REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAXICARE HEALTHCARE CORPORATION, Petitioner,	C.T.A. CASE NO. 8441 Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 5 2015

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AMENDED DECISION

FABON-VICTORINO, J.:

Both unconvinced, petitioner Maxicare Healthcare Corporation and respondent Commissioner of Internal Revenue (CIR) filed their respective motions for partial reconsideration assailing the Decision dated April 21, 2014, which partially granted petitioner's Petition for Review in this wise:

> WHEREFORE, the instant Petition for Review dated March 13, 2012 filed by petitioner Maxicare Healthcare, is hereby PARTIALLY GRANTED. Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Maxicare Healthcare Corporation for calendar year 2008 covering deficiency Value-Added Tax is UPHELD IN PART. Accordingly, petitioner is DIRECTED TO PAY respondent basic deficiency VAT in the amount of P125,726,203.58 and the corresponding twenty-five percent (25%) surcharge in the

amount of P31,431,550.89 as imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, or in the sum of P157,157,754.47, computed as follows:

	2nd Qtr	3rd Qtr	4th Qtr	Total
Cost to render service (Exempt Sales per VAT Returns)	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱ 1,195,654,104.47
Output Tax Due Thereon	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱ 143,478,492.54
Less: Input tax attributable to Exempt Sales - now allowed as input tax	5,209,895.00	5,402,589.96	7,139,804.00	17,752,288.96
Basic Deficiency VAT	**₱24,476,512.77**	**₱39,747,965.34**	**₱61,501,725.47**	**₱125,726,203.58**
Add: 25% Surcharge				31,431,550.89
Total Amount Due				**₱157,157,754.47**

In addition, petitioner is ORDERED TO PAY (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P24,476,512.77, P39,747,965.34, and P61,501,725.47 for the 2nd, 3rd and 4th quarters, respectively, computed from July 25, 2008, October 25, 2008 and January 25, 2009, respectively, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended; (b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of P157,157,754.47 representing basic deficiency VAT of P125,726,203.58 and 25% surcharge of P31,431,550.89 computed from April 30, 2012 64 until full payment thereof pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.

SO ORDERED.

Petitioner's Motion for Partial Reconsideration

Petitioner insists that it is not liable for any deficiency VAT for calendar year 2008, thus, the Court erred in directing it to pay respondent the amount of P125,726,203.58 plus surcharge and deficiency interest computed based on the provision of second paragraph of Section 4.108-3(k) of Revenue Regulations (RR) No. 16-2005, which defines HMOs and specific rules on what constitutes its **gross receipt** for purposes of determining its tax base for VAT.

Petitioner insists that the general definition of gross receipt under Section 4.108-4 of RR 16-2005 applies to all sales and services including those selected services enumerated under Section 4.108-3 of the same revenue regulation. Allegedly, there is nothing in RR 16-2005 that states that the said general definition of gross receipts is inapplicable to HMOs. Also no similar limitation appears in the amendments introduced by RR 4-2007 on the definition of gross receipts.

There is likewise no sufficient justification to exclude HMOs from the privileges enjoyed by other service-oriented entities by virtue of the amendments on the definition of gross receipts under RR 4-2007. To single out HMOs and preclude them from the mantle of Section 4.108-4 on the definition of gross receipts, as amended, is to violate the rule on uniformity of taxation clauses, says petitioner.

Petitioner further submits that only 20% of the total enrollment fees received from its members belongs to it and constitutes its gross income subject to VAT, it being merely an intermediary or conduit between purchasers of health care services known as its members and health care providers. The other amount equivalent to 80% of the total enrollment fees which is earmarked for medical/hospital utilization expenses does not belong to it nor does it redound to its benefit, hence, should not be considered part of its gross receipts for VAT purposes pursuant to RR 4-2007. Gross receipts subject to VAT under the Tax Code do not include monies or receipts entrusted to the taxpayer, which do not belong to it and do not redound to its benefit.

In any event, the sudden change in respondent's construction and interpretation of what constitutes gross receipts for VAT purposes as contained in RMC No. 39-2010 should not be retroactively applied to its prejudice given that it merely relied in good faith on the validity of BIR Ruling DA-(VAT-026)-375-08, which excluded that portion of enrollment fees received and earmarked for payment to unrelated third party; i.e. health care providers, hospitals or clinics, or those received as reimbursement for advance payment on behalf of another and which do not redound to its benefit. Petitioner points out that BIR Ruling DA-(VAT-026)-375-08 actually echoed the amendment introduced by Revenue Regulation No. 4-2007 on the definition of gross receipt. The same ruling clearly indicates the nature and business of petitioner justifying its reliance on ruling pursuant to provisions under RR 4-2007. To retroactively apply RMC No. 39-2010 in the present case is to violate the tenets of good faith, equity and fair play, says petitioner.

Petitioner also views respondent's VAT deficiency assessment as infirmed for it allegedly failed to disclose the facts and the law upon which it is based in utter disregard of Section 228 of the Tax Code which requires the same.

Finally, to sustain the validity of the subject tax assessment will be highly iniquitous and arbitrary, tantamount to a violation of the "equal protection clause" enshrined in Constitution.

Despite the several extensions granted, respondent failed to file any comment or register any objection to petitioner's motion, per Records Verification dated July 25, 2014.

A judicious evaluation of petitioner's arguments unfolds no extenuating ground for the Court to depart from its ruling with respect to the application of Section 4.108-3(k) of RR No. 16-2005 defining what constitutes HMOs' gross receipts for purposes of determining its tax base for VAT. The challenged Decision of April 21, 2014 even traced the evolution of the terms as applied in the present case and clarified that for VAT purposes, HMOs' gross receipts shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable

to the owners/operators of hospitals, clinics and medical and dental practitioners.

To ease petitioner's mind and to give closure to other issues it raised in relation to the definition of HMOs' gross receipts for VAT purposes, the relevant portion of the assailed Decision of April 21, 2014 is hereby quoted, thus:

> "Note the definition of **gross receipts** in the last paragraph of Section 108 (A)(8) of the National Internal Revenue Code of 1997, as amended. **Gross receipts** is defined therein as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."
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> Similarly, under Revenue Regulations No. 16-2005 implementing Title IV (Value-Added Tax) of the Tax Code, the term **gross receipts** is defined as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT."
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> Subsequently, Revenue Regulations No. 4-2007 amended certain provisions of Revenue Regulations No. 16-2005, defining gross receipts as follows:
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> "**SEC. 4.108-4.** ***Definition of Gross Receipts.*** – ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental

or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.

A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.

For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor,

trustee or beneficiary, even if covered by an agreement to the contrary."

Further, the second paragraph of Section 4.108-3(k) of Revenue Regulations No. 16-2005 defines HMOs gross receipts as:

> "**SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.*** –
>
> xxx xxx xxx
>
> (k) xxx
>
> **HMOs gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax.** The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received." *(Emphasis and underscoring supplied.)*

The definition of gross receipts provided under Section 4.108-4 of Revenue Regulations No. 16-2005, which was amended by Section 10 of Revenue Regulations No. 4-2007, applies to all sales of services, except those specifically provided under Section 4.108-3 of the same. It is also clear that Section 10 of Revenue Regulations No. 4-2007 has amended Section 4.108-3(e),(f),(h) and (i) of Revenue Regulations No. 16-2005, but not Section 4.108-3(k) of the latter. Thus, the definitions of health maintenance organizations and their gross receipts stated in Revenue Regulations No. 16-2005 still stands and remain operative. Hence, considering that

> Revenue Memorandum Circular No. 039-10 was issued in accordance with Revenue Regulations No. 16-2005, the same is valid and applicable to the instant case.
>
> Therefore, **petitioner's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax."**

Also flawed is petitioner's argument that gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to their benefit citing in support thereof the amended definition of gross receipts under Section 10 of Revenue Regulations No. 4-2007 and the case of *Commissioner of Internal Revenue vs. Tours Specialist, Inc.*[1]

Instructive on this regard is the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[2], where the Court in Division distinguished the difference between a travel agency and an HMO with respect to the application of the concept of "money in trust", as follows:

> *CIR vs. Tours Specialists, Inc.* cited in *CIR vs. BPI* involved certain payments to hotels for lodging accommodations of tourists that were: (a) payable directly to the hotels by either the tourists or their foreign travel agents; (b) based on arrangements made directly between the hotels, on the one hand, and the tourists or their foreign travel agents, on the other hand; (c) not part of the package fee agreed upon between the tourists and the local tour agency (the taxpayer); (d) not diverted to the funds of the local tour agency; (e) for convenience and economy, entrusted to the local tour agency by the tourists or foreign travel

[1] G.R. No. 66416, Mach 21, 1990.
[2] CTA Case No. 7948, June 5, 2014.

agents for remittance to the hotels; (f) in the custody of the local tour agency for the specific purpose of remittance to the payee hotels.

Therefore, the taxpayer-local travel agency in Tours Specialists, Inc., had nothing at all to do with the contract or engagement between the payors (the tourists or foreign travel agents) and the payees (hotels), or how the amount payable to the payees were negotiated or arrived at. The taxpayer could have thus theoretically refused to make the remittance in behalf of the tourists or the foreign travel agents because that service is not part of the package offered by it, but was nevertheless undertaken only by way of accommodation. The taxpayer in that instance could not have diverted for any other purpose the amounts entrusted to him without incurring criminal liability.

As distinguished from Tours Specialists, Inc., the alleged amounts earmarked for payment, or actually paid, to hospitals and doctors by petitioner HMO in this case form part and parcel of the entire package offered to its members. There is no contract for administrative or management services between the HMO and its members that is distinct, independent or segregatable from a contract providing for the remittance of the fees payable to doctors and hospitals.

The petitioner's members do not deal directly with the doctors, hospitals and other medical service providers on the matter of the fees payable to the latter. It is in the nature of their health contracts that the members are unaware, or clearly without right to inquire into, much less negotiate, the amounts of their medical bills.

Therefore, no portion of the moneys that go into the hands of petitioner is delineated for "delivery" to an identified third party. Rather, all moneys are surrendered to petitioner lump sum by its members in

exchange of an obligation or service to ensure that medical services will be provided the members without the usual payment protocols. How the petitioner does this is entirely the essence of its business as a service contractor.

Furthermore, there is no showing here that the members have the right to require petitioner HMO to account to them the management and disposition of the portions of their premiums which petitioner claims it earmarks for the payment of contingent medical bills. They have no basis to claim for rebate of their premium payments in the event the medical benefits remain unutilized upon the expiration of the period of coverage stated in the health agreements. The members are deemed to have prepaid to the HMO, and not to the doctors and hospitals, the professional fees and bills which may or may not be due the latter.

All these negate the concept of "money in trust" as contemplated in Tours Specialists, Inc. Petitioner cannot credibly claim that it acquires no ownership over the contested amounts simply because it internally allocates a portion thereof for medical bills. **The act of "earmarking or allocation" is by itself an act of ownership and management over the funds, the entire disposition of which is in truth surrendered to it by the members.**

It is along this line of reasoning that Revenue Regulations No. 4-2007 amending Revenue Regulations No. 16-2005 above-quoted should be read and understood. **When this RR excludes from "gross receipt" those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor, the requirement is that the act of payment to a 3rd party, whether as reimbursement or advance, is pursuant to an obligation between such 3rd party-recipient and**

another person not the taxpayer. The RR provides:

> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

In the case of HMOs, it is they, not their members, who are obligated to the doctors and hospitals for payment of the latter's bills. The contractual vinculum, insofar as the provision of medical services is concerned, is between the hospitals and doctors, on the one hand, and the petitioner, on the other hand. In the event, for example, that a doctor refuses to treat a member, the course of action of the member is against petitioner, not the doctor. The doctors on the other hand, cannot refuse to render service for as long as the member is in good standing in the records of the petitioner.

Therefore, all payments to doctors and hospitals, whether earmarked or actually paid, including the item of P11,522,346.00 **identified as Professional Fees in the disputed assessment, are inextricably intertwined with the total fees payable to petitioner by the members and are a crucial factor in the over-all design of the terms and conditions stated in every contract for coverage. They form part of the gross receipt of petitioner subject to VAT.**" (boldfacing supplied).

Clearly, payments made by petitioner to doctors, hospitals and for other medical utilization do not constitute "money in trust" that should be excluded from the computation of its gross receipts for VAT purposes.

All the foregoing notwithstanding, petitioner implores the Court to give a second hard look at its invocation of Section 246 of the NIRC, as amended, and uphold its position that RMC No. 39-2010 revoking BIR Ruling [DA-(VAT-026)-375-08] should not be retroactively applied in this particular case since it merely relied in good faith on the validity of BIR Ruling [DA-(VAT-026)-375-08]. Per petitioner, to retroactively apply the said BIR Ruling is to gravely prejudice HMOs, petitioner included.

Thus, the Court finds it incumbent to meticulously weigh the foregoing discussion against the circumstances peculiar to the present case to arrive at a just and fair conclusion.

It is undisputed that respondent, acting on the petitioner's letter dated September 25, 2008, issued BIR Ruling [DA-(VAT-026)-375-08] on October 31,2008, the pertinent portion of which states that "...Maxicare, being an intermediary between the purchaser of health care services (members) and the health care providers (hospitals and clinics), does not exercise any beneficial ownership of the **amount transferred and earmarked for medical utilization and which amount does not redound to the benefit of the corporation, the same shall be excluded from its gross receipts for purposes of VAT**. Only gross receipts constituting part of gross income of the recipient shall be subject to VAT.

On the basis of the said BIR Ruling, petitioner filed its VAT return and paid the corresponding VAT for taxable year 2008 using as tax base only twenty percent (20%) of its actual gross receipts or total enrollment fees as the eighty percent (80%) thereof was earmarked for medical/hospital utilization expenses.

About two (2) years thereafter or on May 21, 2010, respondent issued RMC 39-2010, totally revoking BIR Ruling [DA-(VAT-026)-375-08] by changing the interpretation and construction of the gross receipts for VAT purposes of HMO.

It is worth to note that BIR Ruling [DA-(VAT-026)-375-08] at the time of issue on October 31, 2008 was valid for it was in consonance with the then prevailing RR 16-2005

dated October 19, 2005, as amended by RR 4-2007 dated March 20, 2007. No law or provision to the contrary was in legal existence during that relevant period. Petitioner was therefore correct and in good faith when it filed the required VAT return and paid the correspondent VAT for taxable year 2008 following respondent's own ruling as expressly worded in BIR Ruling [DA-(VAT-026)-375-08]. Hence, respondent's sudden change of heart some two years thereafter should not be countenanced to the undue prejudice of petitioner insofar as taxable year 2008 is concerned.

In the case of *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*,[3] it was ruled that under Section 246 of the 1997 Tax Code, respondent is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer as evident in the case at bar where petitioner relied in good faith on the respondent's ruling issued in accord with the then prevailing revenue regulations.

Indeed, petitioner can take refuge under the mantle of protection guaranteed in Section 246 of the NIRC, as amended. In the absence of any indication of bad faith, petitioner is entitled to the benefit of non-retroactivity of rulings which provides as follows:

> *Sec. 246. Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation modification or reversal will be prejudicial to the taxpayers, except in the following cases:
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> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different

[3] G.R. No. 52306, October 12, 1981, 108 SCRA 142.

from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

With the foregoing disquisition, discussions on the other issues raised by petitioner are rendered unnecessary.

Respondent's Motion for Partial Reconsideration

Respondent, for her part, advances that petitioner cannot escape the binding effect of the judicial admission of its own witness that it is previously known as Philippine Health Care Providers, Inc. and that not all the membership fees collected from its members are reported in its VAT Returns. Such judicial admission requires no further proof on the part of the respondent to establish that petitioner's VAT return is false.

Citing the case of *Philippine Healthcare Provider's Inc. vs. Commissioner of Internal Revenue*,[4] respondent claims this Court already ruled that gross receipts of HMOs for purposes of computing VAT shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners. This ruling had become final and executory, hence, should be regarded as the law of the case which can no longer be changed.

Respondent also posits that petitioner's Quarterly VAT Returns for the year 2008 are considered false for failure of petitioner to indicate therein all the enrollment fees collected from members. That being the case, the applicable period to assess is ten (10) years from discovery of the falsity.

The FAN dated May 17, 2011 as well indicates that petitioner filed a false VAT return for TY 2008 for failure to report receipts in an amount exceeding thirty percent (30%) of that declared per VAT returns.

[4] CTA Case No. 6166, April 5, 2002."

In rejecting respondent's contentions, petitioner counter-argues that the definition of gross receipts of HMOs in the cited case of *Philippine Healthcare Provider's Inc. vs. Commissioner of Internal Revenue*,[5] was already changed with the advent of new tax laws. The ruling in the said case, insofar as the definition of gross receipts, no longer applies.

Petitioner also heavily relied in good faith on BIR Ruling DA (VAT-026) 275-08 and Revenue Regulation No. 16-2005, as amended by Revenue Regulation No. 4-2007, believing that they were contemporaneous constructions of the Tax Code itself.

Contrary to respondent's claim, it only had three (3) years within which to issue an assessment against petitioner in this case.

Respondent's motion is bereft of merit.

Respondent's contentions in her Motion for Reconsideration are but a reiteration of her position expressly stated in her Answer dated May 25, 2012.

The Court has amply discussed above as well as in the assailed Decision of April 21, 2014 the definition of gross receipts specifically applied to HMOs pursuant to the last paragraph of Section 108 (A)(8) of the National Internal Revenue Code of 1997, as amended, and as implemented by the second paragraph of Section 4.108-3(k) of Revenue Regulations No. 16-2005.

It is also inaccurate, if not misleading, to state that the case of *Philippine Healthcare Provider's Inc. vs. Commissioner of Internal Revenue*,[6] had settled the issue on the definition of gross receipts respecting HMOs and that the same had become final and executory, thus, becoming the law of the case. For one, the CTA reversed itself on motion for reconsideration filed by petitioner and ordered the therein assailed VAT assessment for taxable year 1996 and 1997 withdrawn and set aside. This ruling was sustained by the Court of Appeals in its Decision dated February 18,

[5] CTA Case No. 6166, April 5, 2002.
[6] CTA Case No. 6166, April 5, 2002.

2005,[7] and finally by the Supreme Court, in the case of *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*[8]

On respondent's allegation that petitioner's VAT Returns for 2008 are considered false for it only declared 20% of the enrollment fees collected as gross receipts, hence, the prescriptive period to assess is ten (10) years from discovery of falsity, suffice it to say that this issue was never raised by respondent in all her pleadings filed before the Court until this incident and after the decision has been rendered. Respondent kept mum on this issue during the trial of the case and opted not present any evidence to prove such alleged falsity. Settled is the rule that an issue which was not raised during the trial could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[9]

Finally, the statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.[10]

WHEREFORE, the Motion for Partial Reconsideration dated May 7, 2014 filed by petitioner is hereby **GRANTED**. Accordingly, the impugned VAT assessment issued by respondent against petitioner for taxable year 2008 is ordered withdrawn and set aside.

On the other hand, the Motion for Partial Reconsideration posted by respondent on May 9, 2014 is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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7 CA-G.R. SP No. 76449.
8 *G.R. No. 168129, April 24, 2007.*
9 *Victorias Milling Co., Inc. vs. Court of Appeals*, 333 SCRA 663; *Jimenez vs. Patricia, Inc.*, 340 SCRA 525.
10 *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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