REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

J SQUARE C CONSTRUCTION SUPPLY, INC., *Petitioner,*	**CTA CASE NO. 8455** Members:
-versus-	Del Rosario, *Chairperson* Uy, *and* Mindaro-Grulla, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 3 1 2014 ; 3:34 p.m.

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DECISION

DEL ROSARIO, <u>P.J.</u>:

THE CASE

The present Petition for Review seeks the reversal of the decision of respondent anent petitioner's protest on deficiency value-added tax (VAT) assessment in the total amount of P1,573,545.25 for taxable year 2008.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 700-A Aurora Boulevard, Valencia, Quezon City. It is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer under tax identification number (TIN) 000-390-620-000 and is duly registered with the Securities and Exchange Commission.[1]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is charged with the authority to perform the duties of her office, including *inter alia*, the power to interpret tax laws, decide tax

[1] Parties, Petition for Review, CTA Docket, p. 7.

cases, and make assessments as provided by law, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

FACTS

On 16 July 2009, a Letter of Authority[3] was issued subjecting petitioner to audit investigation for taxable year 2008. The audit was conducted by Revenue Officer Monica I. Dimaculangan under Group Supervisor Leticia T. Balderama of Revenue District Office No. 40, Revenue Region 7, Cubao, Quezon City.[4]

On March 2, 2010, Revenue District Officer Clavelina S. Nacar of RDO 40, Cubáo, Quezon City issued a Post Reporting Notice[5] informing petitioner of the proposed income tax, value-added tax and expanded withholding tax assessments covering taxable year 2008.

Respondent issued a Preliminary Assessment Notice (PAN) dated 10 March 2011, which allegedly was received by petitioner on 18 March 2011, assessing petitioner of deficiency VAT on sale of its real property,[6] the detailed computation of which is shown below:[7]

DEFICIENCY VALUE ADDED TAX		
Taxable sales/receipts per returns		P 4,086,311.63
Add: Adjustment per investigation		
Sale of Real Property		9,000,000.00
Taxable sales/receipts per Investigation		P13,086,311.63
Output tax due thereon (12%)		P 1,570,357.40
Less: Tax Credits/Payments:		
Payments	P161,394.97	
Input tax claimed for the year	346,658.80	
Total	508,053.77	
Less: Disallowed input tax	17,696.40	490,357.37
Deficiency Value Added Tax		1,080,000.03
Add: 20% Interest p.a. (01.27.09 to 03.10.11)		457,446.59
TOTAL AMOUNT DUE		P 1,537,446.62

On 8 April 2011, petitioner filed a letter dated 1 April 2011 to the Bureau of Internal Revenue (BIR) Region 7 informing the latter that the

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2 Parties, Petition for Review, CTA Docket, p. 7.
3 Exhibit "D"; CTA Docket, p. 159.
4 Par. 2, Statement of Facts, Petition for Review, CTA Docket, p. 8.
5 Exhibit "E"; CTA Docket, p. 160.
6 Par. 9 & 10, Statement of Facts, Petition for Review, CTA Docket, p. 11.
7 Exhibit "L"; CTA Docket, p. 170.

issue of subjecting the sale of lot to 12% VAT has been brought up in the examination of its return in 2010, which after thorough verification and submission of required supporting evidence, the concerned examiners and officers classified and affirmed the property as capital asset, subject only to final tax of 6%.

On 8 April 2011, respondent, through Regional Director Nestor S. Valeroso issued a Formal Letter of Demand/Final Assessment Notice to petitioner, which it received on 15 April 2011,[8] finding petitioner liable for deficiency VAT in the total amount P1,573,545.25, inclusive of interest, computed as follows:

DEFICIENCY VALUE ADDED TAX		
Taxable sales/receipts per returns		P 4,086,311.63
Add: Adjustment per investigation		
Sale of Real Property		9,000,000.00
Taxable sales/receipts per Investigation		P13,086,311.63
Output tax due thereon (12%)		P 1,570,357.40
Less: Tax Credits/Payments:		
Payments	P161,394.97	
Input tax claimed for the year	346,658.80	
Total	508,053.77	
Less: Disallowed input tax	17,696.40	490,357.37
Deficiency Value Added Tax		1,080,000.03
Add: 20% Interest p.a. (01.27.09 to 05.10.11)		493,545.22
TOTAL AMOUNT DUE		P 1,573,545.25[9]

On August 10, 2011, petitioner received a letter from Regional Director Nestor S. Valeroso dated July 29, 2011, whereby the latter has acknowledged the receipt of petitioner's protest letter (on the PAN) dated April 1, 2011, and gave petitioner fifteen (15) days from August 10, 2011 to file its protest against the Final Assessment Notice/Formal Letter of Demand.[10]

In a letter dated August 17, 2011, which the BIR Region 7 received on August 24, 2011, petitioner protested the Final Assessment Notice/Formal Letter of Demand restating that in its April 1, 2011 letter it gave full explanation and directed the attention of the BIR to the different supporting documents of why it is subject to 6% capital gains tax instead of the 12% VAT.[11]

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[8] Par. 13, Statement of Facts, Petition for Review, CTA Docket, p. 12.
[9] Exhibit "N"; CTA Docket, pp. 173-176.
[10] Exhibit "O"; CTA Docket, p. 177.
[11] Exhibit "P"; CTA Docket, p. 178.

On 9 December 2011, petitioner received a letter dated 7 December 2011 informing petitioner that pursuant to MOA 040-000890 dated 5 December 2011, Revenue Officer Joseph E. Rodriguez under Group Supervisor Letecia T. Balderama will be continuing the verification/investigation of the 2008 tax liabilities. Respondent informed petitioner of the re-investigation of the case.[12]

On 1 March 2012, Jonas DP. Amora, OIC-Regional Director of Revenue Region 7, Quezon City issued the Final Decision denying petitioner's protest against the Final Assessment Notice/Formal Letter of Demand for failure to submit documents in support thereof.[13]

On April 10, 2012, petitioner assailed the foregoing decision before this Court by filing a Petition for Review.[14]

Respondent, in her Answer[15] filed on June 4, 2012, interposed the following special and affirmative defenses:

> "5. All presumptions are in favor of the correctness of the Assessment;
>
> 6. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment;
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> 7. Supporting documents were not submitted to completely substantiate Petitioner's allegations or to rebut the assessment issued. This is despite the grant of the reinvestigation to the Petitioner. Verification by the Revenue District Office disclosed that the sale of the real property of the Petitioner is subject to value-added tax.
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> 8. Pursuant to the audit investigation conducted by the District Office, a Post Reporting Notice issued by the District Office No. 70-Cubao assessed the Petitioner of deficiency value-added tax in the amount of P1,626,856.00, deficiency income tax in the amount of P5,100.50, deficiency expanded withholding tax in the amount of P7,496.01 and compromise penalty in the amount of P3,000. The same was made known to the Petitioner as it was personally served upon the representative of the Petitioner in the person of Marie Sayno on June 16, 2010 at 11:30 a.m.

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[12] Par. 17, Statement of Facts, Petition for Review, CTA Docket, p. 13.
[13] Par. 1, Discussion and Arguments, Petition for Review, CTA Docket, p. 14; Exhibit "A", CTA Docket, p. 154.
[14] CTA Docket, p. 6.
[15] CTA Docket, pp. 53-58.

This can clearly be shown from the signature of Marieta Sayno appearing on the office copy of the Post Reporting Notice;

9. The District Office held that the real property sold by the Petitioner was subject to VAT due to the fact that the Petitioner reported the said real property in its Financial Statements as Property and Equipment, an account which includes all assets which are used in the course of trade and business of the Petitioner. Hence, the Formal Letter of Demand states that 'Verification disclosed that the sale of your real property amounting to P9,000,000 has not been subjected to VAT, hence, assessed pursuant to Section 106 and 108 of the Tax Code, as amended.'

10. There was indeed an Agreement Form executed by the District Office which was signed by Revenue Officer Monica Dimaculangan, Group Supervisor Leticia Balderama and duly noted by Revenue Disctrict Officer Clavelina Nacar, in favor of J Square C Construction for taxable year 2008. Under said Agreement Form, the Petitioner was allowed to pay the deficiency income tax in the amount of P5,100.25, deficiency value-added tax in the amount of P24,410.60, deficiency withholding tax in the amount of P7,496.01 and compromise penalty in the amount of P3,000, all inclusive of penalties and increments. However, the District Office was not satisfied with the justification and documents provided by the Petitioner as to warrant the cancellation of the assessment for value-added tax on the sale of the real property of the Petitioner. Hence, in the Memorandum to the Revenue District Officer, RO Monica Dimaculangan and Group Supervisor Leticia Balderama reported that payments made as per the Agreement Form but stated therein that an assessment on value-added tax was determined on the sale of Real Property in the amount of P1,626,856.00 inclusive of increments which is still under protest. Further, it was recommended that the case be forwarded to the Assessment Division for appropriate action on the value-added tax liability on the sale of the real property;

10. The Letter of Authority issued to the Petitioner was made for the audit investigation of the books of accounts and accounting records for taxable year 2008 and not for the sole purpose of determining the taxability of the sale of the real property of the Petitioner. The Agreement Form issued by the District Office, while it may have already included a findings on the value-added tax, does not yet include the findings of the District Office that the sale of the real property of the Petitioner is subject to value-added tax. This is very clear from the 19 May 2010 Memorandum report of the Revenue Officer to the District Officer, a day after the issuance of the Agreement Form.

11. The findings of the District Office is subject to review by the Assessment Division. This is very clear to the Petitioner as the Agreement Form which it signed contained a statement that 'I/We understand that the report of verification submitted by the Revenue Officer/s is subject to review and approval by higher authorities.'

12. Assessment Notice No. 040-B0187-08 was issued to the Petitioner on April 8, 2011 and the same was admitted to have been received by the Petitioner on April 15, 2011. Under Section 228 of the National Internal Revenue Code of 1997, the Petitioner has a period of

> thirty days from receipt thereof within which to file a request for reinvestigation or reconsideration from receipt of the assessment. In the instant case, the Protest on the Final Assessment was filed by the Petitioner only on August 24, 2011, in clear violation of the statutory requirement set forth under Section 228 of the National Internal Revenue Code of 1997. Being a statutory requirement, such rule cannot be changed such that the Protest filed on August 24, 2011 or one hundred thirty-one (131) days after receipt of the Assessment Notice had rendered the same final and demandable.
>
> 13. The Assessment Notice issued against the Petitioner has likewise become final and demandable due to the failure of the Petitioner to submit a valid protest which conforms to the form required under existing revenue issuances;
>
> 14. Further, the Notice of Assessment issued against the Petitioner had become final and demandable. The Petitioner still failed to submit supporting documents to rebut the assessment within sixty (60) days from the filing of the Protest on August 24, 2011 as required under Section 228 of the National Internal Revenue Code of 1997."

After the pre-trial conference on July 6, 2012,[16] the parties filed their Joint Stipulation of Facts and Issues[17] on September 7, 2012 and the Court approved it in the Resolution[18] dated September 13, 2012. In the same Resolution, the pre-trial was terminated and the parties were ordered to proceed with the trial, limiting the presentation of their evidence only to relevant matters that have not been covered by their joint stipulation.

In the course of trial, both parties presented their respective testimonial and documentary evidence. The Court admitted their respective offered documentary exhibits in the Resolutions dated March 21, 2013,[19] November 20, 2013[20] and April 2, 2014.[21]

The case was submitted for decision on June 24, 2014 taking into consideration petitioner's memorandum posted on May 27, 2014, *sans* respondent's memorandum.[22]

[16] CTA Docket, p. 93.
[17] CTA Docket, pp. 106-110.
[18] CTA Docket, p. 112.
[19] CTA Docket, p. 199.
[20] CTA Docket, p. 310.
[21] CTA Docket, p. 341.
[22] CTA Docket, p. 399.

ISSUES

The parties raised the following issues[23] for the Court's resolution, to wit:

1. Whether or not the property sold by the petitioner is a capital asset;

2. Whether or not petitioner is liable for the value-added tax for the sale of the real property;

3. Whether or not petitioner has already paid the deficiency value-added tax assessed on the disallowed input taxes amounting to Seventeen Thousand Six Hundred Ninety Six Pesos and Forty Centavos (P17,696.40); and,

4. Whether or not the final assessment notice has already become due and demandable.

THE COURT'S RULING

The Court will first resolve the fourth issue of whether or not the final assessment notice had become due and demandable since an affirmative answer to this issue would certainly make any discussion on the first three issues moot and academic.

Respondent claims, in her Answer to the Petition for Review, that the assessment notice issued on April 8, 2011 and received by petitioner on April 15, 2011, already became final and demandable on the following grounds, namely: (i) petitioner's protest was filed only on August 24, 2011, way beyond the statutory period of thirty (30) days under Section 228 of the National Internal Revenue Code (NIRC) of 1997; (ii) petitioner failed to submit a valid protest which conforms to the form required under existing revenue issuances; and (iii) petitioner failed to submit supporting documents to rebut the assessment within sixty (60) days from the filing of the protest on August 24, 2011 as required under Section 228 of the National Internal Revenue Code (NIRC) of 1997.

Petitioner counter-argues that the assessment notice is not yet due and demandable as it was able to file its protest against the Preliminary Assessment Notice on 8 April 2011, which is the same date respondent

[23] Pre-Trial Order, CTA Docket, p. 115.

informed petitioner of the issuance of an Assessment Notice and Formal Letter of Demand ready for sending to its office. Petitioner treated its protest letter to the PAN as its protest to both the PAN and the Assessment Notice with Formal Letter of Demand as they allegedly raised identical tax issues. Accordingly, its letter protest to the PAN filed on 8 April 2011 is a continuing protest to the Assessment Notice/Formal Letter of Demand issued on the same date.

Petitioner claims that the letter dated 29 July 2011 signed by Regional Director Nestor Valeroso stating that the Assessment Notice dated 8 April 2011 was issued merely to protect the interest of the government considering the proximity of the prescription of the assessment, and giving petitioner fifteen (15) days to file a protest based on the Final Assessment Notice/Formal Letter of Demand, reveals that respondent has not yet considered the Assessment Notice as having become final and executory in view of the unresolved protest letter filed by petitioner on 8 April 2011. Petitioner concludes that respondent is now estopped from claiming that the Final Assessment Notice has already become final and executory.

This Court is constrained to rule the issue against petitioner.

Section 228 of the NIRC of 1997 is instructive, *viz.*:

> "SECTION 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:
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> (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; otherwise, the decision shall become final, executory and demandable."
(Emphasis supplied)

Implementing the foregoing provision is Revenue Regulations 12-99,[24] specifically Section 3 thereof, which provides:

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 Notice for informal conference. — xxx

3.1.2 Preliminary Assessment Notice (PAN). — xxx

3.1.3 Exceptions to Prior Notice of the Assessment. — xxx

3.1.4 Formal Letter of Demand and Assessment Notice. —xxx

3.1.5 Disputed Assessment. — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof**. If there are several issues involved in the

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[24] 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

formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty

> (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
> (Emphasis supplied)

It is undisputed that petitioner received the 8 April 2011 assessment notice on 15 April 2011. Applying Section 228 of the NIRC of 1997 and its implementing regulations, petitioner had only until May 15, 2011 within which to file its protest against the final assessment notice. Sorely, it filed a protest only on August 24, 2011, which is clearly beyond the statutory period; hence, the assessment became final, executory and demandable.

Petitioner's contention that its protest letter filed on 8 April 2011 is a continuing protest to the assessment notice issued by the BIR on the same date is untenable.

Petitioner's protest letter signed by its President, Juan T. Ong, and filed on April 8, 2011 reads:

> "**This refers to the preliminary assessment notice** dated March 10, 2011 to us, which among others is subjecting our sale of lot to 12% VAT.
>
> Please be informed that this matter has been brought up in examination of the relevant return last 2010, which after thorough verification and submission of required supporting evidences (copy of acknowledged receipt attached) to the full satisfaction of the examiners and officers concerned said sale was properly classified and affirmed as that of a capital asset therefore subject only to the final tax of 6%.
>
> We would presume that the report of said investigation and all supporting documents must have been forwarded to your office. Nonetheless, if there is anything else needed for the clarification of this matter, please let us know.
>
> Thank you." (Emphasis supplied)

Plain reading of the protest letter filed on April 8, 2011 shows that the same is really intended to dispute the PAN. Contrary to petitioner's averment, the protest letter does not appear to constitute as petitioner's continuing protest to the final assessment notice.

The theory of estoppel advocated by petitioner is bereft of merit.

While in the letter dated 29 July 2011 signed by Regional Director Nestor Valeroso, which petitioner received on August 10, 2011, petitioner purportedly was given fifteen (15) days from receipt thereof to file a protest on the final assessment notice, the same could not validly brush aside the legal consequences which Section 228 of the NIRC of 1997 itself has provided, *i.e., the assessment shall become final, executory and demandable if the taxpayer fails to file a protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.* In other words, the mandatory provision on protesting a tax assessment within the statutory period cannot be rendered nugatory by the mere issuance of a letter by respondent's representative, which act is not expressly sanctioned by law. Interestingly, the Regional Director's letter was issued way beyond May 15, 2011 - - the last day within which a valid protest could have been made - - obviously in an attempt to cure petitioner's failure to file a timely protest. Such action of the Regional Director is irregular, to say the least.

It is a long and firmly settled rule of law that the Government is not bound by errors or mistakes committed by its agents,[25] moreso when they are tainted with illegality. The Government cannot be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents.[26]

By operation of law, the final assessment notice received by petitioner on April 15, 2011 became final, executory and demandable as petitioner's protest was filed only on August 24, 2011, way beyond the 30-day reglementary period.

Having ruled that the final assessment notice already became final, executory and demandable, discussion on the other issues presented in this case is moot and academic.

WHEREFORE, premises considered, the Petition for Review is **DENIED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[25] Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals, G.R. No. 106611, July 21, 1994.
[26] Id.

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
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.

ROMAN G. DEL ROSARIO
Presiding Justice