, 2006.

The respondent filed her Answer on July 14, 2006, and prayed for the dismissal of the petition for lack of merit. She alleged therein the following Special and Affirmative Defenses:

> '5. Assuming but without admitting that Petitioner filed a claim for tax credit certificate, the same is still subject to investigation by the Bureau of Internal Revenue;
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> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 8. It is incumbent upon the Petitioner to show that its(sic) has complied with the provisions of Section 204(c) in relation to Section 223 of the Tax Code, as amended;
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> 9. In an action for tax credit or refund , the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (Emmanuel &Zenaida Aguilar v. Commissioner of Internal Revenue, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);
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> 10. Claims for refund are construed strictly against the claimant (as) the same partake the nature of exemption from taxation (Commissioner of Internal Revenue Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavour. (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

After trial, this Court's former First Division rendered a Decision[5] which in summary held that the claim for refund was filed within the two-year prescriptive period provided under Section 204(c) in relation

[5] En banc Docket, pp. 36-47.

to Section 229 of the NIRC- the claim for refund both in the administrative and judicial levels were filed within (2) two years from the date of payment of tax; the fact of withholding of creditable taxes by the withholding agents on income subject to withholding tax were reflected in the 2003 income tax return; the income upon which the withholding taxes were withheld were included as part of the gross income; petitioner was able to establish that it did not carryover as a tax credit the claimed unutilized creditable withholding tax based on the 2004 annual income tax return and that petitioner was entitled only to the reduced amount of ₱1,143,065.38.

Upon reconsideration, this Court's former First Division, in its Amended Decision, found merit in respondent's sole argument that the non-presentation of petitioner's 2004 quarterly income tax returns was fatal to the claim for refund since it cannot be determined whether petitioner had exercised the option to carry-over its unutilized creditable withholding tax for the calendar year 2003 to the succeeding taxable quarters of 2004.

In a Resolution dated May 22, 2009, this Court's former First Division denied petitioner's Motion for Reconsideration of the Amended Decision whereby photocopies of petitioner's 2004 quarterly income tax returns were attached.

In the instant Petition for Review, petitioner states the following assignment of errors:

1. "The Honorable CTA- First Division erred in ruling that the petitioner failed to prove that it did not carry over its claimed excess creditable witholding taxes to the succeeding quarters of taxable year 2004; and
2. The Honorable CTA-First Division erred in ruling that the petitioner failed to explain or reconcile the difference between the tax overpayment in the amount of Php1,616,400.00 as stated in the annual income tax return of the petitioner for 2004 and the prior year's excess credits as stated in the annual income tax reurn of the petitioner for 2005 in the amount of Php 2,853,712.00".

On the first assignment of error, the issue is whether petitioner was able to prove that it did not carry over its claimed excess creditable withholding taxes in the succeeding quarters for the taxable year 2004.

The crux of the issue is whether the presentation of the succeeding quarterly income tax return is indispensable to petitioner's claim of refund to prove that it did not carry over its claimed excess creditable withholding taxes to the succeeding quarters.

In a Decision[6] dated December 9, 2008, this Court's former First Division held that petitioner was able to establish that it did not

[6] Ibid.

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carryover as a tax credit the claimed unutilized creditable withholding taxes of ₱1,341,623.00 to the succeeding taxable year as shown in its 2004 income tax return. But this Decision was set aside in an Amended Decision which held that the 2004 annual income tax return is not enough to conclude that petitioner did not apply said unutilized creditable withholding taxes for the first three quarters of 2004, thus, the presentation of the quarterly income tax returns is very important.

The finding of facts of this Court's former First Division is undisputed, as follows:

1. The claim for refund for excess creditable withholding taxes was filed within the two-year prescriptive period provided under Section 204(c) in relation to Section 229 of the NIRC. Petitioner's claim which was filed with the BIR on **April 7, 2006** as well as its petition for review which was filed on **April 12, 2006**, fall within the two- year period reckoned from April 15, 2004, the date the 2003 Annual Income Tax Return was filed;[7]

2. The creditable taxes were withheld by the withholding agents;[8] and

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[7] Ibid, p. 41.
[8] Ibid, pp. 41-45.

3. The income upon which the withholding taxes were withheld were included as part of the gross income and these were reflected in the 2003 income tax return.[9]

In the recent case of Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)[10], the Supreme Court held that a taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

Petitioner complied with the requisites set forth above as it filed its administrative and judicial claim for refund within the two-year prescriptive period; the income received was declared as part of the gross income on the 2003 return and the fact of withholding was established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

However, compliance with the abovementioned requisites does not automatically entitle petitioner for a refund. Nor does it shift the burden of

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[9] Ibid, p. 45.
[10] G.R. No. 173854, March 15, 2010

proof on the part of the taxpayer claimant (petitioner) to establish the factual basis of its claim for tax credit or refund. It is equally important that the taxpayer claimant did not carry-over and apply the excess creditable withholding tax against the estimated quarterly income tax due for the taxable quarters of the succeeding taxable years pursuant to Section 76 of the NIRC of 1997, which reads:

> "SEC. 76. Final Adjustment Return. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" (Emphasis supplied)

Evidently, if the sum of the quarterly tax payments is less than the tax due on the entire taxable net income in the final return, the corporation shall pay the deficiency, or if it had made overpayments, it shall be refunded whatever excess amount it had paid or the corporation may carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years. Be that as it may, overpayment does not automatically entitle claimant for a refund because it must be proven that the excess was not carried over.

Under the "Irrevocable Rule", if the corporation opted to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no cash refund or tax credit shall be allowed. Apparently, before a refund for creditable withholding tax is granted, it is essential to prove that the excess creditable withholding tax has not been utilized or carried over to succeeding taxable quarters considering that the option to carry-over or apply as tax credit in the succeeding taxable quarters cannot be modified in its final adjustment return.

The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid, as follows:

(1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued, and

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(2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.[11]

Thus, even if the claim for refund was within the two-year prescriptive period, the fact of withholding of creditable taxes by the withholding agents was proven. Also, the income upon which the withholding taxes were withheld were included as part of the gross income and these were reflected in the preceding income tax return. Nonetheless, that the excess creditable withholding tax has not been utilized or carried over to the succeeding taxable quarters should still be proven.

On this matter, it is incumbent upon petitioner to show that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters. In other words, the burden of proof is upon the taxpayer claimant. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[12] Moreover, entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[13]

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[11] Systra Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007

[12] Commissioner of Internal Revenue, vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

[13] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, etc.*, G.R. No. 173854, March 15, 2010.

Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilize the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.

Significantly, a taxpayer may amend its quarterly income tax return or annual Income tax return or Final Adjustment Return which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry-over in the succeeding taxable quarters under the irrevocable rule cannot be modified in its final adjustment return.

The presentation of the final adjustment return does not the shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.

The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process[14], and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry-over and apply the excess was effectively chosen despite the intent to claim a refund.

In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding

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[14] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005

quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are indispensable. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st , 2nd , 3rd quarters and final adjustment return of the succeeding taxable year.

Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries-over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed.

In the instant case, petitioner seeks a refund for the excess creditable withholding taxes for the year 2003, thus, it is imperative for petitioner to prove that it did not utilize or carry over or that it did not opt to utilize and carry over to the 1st , 2nd , 3rd taxable quarters and final adjustment return of the taxable year 2004. Hence, the presentation of the quarterly income tax return and the final adjustment return are essential.

There is no merit in petitioner's argument that the preceding annual Income tax return is already sufficient to prove that it did not carry over, apply or utilize the amount claimed, considering that Line 27A-Prior Year's Excess Credits of the 2004 Income Tax Return was left blank[15].

Petitioner attached the photocopies of the quarterly income tax returns for the first three (3) quarters of 2004 in its Motion for Reconsideration and asks that the same be admitted as evidence to further substantiate its allegation that it did not carry over, apply or utilize the amount claimed in the taxable year 2004. Citing the case of BPI-Family Savings Bank vs. Court of Appeals[16], petitioner asseverates that the photocopy of the quarterly income tax returns for the first three (3) quarters of 2004 finally settles the issue.

The BPI-Family Savings Bank case does not apply in the instant case. It was established by the returns attached to the Motion for Reconsideration and the judicial notice made by the Supreme Court that there was a net loss for the taxable year such that petitioner in that case could not have applied the amount claimed as tax credit. More importantly, when the BPI-Family Savings Bank case was decided,

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[15] En banc Docket, p. 192, par. 24
[16] G.R. No. 122480. April 12, 2000.

there was as yet no irrevocability rule to consider.[17] Hence, the Supreme Court recognized that once a taxpayer has established his claim for refund, his failure to strictly comply with the rules of procedure, even if he is negligent, should not compel the Court to disregard such established fact.

Section 76 of the NIRC prior to its amendment reads:

> "Section 76. Final Adjustment Return. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
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> (a) Pay the excess tax still due; of
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimate quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

In the instant case, petitioner did not suffer a net loss as reflected in its 2003, 2004 or 2005 annual income tax returns. Further, it is established that petitioner failed to prove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters.

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[17] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

Thus, petitioner failed to meet the burden of proof required to establish the factual basis of its claim for a tax refund.

While this Court is not governed strictly by technical rules of evidence, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Without the factual basis of its refund, petitioner's photocopied quarterly income tax returns for the first three (3) quarters of 2004 are inadmissible. Well-settled is the rule that documentary evidence not formally offered cannot be considered by the Court, pursuant to Section 34, Rule 132 of the Revised Rules of Court. To admit the photocopied quarterly income tax returns would violate Section 3, Rule 130 of the Rules of Court[18]. The best evidence rule requires the highest grade of evidence obtainable to prove a disputed fact. Although there are recognized exceptions, such as when the subject of inquiry is the contents of a document, no evidence shall be

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[18] Section 3, Rule 130 of the Rules of Court reads:

Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

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admissible other than the original document itself.[19] Moreover, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so, when a decision has already been rendered.[20]

Consequently, it is no longer necessary to discuss the 2nd assignment of error for being moot.

Nonetheless, the amount claimed will not be forfeited in favor of the government because it may be claimed by petitioner as a tax credit or the same can be carried over in the succeeding taxable years like petitioner's 2002 excess credits in the amount of ₱1,438,185.00[21] which was carried over and applied in the taxable year 2003, claimed as refund and later on be carried over and applied in the taxable year 2005 as part of prior year's excess credits.

In fine, we find no cogent reason to reverse the findings of this Court's former First Division.

WHEREFORE, the instant petition is **DENIED.** The Amended Decision of the former First Division of this Court in CTA Case No. 7441,

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[19] Bank of Philippine Island as successor-in-interest of Far East Bank and Trust Company vs. SMP, Inc, G.R. No. 175466, December 23, 2009.
[20] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.
[21] En banc Docket, pp. 194-199.

dated February 11, 2009, and its Resolution dated May 22, 2009, are **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice