REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 843** (CTA Case No. 7675)
	Members:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **COTANGCO-MANALASTAS,** *JJ.*
	Promulgated:
UPS INTERNATIONAL, INC., Respondent.	MAR 22 2013 Cw Apolinario 10:15 a.m.

x - x

DECISION

UY, J.:

Before Us is a Petition for Review filed by petitioner, Commissioner of Internal Revenue, against respondent, UPS International, Inc., on November 21, 2011, seeking the nullification of the Decision dated August 4, 2011 of the Third Division of this Court, and its affirmatory Resolution dated October 19, 2011. Petitioner prays that the Court *En Banc* render judgment ordering respondent to pay the amount of ₱ 5,427,426.06 as deficiency income and withholding taxes covering taxable year 2002, plus 25% surcharge, 20% deficiency and delinquency interests, and compromise penalty, until fully paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connected therewith. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at UPS Intra-Asia Hub, Civil Aviation Complex, Diosdado Macapagal International Airport, Clark Special Zone, Pampanga. It is engaged in the business of operating air hubs, cargo handling/distribution centers, aircraft maintenance base, renders related cargo handling services and in other allied services.

Furthermore, respondent is registered with the Clark Development Corporation (CDC) as a Clark Special Economic Zone Enterprise, as evidenced by Certificate of Registration No. 2001-071 dated November 9, 2001. As such, respondent enjoys the privileges laid down under Section 15 of Republic Act No. 7227, Section 5 of Executive Order No. 80, and Proclamation No. 163. Thus, it is required to pay only a five percent (5%) tax on it gross profit in lieu of all local and national taxes.

Respondent only started its commercial operations on April 4, 2002, despite the fact that it is already registered with the Securities and Exchange Commission since September 14, 2001. It then applied for and was issued a Certification dated June 14, 2002 from CDC as a Regional Enterprise. CDC also issued a Permit to Operate No. PTO 2002-138 in favor of petitioner. As a registered Regional Enterprise, respondent, in addition to privileges being enjoyed by it, is entitled to the availment of expanded deductions under Section 2 of Revenue Regulations (RR) No. 16-99 dated September 27, 1999.

On May 24, 2004, petitioner issued a Letter of Authority to one of its revenue officers to examine all of respondent's internal revenue taxes for the period covering January 1, 2002 to December 31, 2002.

On February 16, 2006, respondent received a Preliminary Assessment Notice (PAN), finding it liable for deficiency income tax and final tax on fringe benefits amounting to ₱ 1,777,638.03 and ₱ 3,728,314.31, respectively.

On March 3, 2006, respondent filed a protest against the PAN.

On March 10, 2006, petitioner received a Formal Letter of Demand dated February 23, 2006, issued by the Regional Director of Pampanga reiterating the matters alleged in the PAN, detailed as follows:

TAX TYPE	AMOUNT
Income Tax	₱ 1,876,100.84
Final Withholding Tax on Fringe Benefits	3,861,325.22
TOTAL	**₱ 5,737,426.06**

On March 31, 2006, respondent filed a protest to the Formal Letter of Demand, reiterating the arguments it raised in the protest against the PAN.

In the Regional Director's letter dated August 14, 2006, which was received by respondent on August 29, 2006, the protest to the Formal Letter of Demand was denied and respondent was found liable for the total amount of ₱ 5,737,426.06, representing alleged deficiency income tax and final withholding tax on fringe benefits.

Respondent thereafter filed an appeal dated September 28, 2006 with the Commissioner of Internal Revenue, herein petitioner. Notwithstanding such appeal, Revenue District Office No. 21 (San Fernando, Pampanga) still sent a Final Notice Before Seizure ordering respondent to pay the amounts of ₱ 1,876,100.84 and ₱ 3,861,325.22, representing income and withholding taxes.

On July 25, 2007, respondent received the Warrant of Distraint and/or Levy dated July 9, 2007, issued by then Commissioner of Internal Revenue Jose Mario C. Buñag, through the OIC-Assistant Commissioner (Collection Service) Corazon C. Pangcog, authorizing the Chief of the Collection and Enforcement Division of the BIR or his/her duly authorized representatives, to sell or forfeit the properties belonging to respondent to satisfy its tax liabilities.

As a consequence, respondent filed a Petition for Review on August 23, 2007 before this Court. The case was docketed as CTA Case No. 7675 and raffled to the Third Division of this Court (hereinafter referred to as the "Court in Division").

On October 30, 2007, petitioner filed her Answer in CTA Case No. 7675 raising the following Special and Affirmative Defenses, to wit:

"20. The petition is filed out of time. Section 228 of the NIRC provides the following periods governing the rule on protesting of assessment: (a) an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the said assessment; (b) within 60 days from the filing of the protest, supporting documents must be submitted; (c) 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 may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from the lapse of the 180-day period. Petitioner filed its Motion for Reconsideration to the Decision of the Regional Director of Revenue Region No. 4, Pampanga on October 2, 2006 before the Commissioner of Internal Revenue and filed the instant Petition for Review on August 27, 2007. Clearly, the Petition for Review is filed out of time.

21. The Petition for Review fails to state a cause of action. The July 9, 2007 Warrant of Distraint and/or Levy is not a Decision of the Commissioner of Internal Revenue on the Motion for Reconsideration of Petitioner of the Decision of the Regional Director of Revenue Region No. 4 of Pampanga. The Warrant of Distraint and/or Levy is signed only by the Regional District Officer of RDO No. 4 who, under Revenue Regulations No. 12-99 is not the duly delegated authority to deny the Motion for Reconsideration."

On December 17, 2007, respondent filed its Reply to petitioner's Answer.

After Pre-trial held on January 25, 2008, the parties filed their Joint Stipulation of Facts and Issues which was approved by the Court in Division in the Resolution dated March 17, 2008.

During trial, both parties presented and formally offered documentary and testimonial evidence in support of their respective claims and arguments.

On July 28, 2010, the case was submitted for decision after respondent filed Memorandum on July 12, 2010 and petitioner filed her Memorandum on July 23, 2010.

On August 4, 2011, the Court in Division rendered the assailed Decision,[1] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated July 9, 2007 is hereby **CANCELLED**.
>
> **SO ORDERED**."[2]

Subsequently, petitioner filed a Motion for Reconsideration on September 1, 2011, praying for the reversal of the assailed Decision. A Comment/Opposition thereto was filed by respondent on September 20, 2011, praying that the said Motion be denied for having been filed out of time, for lack of jurisdiction and for lack of merit.

On October 19, 2011, the Court in Division promulgated a Resolution,[3] the dispositive portion of which states:

> "**WHEREFORE**, premises considered, [petitioner's] *Motion for Reconsideration* is **DENIED** for being filed out of time and for lack of merit.
>
> **SO ORDERED**."[4]

On November 4, 2011, petitioner filed before the Court *En Banc* a Motion for Extension of Time To File Petition for Review,[5] praying for an extension period of fifteen (15) days from November 5, 2011, or until November 20, 2011, within which to file a Petition for Review.

The Court *En Banc* granted the said Motion and petitioner was granted a final and non-extendible period of fifteen (15) days from November 5, 2011 or until November 20, 2011, within which to file her Petition for Review.[6]

---

[1] Docket, pp. 17 to 34.
[2] Docket, p. 33.
[3] Docket, pp. 41 to 45.
[4] Docket, p. 45.
[5] Docket, pp. 1 to 4.
[6] Docket, p. 6.

On November 21, 2011, petitioner filed the instant Petition for Review.[7] Thereafter, the Court *En Banc* required respondent to file a comment thereto.[8] Respondent filed its Comment/Opposition (To Petitioner's Petition for Review) on January 10, 2012.[9]

Thereafter, the Court *En Banc* ordered the parties to file their respective memorandum within thirty (30) days from notice in the Resolution dated January 20, 2012[10]. On February 3, 2012, petitioner filed her Memorandum.[11]

However, respondent filed a Motion for Extension of Time To File Memorandum on March 1, 2012.[12] The Court *En Banc* granted the said Motion in the Resolution dated March 5, 2012[13] and gave respondent a final and non-extendible period of ten (10) days from March 1, 2012 or until March 11, 2012 to file its Memorandum.

On March 12, 2012, respondent filed the required Memorandum.[14] In view thereof, the Court *En Banc* considered the instant case submitted for decision as of April 12, 2012.

Hence, this Decision.

THE ISSUES

On the basis of petitioner's allegations and arguments raised in the instant Petition for Review, the issues are as follows:

1. Whether the Court in Division has jurisdiction over the Petition for Review in CTA Case No. 7675;

2. Assuming the Court in Division has jurisdiction, whether the assessment is valid;

---

[7] Docket, pp. 7 to 15.
[8] Resolution dated December 21, 2011, Docket, pp. 51 to 52.
[9] Docket, pp. 53 to 94.
[10] Docket, pp. 97 to 98.
[11] Docket, pp. 99 to 107.
[12] Docket, pp.109 to 112.
[13] Docket, p. 114.
[14] Docket, pp. 115 to 166.

3. Upon the same assumption, whether respondent was not a regional enterprise from April 4, 2002 to June 14, 2002;

4. Still on the same assumption, whether respondent is liable for withholding taxes on fringe benefits; and

5. Whether the Court in Division could have brush aside technical rules in deciding petitioner's Motion for Reconsideration.

Petitioner's arguments:

Petitioner argues that the Court in Division has no jurisdiction over the original Petition for Review for being filed out of time.

According to petitioner, assuming that the Court in Division has jurisdiction, the assessment is valid for having complied with the requirements set forth under Section 228 of the NIRC of 1997.

Furthermore, upon the same assumption, petitioner contends that respondent was not a regional enterprise from April 4, 2002 to June 14, 2002; and that respondent is liable for withholding taxes on fringe benefits.

Lastly, petitioner asserts that the Court in Division could have brushed aside technical rules in deciding her Motion for Reconsideration filed on September 1, 2011. Petitioner's counsel allegedly failed to file the said motion on time due to inadvertence, excusable negligence and extreme heavy volume of work, as well as the numerous holidays in between August 4, 2011 and August 31, 2011.

Respondent's counter-arguments:

Respondent avers that the Court *En Banc* has not acquired jurisdiction over the instant Petition for Review for failure to comply with Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals, which provides:

"RULE 8
PROCEDURE IN CIVIL CASES

> **SECTION 1. Review of cases in the Court *en banc*.** – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division."

Moreover, respondent claims that the belated filing of petitioner's Motion for Reconsideration before the Court in Division renders the August 4, 2011 Decision final and executory.

In addition, respondent asseverates that:

1. the instant Petition for Review does not merit brushing aside technical rules of procedure;
2. the Court in Division has jurisdiction over the original petition filed by respondent;
3. petitioner merely reiterated all her arguments contained in her Answer, Memorandum and Motion for Reconsideration which had already been exhaustively passed upon by the Court in Division;
4. the Court in Division correctly declared that the assessment is void for failure to clearly and properly inform respondent of the law and the facts on which the assessment is made as required under Section 228 of the NIRC;
5. for the income tax assessment, petitioner failed to inform respondent of the basis and the details of the adjustment per audit;
6. for the withholding tax assessment, petitioner failed to inform respondent of the basis and the details of the alleged foreign travel expenses;
7. there was a violation of respondent's right to due process since petitioner did not observe the required procedures in the issuance of the Preliminary Assessment Notice and Formal Assessment Notice as mandated by Revenue Regulations No. 12-99. Violation of this due process requirement renders the assessment null and void;
8. respondent is entitled to the deductions excluded by petitioner in computing its taxable income subject to the 5% tax;
9. petitioner is not correct in asserting that the alleged travel and lodging expenses incurred by respondent are fringe benefits subject to fringe benefits tax;
10. expenses were incurred in furtherance of respondent's business, hence, not subject to fringe benefits tax;
11. not all the expenses were incurred for respondent's employees, hence, they do not fall under the categories of taxable fringe benefits;

12. petitioner did not consider the amount of taxes paid in the computation of the deficiency taxes dues; and
13. petitioner's right to assess deficiency withholding tax for the year 2002 had already prescribed.

THE COURT *EN BANC*'S RULING

Petitioner primarily argues that the Court in Division has no jurisdiction to entertain CTA Case No. 7675 because respondent's Petition for Review thereat was filed out of time.

On the other hand, respondent claims that petitioner belatedly filed her Motion for Reconsideration of the assailed Decision dated August 4, 2011 before the Court in Division, thereby making the said Decision final and executory. Consequently, the Court *En Banc* allegedly has not acquired jurisdiction over the instant Petition for Review.

In light of the foregoing arguments of the parties, it must be emphasized that a decision of the court without jurisdiction is null and void; hence, it could never logically become final and executory.[15]

Thus, it becomes imperative that We primarily resolve the following principal issues, to wit:

1) Whether or not the Court in Division acquired jurisdiction over respondent's Petition for Review in CTA Case No. 7675; and

2) If in the affirmative, whether the assailed Decision rendered in said case, has attained finality by reason of the belated filing of petitioner's Motion for Reconsideration.

The answers to both questions are in the affirmative.

The Court in Division acquired jurisdiction over CTA Case No. 7675.

In this case, respondent treated the issuance by petitioner of the subject Warrant of Distraint and/or Levy as the denial of its appeal to the decision of the Regional Director, which prompted respondent

[15] *Padre vs. Badillo, et al.*, G.R. No. 165423, January 19, 2011.

to file the Petition for Review in CTA Case No. 7675 on August 23, 2007.[16] In other words, respondent considered the said Warrant of Distraint and/or Levy as the decision on the disputed assessment of petitioner appealable to this Court for review.

Respondent is correct.

Sections 7(a)(1) and 11 of Republic Act No. (RA) 1125,[17] as amended by RA 9282,[18] provide:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions 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;" *(Emphasis supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

[16] Paragraph 29, Petition for Review (CTA Case No. 7675), p. 10; Division Docket, p. 9.
[17] AN ACT CREATING THE COURT OF TAX APPEALS.
[18] 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.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. **A Division of the CTA shall hear the appeal**: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

xxx xxx xxx." *(Emphases supplied)*

The word "decisions" in the above quoted Section 7(a)(1) has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments.[19]

In relation to the aforequoted provisions, paragraph 3.1.5 of Section 3 of Revenue Regulations No. (RR) 12-99[20] provide, in part, as follows:

"3.1.5 *Disputed Assessment.* — xxx.

xxx xxx xxx

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**

[19] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.

[20] 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.

> **receipt of the final decision of the Commissioner's duly authorized representative, <u>the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner</u>.**
>
> 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." *(Emphases and underscoring supplied)*

It is clear from the foregoing that a taxpayer may *"elevate"* his protest to the Commissioner of Internal Revenue when there is a *"final decision of the Commissioner's duly authorized representative"*. If the taxpayer so elevates his protest, the decision of the said representative *"shall not be considered final, executory and demandable"* and more importantly, *"the protest shall be decided by the Commissioner."*

Under the circumstances of the instant case vis-à-vis the above quoted provisions of RR 12-99, it is the Warrant of Distraint and/or Levy dated July 9, 2007[21] which should be treated as the decision of petitioner appealable to this Court for review. This must be so because it is the communication which bears or signifies the decision of the Commissioner of Internal Revenue implicitly denying the appeal made by respondent to the decision of the Regional Director.

Parenthetically, the subject Final Notice Before Seizure[22] cannot be treated as the decision appealable to this Court because it was not made by the Commissioner of Internal Revenue herself, but was merely issued by a Revenue District Officer, contrary to the provisions of paragraph 3.1.5 of Section 3 of RR 12-99, which require that *"the protest shall* [already] *be decided by the Commissioner."*

Such being the case, counting from July 25, 2007—the date of receipt of the said Warrant of Distraint and/or Levy, respondent had until August 24, 2007 within which to file the appeal before the Court

---

[21] Exhibit "K".
[22] Exhibit "J".

in Division, pursuant to Section 11 of RA 1125, as amended by RA 9282.

Considering that the appeal was brought before the Court in Division on August 23, 2007 or 29 days after receipt of the subject Warrant of Distraint and/or Levy, the said Court in Division had jurisdiction to entertain respondent's Petition for Review in CTA Case No. 7675.

The Decision of the Court in Division attained finality due to the belated filing of a Motion for Reconsideration by petitioner in CTA Case No. 7675.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals provided for the following rule, to wit:

> "**RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SECTION 1.** ***Review of Cases in the Court en banc.***- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must be preceded by the filing of a timely motion for reconsideration** or new trial **with the Division**." *(Emphasis supplied)*

It is clear from the foregoing provision that the petition for review of a decision of Court in Division *"must be preceded by the filing of a timely motion for reconsideration...with the Division."* [23]

In this connection, in *Commissioner of Customs vs. Marina Sales, Inc.*,[24] the Supreme Court said:

> "On the procedure, the Court agrees with the CTA En Banc that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals requiring that 'the petition for review of a decision or resolution of the Court

[23] Underscoring supplied.
[24] G.R. No. 183868, November 22, 2010.

> in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division.' The word 'must' clearly indicates the mandatory – not merely directory – nature of a requirement.'
>
> The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules." *(Underscoring supplied)*

In light of the foregoing considerations, the timely filing of a Motion for Reconsideration of a Decision of a Court in Division is mandatory. Needless to state, where a motion to reconsider is filed out of time, the order or decision subject of reconsideration becomes final.[25]

The general and bare averments of petitioner why she failed to file on time her Motion for Reconsideration of the Court in Division's Decision (*i.e.*, due to inadvertence, excusable diligence and extreme heavy volume of work, as well as the numerous holidays in between August 4, 2011 and August 31, 2011) hardly fall under the cloak of *"very exigent and persuasive reasons"* to warrant the relaxation of the rules.

Considering therefore petitioner's failure to file on time the said Motion for Reconsideration, the Decision of the Court in Division has already become final. Such decision having become final, it is beyond the jurisdiction of this Court, or any court or body, for that matter, to review or modify, even supposing for the sake of argument, that it is indeed erroneous.[26]

---

[25] *Elizalde & Co., Inc. vs. Court of Industrial Relations, et al.*, G.R. No. L-21942, September 23, 1968.

[26] *Metropolitan Cebu Water District vs. Mactan Rock Industries, Inc.*, G.R. No. 172438, July 4, 2012.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated August 4, 2011 and Resolution dated October 19, 2011, both rendered by the Court in Division in CTA Case No. 7875 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice