REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MINDANAO SANITARIUM AND HOSPITAL INC., Petitioner,	**CTA Case No. 8927**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 15 2017 2:14 pm

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review* filed on November 11, 2014 by Mindanao Sanitarium and Hospital Inc. against the Commissioner of Internal Revenue, seeking to set aside the 2010 deficiency tax assessment in the total amount ₱2,469,652.51, for being bereft of legal and factual bases.

THE FACTS

Petitioner Mindanao Sanitarium and Hospital Inc. is a nonstock, nonprofit institution, organized and existing under the laws of the Republic of the Philippines, with principal office at National Highway, San Miguel, Iligan City.[1]

On the other hand, respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) of 1997 to examine any taxpayer including

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[1] Par. 3, Additional Facts As Stipulated, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 125.

inter alia, the power to issue tax assessments, evaluate and decide upon protests relative thereto. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman Quezon City.[2]

On December 21, 2009, petitioner was able to secure a BIR Ruling No. NSNP (S30E-157) 803-2009 issued by Assistant Commissioner for Legal Services, James H. Roldan,[3] confirming that it is a *"corporation organized for charitable purposes as contemplated under Section 30(E) of the Tax Code of 1997."*

On April 5, 2011[4], petitioner filed its income tax return for taxable year ending December 31, 2010.[5]

On November 22, 2011, respondent issued *Letter of Authority* No. eLA201000034601 LOA-101-2011-00000247,[6] authorizing the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

On February 19, 2014, respondent allegedly issued a *Preliminary Assessment Notice* (PAN) against petitioner, assessing its deficiency income tax amounting to ₱2,431,264.13.[7]

Subsequently, respondent issued the *Formal Letter of Demand* (FLD) dated March 26, 2014 with *Details of Discrepancies*[8] and *Assessment Notice* dated March 27, 2014[9], assessing petitioner of deficiency income tax for taxable year 2010 in the amount of ₱2,469,652.51. Petitioner received the said documents on April 4, 2014.[10]

On April 15, 2014, petitioner filed its letter protest, disputing the Formal Letter of Demand (FLD) and Assessment Notice, and seeking a reconsideration of the income tax assessment.[11] Petitioner claims that it did not receive the requisite PAN, and even assuming that

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[2] Par. 1, Admitted Fact, JSFI, Docket, p. 125.
[3] Exhibit "P-3", Docket, pp. 183 to 185.
[4] BIR Records, p. 27
[5] Par. 3, Additional Facts As Stipulated, JSFI, Docket, p. 125.
[6] Exhibit "R-1", BIR Records, p. 30.
[7] Exhibit "R-8", BIR Records, pp. 246 to 247.
[8] Exhibit "P-6", Docket, pp. 189 to 191; BIR Records, 248 to 250.
[9] BIR Records, p. 251.
[10] Exhibit "P-4", Docket, pp. 186 to 187.
[11] Par. 4, Additional Facts As Stipulated, JSFI, Docket, p. 125; Exhibit "P-4", Docket, pp. 186 to 187.

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there was a PAN, the interest in the amount of ₱934,117.27 should not be imposed on the basis of good faith, and because petitioner relied on BIR Ruling No. NSNP (S30E-157) 803-2009 dated December 21, 2009, declaring it to be exempted from income under Section 30(E) of the NIRC of 1997.

Respondent issued the letter dated July 4, 2014, denying petitioner's protest and ordering the taxpayer to immediately pay its tax liabilities.[12]

Due to the alleged inaction of respondent, petitioner filed the instant *Petition for Review*[13] on November 11, 2014 praying to set aside the 2010 deficiency income tax assessment in the total amount of ₱2,469,652.21, for being bereft of legal and factual bases. In the alternative, petitioner prays that, should it be found to be subject to income tax, petitioner should not made to pay the interest charges thereon, for having relied in good faith on BIR Ruling No. NSNP (S30E-157) 803-2009 relative to its tax-exempt status.

Upon respondent's *Motion for Extension of Time to File Answer* filed on December 17, 2014,[14] and *Manifestation* filed on January 13, 2015,[15] and within the extended time granted by the Court on December 19, 2014,[16] respondent filed his *Answer* on January 20, 2015,[17] interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

> 4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
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> **This Honorable Court has no jurisdiction to entertain the instant petition**
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> 5. At the onset, respondent submits that the instant petition was filed out of time.

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[12] Exhibit "R-10" BIR Records, p. 261.
[13] Docket, pp. 6 to 10.
[14] Docket, pp. 27 to 30.
[15] Docket, pp. 33 to 35.
[16] Order dated December 19, 2014, Docket, p. 32.
[17] Docket, pp. 39 to 47.

6. The pertinent provision of the NIRC is found on Sec. 228, which states that:

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7. Records show that petitioner protested the assessment on 15 April 2014. However, respondent replied to such protest in a letter dated 4 July 2014 wherein petitioner's motion for reconsideration was denied and a statement that the delinquency tax be paid immediately upon receipt of the letter.

8. Thus, contrary to petitioner's position, there was no inaction on the part of the respondent which allowed petitioner to await the 180 days as imposed under Sec. 228 of the NIRC, as amended.

9. Instead, petitioner had 30 days from receipt of the 4 July 2014 letter, or on or before 3 August 2014 within which to file its Petition for Review before this Honorable Court.

10. This petition however, was filed only on 11 November 2014. Thus the instant petition should be dismissed for being filed out of time.

11. In the event that this Honorable Court finds that it has jurisdiction, the instant petition must still fall based on the foregoing discussions.

Petitioner failed to meet the requirements to make it tax exempt

12. Petitioner relies on BIR Ruling No. NSNP (S30E-157) 803-2009 dated 21 December 2009 wherein it was found that petitioner is a 'corporation organized for charitable purposes as contemplated under Section 30(E) of the Tax Code of 1997.'

13. Based on this BIR ruling, petitioner contends that it should not be assessed any tax.

14. Such conclusion is erroneous. Tax exemptions are construed *strictissimi juris*. The

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requirements provided by law for tax exemption must be continually satisfied by the taxpayer in order to enjoy immunity from taxation. Respondent is not precluded from conducting an investigation in order to insure that the taxpayer continuously meets the criteria for exemption for each taxable year.

15. Furthermore, the said BIR Ruling has a caveat at the end stating 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

16. As a result of the investigation conducted under Letter of Authority No. 101-2011-00000247 dated 2 November 2011, it was found that petitioner's charitable expenditure amounting to P9,784,966.29 represented only 4% of the total revenues.

17. This shows that the hospital is not **organized and operated exclusively** for a charitable activity, this was assessed 10% preferential income tax pursuant to Section 27(B) vis-à-vis Section 30(E) of the NIRC as amended, clarified under RMC No. 67-2010.

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19. As the Supreme Court declared in *CIR vs. St. Luke's Medical Center, Inc.*[18]:

> St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its income from its for-profit activities.

20. Interest was also charged based on Section 249(B) of the NIRC, as amended, which states that:

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[18] G.R. No. 195909, September 26, 2012.

21. Regardless of petitioner's defense of good faith, when the law is clear like in the instant case, there is no room for interpretation but only implementation. Thus, petitioner should also be made liable to pay the 20% interest.

<u>No violation of due process, petitioner was well apprised of the facts and law for the assessment</u>

22. Petitioner complains that it never received a PAN and was instead immediately issued a Formal Letter of Demand and an Assessment Notice.

23. However, a review of the BIR records shows that indeed a PAN dated 19 February 2014 was issued to petitioner. The PAN was sent via LIBCAP Super Express No. 17766845 and delivered and received by Mr. JC Asoy on 22 February 2014.

24. Respondent's Preliminary Assessment Notice and Final Assessment Notice clearly and sufficiently establishes the facts and laws which are the basis of the assessment.

25. The said assessment provides the following discrepancy for taxable year 2010, to wit:

Income tax	
Taxable Income per FS	₱15,355,352.38
Income Tax Due	1,535,535.24
Less: Income tax credits/payments	-
Deficiency Income	1,535,535.24
Add: Interest 20% from 4.15.11 to 3.15.14	934,117,27
Total Amount Due	**₱ 2,469,652.51**

26. The said assessment also states the law on which such assessment was based. Specifically, Sec. 27(B) in relation to Section 30(E) of the NIRC, as amended, as clarified under RMC No. 67-2012 and as declared under the Supreme Court Decision on CIR vs St. Luke's Medical Center, Inc. Section 249(B) of the NIRC, as amended also applies with regards to the interest.

27. Therefore the said assessment shows the exact amount of delinquent tax, the reason thereof, the

laws on which it is based, along with the demand to make payments.

28. Thus, petitioner cannot invoke that it was denied due process for it was well apprised of the facts and laws which formed the basis for the assessment.

Tax exemptions are construed strictly against the claimant

29. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered.

30. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

31. Based on the foregoing, the finding of deficiency tax liabilities against petitioner for taxable year 2010 is proper in all respects. The case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands*[19] may be used well as a guide, thus:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"

Thereafter, respondent forwarded the BIR Records of this case on March 24, 2015.[20]

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[19] G.R. No. 134062, April 17, 2007.
[20] Docket, p. 62.

The Pre-Trial Conference set on April 23, 2015[21], was reset to April 30, 2015 upon the filing of petitioner's *Motion to Reset (April 23, 2015 Pre-Trial Conference)*[22]. Petitioner filed its *Pre-Trial Brief* on April 13, 2015.[23]

On April 17, 2015, respondent filed an *Urgent Motion to Defer Pre-Trial Conference*[24] which was granted by the Court and pre-trial conference was re-scheduled to July 2, 2015.[25] Respondent filed its *Pre-Trial Brief* on May 19, 2015.[26]

After the Pre-trial Conference held on July 2, 2015,[27] the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on July 20, 2015[28]. The same was approved in the Resolution dated July 24, 2015.[29] Subsequently, the Court issued its Pre-Trial Order on August 18, 2015.[30]

During trial, petitioner presented the testimonies of its Vice-President for Finance, Enrino Panes,[31] and its Director of Human Resource Department, Myrna Legaspino.[32] On the other hand, respondent presented as witness, Revenue Officer (RO) II Tomianong Galo assigned at Revenue District 101, Iligan City.[33]

In the Resolution dated November 16, 2016,[34] this case was submitted for decision, taking into consideration the *Memorandum* of petitioner filed on October 25, 2016,[35] and the *Manifestation* of respondent filed on November 11, 2016,[36] stating

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[21] Notice of Pre-Trial Conference dated February 3, 2015, Docket, p. 50.
[22] Docket, p. 51.
[23] Docket, pp. 68 to 70.
[24] Docket, pp. 80 to 83.
[25] Order dated April 28, 2015, Docket, p. 86.
[26] Docket, pp. 87 to 91.
[27] Resolution dated July 2, 2015, Docket, pp. 117 to 119.
[28] Docket, pp. 125 to 127.
[29] Docket, pp.130 to 131.
[30] Docket, pp. 132 to 136.
[31] Exhibits "P-7" and "P-7-a" (Judicial Affidavit of Enrino Panes), Docket, pp. 105 to 109.
[32] Exhibits "P-8" and "P-8-a" (Revised Judicial Affidavit of Myrna P. Legaspino), Docket, pp. 192 to 194.
[33] Exhibits "R-11" and "R-11-a" (Judicial Affidavit of Tomianong Galo), Docket, pp. 97 to 102.
[34] Docket, p. 260.
[35] Docket, p. 244 to 255.
[36] Docket, p. 256 to 257.

that he is adopting the arguments raised in his *Answer* dated January 20, 2015 as his *Memorandum*.

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, to wit:

"1. Whether this Honorable Court has jurisdiction to entertain the instant petition.

2. Granting this Honorable Court has jurisdiction, whether or not petitioner is liable for the amount of P2,469,652.51 representing unpaid income tax and interest for taxable year 2010, plus 25% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Section 248 and 249 of the NIRC of 1997.

3. Whether or not petitioner was denied due process."[37]

Petitioner's arguments:

Petitioner contends that this Court acquired jurisdiction over the case. According to petitioner, for BIR's failure to act on its letter-protest, petitioner, after waiting until October 12, 2014 (which is the 180th day after filing the protest on April 15, 2014), decided to elevate the matter to this Court. According to petitioner, it therefore had thirty (30) days left from October 12, 2014, or until November 11, 2014, within which to lodge its petition, and that as borne out by the records, petitioner did file its *Petition for Review* on November 11, 2014 or exactly on the last day to do so.

Petitioner insists that respondent failed in his duty to serve upon petitioner the requisite PAN, let alone present a witness duly equipped with a written report under oath fleshing out in detail how he went about with the service of the PAN.

Allegedly, respondent's failure to comply with the law and revenue regulations in connection with the service of PAN deprived it

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[37] JSFI, Docket, p. 126.

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of its right to due process. Hence, the 2010 deficiency tax assessment is void.

Finally, petitioner argues that BIR Ruling No. NSNP (S30E-157) 803-2009 dated December 21, 2009, recognizes its tax-exempt status. Assuming however that it is indeed subject to income tax, it should nevertheless be spared from payment of interest charges, having relied on the aforementioned BIR ruling and under the honest belief and in good faith that it is tax-exempt.

Respondent's counter-arguments:

Respondent counter-argues that the instant petition was filed out of time, hence, the Court has no jurisdiction to entertain the same.

According to respondent, records show that petitioner protested the deficiency tax assessment on April 15, 2014, to which respondent replied in the letter dated July 4, 2014, denying the protest and stating that the delinquency tax be paid immediately upon receipt of the letter. Thus, contrary to petitioner's position, there was no inaction on the part of respondent. As such, petitioner had thirty (30) days from receipt of the July 4, 2014 letter, or on or before August 3, 2014, within which to file its *Petition for Review* with this Court. Considering that the petition was filed on November 11, 2014, the instant petition should be dismissed for being filed out of time.

Respondent likewise contends that petitioner failed to meet the requirements to make it tax exempt. According to respondent, it is not precluded from conducting an investigation in order to insure that the taxpayer continuously meets the criteria for exemption for each taxable year.

Moreover, respondent claims that the BIR ruling relied upon by petitioner has a caveat at the end stating that "This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void." In view thereof, respondent conducted an investigation under Letter of Authority No. 101-2011-00000247 dated November 22, 2011 where it was found out that petitioner's charitable expenditure amounting to ₱9,784,966.29 represented only 4% of the total revenues. According to respondent, this shows that the hospital is not organized and operated exclusively for charitable activity, thus assessed 10% preferential income tax pursuant to Section 27(B) vis-à-vis Section 30(E) of the NIRC as amended, clarified under RMC No. 67-2012.

Regardless of petitioner's defense of good faith, when the law is clear as in the instant case, there is allegedly no room for interpretation but only implementation. Thus, petitioner should also be made liable to pay the 20% interest.

Respondent also argues that there was no violation of due process since petitioner was well apprised of the facts and law for the assessment. A review of the BIR records allegedly shows that indeed a PAN dated February 19, 2014 was issued to petitioner; and the PAN was sent via LIBCAP Super Express No. 17766845 and delivered and received by Mr. JC Asoy on February 22, 2014. Respondent further claims that the PAN and FAN clearly and sufficiently establishes the facts and laws which are the basis of the tax assessment.

Finally, respondent contends that tax exemptions are construed against the claimant and liberally in favor of the taxing authority.

THE COURT'S RULING

We find merit in the instant Petition for Review.

Central to the resolution of the first and the third issues are the pertinent provisions of Section 228 of the NIRC of 1997, and the implementing Revenue Regulations thereof, relative to: (1) the prescriptive periods in the filing of an appeal to assail tax assessments before this Court, which are determinative of this Court's jurisdiction over the instant case, and (2) the issuance of the PAN which is directly involved in the observance of procedural due process. We quote:

> "**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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

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(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period;

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> **otherwise, the decision shall become final, executory and demandable.**" *(Emphases supplied)*

The foregoing provision is implemented in Regulation (RR) No. 12-99,[38] as amended by RR No. 18-2013.[39] Relative to the requirement of issuing a PAN, Section 3 of the said RR provides that the issuance of a PAN is part of the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment.** It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of

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[38] SUBJECT: 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.

[39] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.2 *Exceptions to Prior Notice of the Assessment.* — **Pursuant to Section 228 of the Tax Code, as amended, a PAN shall *not* be required in any of the following cases**:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(iv) When the excise tax due on excisable articles has not been paid; or
(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright." *(Emphases and underscoring supplied)*

Based on the foregoing rules, in relation to the provisions of Section 228 of the NIRC of 1997, when the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings in writing, stating the law and the facts on which the assessment is made, otherwise, the assessment shall be void. Respondent or his authorized representative is mandated to issue a PAN, unless the case falls under any of the enumerated exceptions where the issuance of the PAN is no longer necessary, and the issuance of FLD and Final Assessment Notice shall be done outright.

As regards the procedure in disputing of tax assessments issued by respondent, and the period to appeal the same before this Court under the afore-quoted Section 228, Section 3.1.4 of RR No. 12-99,[40] as amended by RR No. 18-2013, implements the same in this wise, to wit:

> "3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[41] within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> xxx xxx xxx
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
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> **<u>If the protest is denied</u>, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> **<u>If the protest is not acted upon by the Commissioner's duly authorized representative</u> within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the**

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[40] SUBJECT: 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.

[41] That is, "Formal Letter of Demand and Final Assessment Notice".

> **taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
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> **It must be emphasized, however, that <u>in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other</u>.**" *(Emphases and underscoring supplied)*

Clearly from the foregoing provisions, a taxpayer wishing to assail a tax assessment issued by respondent, may file a protest with respondent praying for a reconsideration or reinvestigation thereof, within thirty (30) days from receipt of tax assessments. All relevant supporting documents as determined by the taxpayer must be submitted within sixty (60) days from filing of a request for reinvestigation.

However, if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction has the following options, to wit:

1. If the protest is wholly or partially denied by respondent or his authorized representative, then the taxpayer may appeal to this Court within thirty (30) days from receipt of the whole or partial denial of the protest.

2. If the protest is wholly or partially denied by the respondent's authorized representative, then the taxpayer may appeal to respondent within thirty (30) days from receipt of the whole or partial denial of the protest.

3. If respondent or his authorized representative failed to act upon the protest within one-hundred eighty (180) days from submission of the required supporting documents, then the taxpayer may appeal to this Court within thirty (30) days from the lapse of the 180-day period.[42]

Having all the foregoing legal principles in mind, We shall resolve the first and third issues stipulated by the parties.

The CTA has jurisdiction to entertain the instant case.

Petitioner submits that this Court acquired jurisdiction over this case in view of the timely filing of the instant *Petition for Review* on November 11, 2014. According to petitioner, after waiting until October 12, 2014 (which is the 180th day after filing the protest on April 15, 2014), it decided to elevate the matter to this Court within thirty (30) days from October 12, 2014, or until November 11, 2014, due to the alleged failure of the BIR to act on its letter-protest, petitioner. This is allegedly in accord with Section 228 of the NIRC of 1997.

On the other hand, respondent contends that although records

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[42] Refer to *Philippine Amusement and Gaming Corp. vs Bureau of Internal Revenue, et.al.,* G.R. No. 208731, January 27, 2016.

show that petitioner indeed protested the deficiency tax assessment on April 15, 2014, respondent however points out that he sent a reply through the letter dated July 4, 2014, denying petitioner's protest and stating that that the delinquency tax be paid immediately upon receipt of the letter. Hence, contrary to petitioner's position, there was no inaction on the part of respondent. As such, petitioner had thirty (30) days from receipt of the July 4, 2014 letter, or on or before August 3, 2014, within which to file its *Petition for Review* with this Court. Considering that the petition was filed on November 11, 2014, the instant petition should be dismissed for being filed out of time.

The jurisdiction of this Court is conferred under Section 11 of Republic Act (RA) No. 1125,[43] as amended by RA No. 9282,[44] to wit:

> "SEC. 7. *Jurisdiction.* — **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
>> (1) **<u>Decisions</u> 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;
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>> (2) **<u>Inaction</u> by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which cases the inaction shall be deemed a denial;**" *(Emphases and underscoring)*

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[43] AN ACT CREATING THE COURT OF TAX APPEALS.
[44] 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.

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Further, the reglementary period within which to file an appeal before this Court is provided as follows:

> "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, xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** in cases involving disputed assessments **or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> xxx xxx xxx."

On the basis of the foregoing provisions, the exclusive appellate jurisdiction of this Court to review by appeal, refers either to a decision of respondent Commissioner of Internal Revenue in cases involving a disputed assessment; or respondent's inaction over a disputed assessment. The commencement of the running of the 30-day period would depend on whether the said appeal pertains to a decision of respondent, or an inaction by respondent.

In this case, petitioner alleges that this case is an appeal from the inaction of respondent over its letter-protest filed on April 15, 2014, as it denies receipt of any PAN for the 2010 deficiency tax assessment issued by respondent. Thus, being an appeal from respondent's inaction over its letter-protest, petitioner invokes the applicability of the 180+30 day periods under the law within which to file the instant Petition for Review before this Court.

On the other hand, respondent insists that petitioner's protest was denied through the letter-reply dated July 4, 2014 (Exhibit "R-10"), and therefore, petitioner had thirty (30) days from receipt of denial of the protest or until August 3, 3014, within which to file its *Petition for Review* before this Court. Hence, the filing of the instant *Petition* on November 11, 2014 was allegedly filed out of time.

In view of the foregoing conflicting stands of herein parties, it is now material to determine whether or not the letter-reply dated July 4, 2014 (Exhibit "R-10"), allegedly denying petitioner's protest, was received by petitioner. Succinctly put, if it can be shown that the said letter was sent to petitioner on the said date, as alleged by respondent, then the Court does not have jurisdiction to entertain the instant Petition for Review, as the same would have been filed out of time.

We find merit in petitioner's contention as respondent has failed to persuade Us that petitioner received the said letter-reply dated July 4, 2014 (Exhibit "R-10").

Relative thereto, the provisions Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, are instructive, to wit:

> **"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**.
>
> xxx xxx xxx
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail** to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. **A copy of the notice may also be sent through reputable professional courier service. <u>If no registry or reputable professional courier service is available</u> in the locality of the addressee, service may be done <u>by ordinary mail</u>.**
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended**, setting forth the manner, place and date of service, the name of the

> person/barangay official/professional courier service company who received the same and such other relevant information. **The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**"

Based on the foregoing, BIR notices, such the Final Decision on a Disputed Assessment (FDDA), may be served through certain modes: (1) primarily, through personal service by delivering personally a copy of the notice; and in case personal service is not practicable, the notice shall be served either (2) by substituted service, or (3) by mail.

In case the mode is service by mail, it should be done by sending a copy of the notice by registered mail, or through a reputable professional courier service. In case there is no registry or reputable professional courier service available in the locality of the addressee, service may be done by ordinary mail.

Thus, respondent must be able to show that it has observed the foregoing rules in his availment of the mode of "service by mail" of the letter-reply dated July 4, 2014 (Exhibit "R-10") to petitioner. Such availment should be supported: (1) by a registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction; and (2) by the fact that the said registry receipt or official receipt, as the case may be, was attached to the case docket.

As an additional requirement on the mode of service by mail, it must be shown that the server accomplished the bottom portion of the said letter-reply dated July 4, 2014 (Exhibit "R-10"), and that such server made a written report under oath, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information.

Respondent, however, failed to show compliance with the above-stated requirements under the aforequoted Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013.

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It is well settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[45]

To prove that petitioner received the subject letter-reply, respondent presented the testimony of RO II Tomianong Galo, the revenue examiner who examined the books of petitioner. Pertinent portions of said testimony, upon cross-examination of petitioner's counsel, are quoted as follows:[46]

"**ATTY. NAPUTO**:
Thank you.

Q. Nonetheless, was that document sent to the taxpayer, particularly the petitioner in this case? And if so, do you have any proof that indeed it was mailed or personally delivered to the taxpayer or to the petitioner in this case?

MR. GALO:
A. Actually, that letter was sent directly to your client Mindanao Sanitarium, **I think it was officially mailed by the Regional Director's office, the denial of your protest. It was not me who served that denial letter.**

ATTY. NAPUTO:
All right. I understand it was not you who served it.

Q. But, do you have, per the BIR records, do you have any proof that it was indeed mailed or personally delivered, do you have any proof of that, as to the service the of that letter?

MR. GALO:
A. The Demand Letter which was sent to me, (interrupted).

ATTY. NAPUTO:
Excuse me, we're not talking of the Demand Letter.

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[45] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.
[46] Transcript of Stenographic Notes (TSN) during the hearing held on July 12, 2016, pp. 13 to 17.

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That particular, what's this?

JUSTICE UY:
Exhibit "R-10"?

ATTY. NAPUTO:
Yes, your Honors.

JUSTICE UY:
All right.

ATTY. NAPUTO:
Yes, that particular document, "R-10."

MR. GALO:
A. Our office was just furnished a copy of that letter.

ATTY. NAPUTO:
Okay.

Q. In short, you have no knowledge if indeed it was mailed or personally served with the petitioner in this case?

MR. GALO:
A. Yes, I have the knowledge.

ATTY. NAPUTO:
Q. You have no knowledge?

MR. GALO:
A. I have a knowledge.

ATTY. NAPUTO:
Q. To be clear, you have no knowledge, correct?

MR. GALO:
A. No, I have a knowledge that it was officially mailed to your client.

ATTY. NAPUTO:
Q. You have knowledge of that?

MR. GALO:
A. Yes, yes.

ATTY. NAPUTO:

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Q. And what is your proof regarding your statement that you have knowledge of that?

MR. GALO:
A. That letter which was received, that it was officially mailed to your client.

ATTY. NAPUTO:
Q. How do you know that it was mailed?

MR. GALO:
A. There was a stamp.

ATTY. NAPUTO:
Q. May we see what's that stamp you were referring to?

JUSTICE UY:
Can you please manifest what he is referring to in the document, for the record?

ATTY. QUIMPO:
For the record, your Honors, the witness is indicating the stamp received indicated in top right corner of the letter, your Honors, which states that it was received on 4 July 2014 by the Admin Division of the Mailing Section.

JUSTICE UY:
So, it was the Admin Division that received it?

ATTY. QUIMPO:
And it was received by one, (interrupted).

JUSTICE UY:
For mailing? Mailing Section? What is?

ATTY. QUIMPO:
Admin Division, Mailing Section, your Honors.

JUSTICE UY:
All right.

ATTY. NAPUTO:
Now, Mr. Witness, just because it was received by the Admin Division, Mailing Section of, I would suppose the Regional Office.

MR. GALO:
A. Yes.

ATTY. NAPUTO:
Q. You now conclude that it was mailed to the taxpayer, correct?

MR. GALO:
A. Yes, yes."

Clearly, the foregoing testimony miserably failed to establish that the letter-reply dated July 4, 2014 (Exhibit "R-10") was received by petitioner. Based on the aforequoted testimony, RO II Galo admitted that he was not the one who served the letter and that he merely relied upon the stamp of the BIR Regional Office Admin Division-Mailing Section shown in the letter, and nothing more, in concluding that the letter was mailed to petitioner.

Unfortunately for respondent, the Court finds that the mere BIR stamp shown in the letter is insufficient to prove that the letter was received by petitioner, or at the very least, was mailed to petitioner. Hence, respondent is deemed **not** to have acted on petitioner's protest.

With the foregoing finding of inaction on the part of respondent, We reckon the running of the 180-day period from the filing of petitioner's letter protest on April 15, 2014, which is until October 12, 2014. Thirty (30) days from said date is until November 11, 2014. Hence, the instant *Petition for Review* was timely filed on November 11, 2014 as it falls within the 180+30 day periods provided under Section 228 of the NIRC of 1997. Therefore, this Court validly acquired jurisdiction over the instant case.

Petitioner's right to due process was violated, hence the assessment is void.

Petitioner denies having received from respondent the alleged PAN regarding the deficiency tax assessment against petitioner for taxable year 2010, and prays that the subject assessment be declared void for violation of its right to due process.

Respondent, however, denies any violation of due process because allegedly, the PAN dated February 19, 2014 was sent via private courier, LIBCAP Super Express and was received by petitioner, through its employee, on February 22, 2014.

We find for the petitioner.

Considering that the present case is not among the enumerated exceptions which make the issuance of the PAN no longer necessary under the law, respondent is therefore mandated to prove that he issued and appropriately sent a PAN to petitioner.

Respondent claims that the PAN dated February 19, 2014 was sent to petitioner via private courier, LIBCAP Super Express, and was delivered and received by a certain JC Asoy on February 22, 2014.

A perusal of the records of this case, however, reveals that respondent failed to present the required server's written report, and the corresponding official receipt issued by LIBCAP Super Express. Moreover, there is no showing that the server of the subject PAN accomplished the bottom portion thereof.

In addition, other than the testimony of respondent's sole witness, RO II Tomianong Galo, who testified that the PAN was sent to petitioner on February 19, 2014, no substantial evidence was presented by respondent to corroborate the self-serving testimony of its witness. Furthermore, there was no indication in the testimony of RO II Galo that he has personal knowledge on the actual mailing of the PAN.[47]

Likewise, the Court cannot give probative value to the photocopy of LIBCAP Delivery Manifest dated February 22, 2014, found in the BIR records.[48] A mere photocopy is unworthy of any probative value and is inadmissible in evidence. Furthermore, even granting that the original copy of the said document was presented, the same would not still be admissible for not being formally offered as evidence. *Apropos*, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case.[49]

Finally, even assuming further that the LIBCAP Delivery Manifest is admissible in evidence, it does not provide in detail what

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[47] Judicial Affidavit of Tomianong Galo, Exhibits "R-11" and "R-11-a", Docket, pp. 97 to 102.
[48] BIR Records, p. 260.
[49] *Pilipinas Shell Petroleum Corp. vs Commissioner of Customs,* G.R. No. 195876, December 5, 2016.

was actually delivered to petitioner. It merely shows that a package was delivered to petitioner which was received by a certain JC Asoy on February 22, 2014, without any clear indication that the package delivered is the subject PAN. Moreover, nowhere in the same delivery manifest does it show that it was respondent who actually sent the package to petitioner. As such, this Court cannot ascertain if the package sent through LIBCAP indeed came from respondent. At most, the said document only establishes the fact that a package was delivered to petitioner.

Nevertheless, even if we ultimately assume that the PAN was mailed through LIBCAP Super Express, respondent failed to prove that the PAN was actually received by petitioner. Respondent was not able to establish that the certain "JC Asoy" was authorized to receive the PAN for and on behalf of petitioner.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[50] the Supreme Court ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997 and RR No. 12-99 is tantamount to denial of due process. In the same case, the Supreme Court further emphasized that the absence of a PAN renders nugatory any assessment made by the tax authorities, to wit :

> "**Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN.** He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> xxx xxx xxx
>
> **From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use

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[50] G.R. No. 185371, December 8, 2010.

> of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.** ." *(Emphasis supplied)*

In light of the foregoing jurisprudential guidelines, the Court finds that no competent evidence whatsoever was presented by respondent to prove actual receipt of the PAN. As already emphasized, strict compliance with due process requirement is necessary for a valid tax assessment. Having failed to prove that petitioner actually received the PAN, petitioner has been denied of its right to due process.

Accordingly, the deficiency tax assessment against petitioner must be declared null and void for having been issued in violation of the due process requirements under Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by RR No. 18-2013.

With this finding, it becomes unnecessary to resolve the second stipulated issue, concerning the propriety of the imposition of the 20% deficiency and delinquency interests under Sections 248 and 249 of the NIRC of 1997.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency income tax assessment in the total amount of P2,469,652.51 for taxable year 2010 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Cielito N. Mindaro-Grulla

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division