REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
Petitioner,

-versus-

CITY OF BALANGA and AMADO P. JIMENEZ, in his capacity as, OIC-City Treasurer of the City of Balanga,
Respondents.

C.T.A. EB NO. 413
(C.T.A. AC NO. 27)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 0 3 2009 MApolinario 10:15 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The review taken by the RTC over the denial of the tax protest by the local treasurer would fall within that court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment of a lower court, but of a local government official *(Yamane vs. BA Lepanto Condominium Corporation, 474 SCRA 268)*.

THE CASE

This is a Petition For Review filed by Philippine Long Distance Telephone Company (hereafter "PLDT") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse the Decision dated May 8, 2008 and Resolution dated July 11, 2008 rendered by the First Division of this Court in C.T.A. AC NO. 27, the respective dispositive portions which read, as follows:

> "**WHEREFORE**, this Court hereby **DENIES** the Petition for lack of merit. The Orders dated August 11, 2006 and December 6, 2006 are hereby **AFFIRMED**.
> **SO ORDERED**."
>
> "**WHEREFORE**, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
> **SO ORDERED**."

THE PARTIES

PLDT is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Ramon Conjuangco Building, Makati Avenue, Makati City.

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On the other hand, respondent City of Balanga is a public corporation duly constituted under *RA 8984*, while respondent Amado P. Jimenez is the OIC-City Treasurer of Balanga City, with office address at the Balanga City Hall, Balanga City.

THE FACTS

The facts of the case, as culled from the records, follow:

On July 4, 2005, PLDT received a letter dated June 23, 2005 from respondent Jimenez, requesting petitioner to pay respondent City business and franchise taxes, invoking Article 243 of the Implementing Rules and Regulations of the Local Government Code and the Revenue Code of the City of Balanga.

On July 27, 2005, PLDT replied thereto, copy of which was received by respondents on July 29, 2005.

Thereafter, there were exchanges of correspondence between PLDT and respondent Jimenez.

On January 20, 2006, PLDT, through counsel, wrote respondents a letter, requesting the latter to cancel and withdraw the assessed tax liabilities imposed upon PLDT.

On January 27, 2006, respondent Jimenez denied PLDT's protest and reiterated that it is subject to both business and franchise taxes.

On February 3, 2006, PLDT received the denial of its protest.

On March 3, 2006, PLDT appealed the said denial to the Regional Trial Court, Branch 57, Makati City ("RTC").

On May 18, 2006, respondents filed a "Motion To Dismiss" with the RTC of Makati City.

On June 5, 2006, PLDT filed an "Opposition (to Respondent's Motion To Dismiss)".

On June 23, 2006, respondents filed a "Reply: To the Opposition to the Motion To Dismiss".

In an Order dated August 11, 2006, the RTC granted the Motion To Dismiss and dismissed PLDT's petition, the dispositive portion of which reads, as follows:

> "WHEREFORE, the afore-quoted Motion is hereby GRANTED and let the instant appeal be, as it is hereby DISMISSED as the RTC-Makati City not being a court of competent jurisdiction to review the instant appeal.
>
> SO ORDERED."

Petitioner filed a "Motion For Reconsideration" of said Order dated August 11, 2006, which was denied by the RTC on December 6, 2006.

On January 19, 2007, PLDT appealed the Order dated August 11, 2006 by way of a Petition For Review before the First Division of this Court, docketed as C.T.A. AC No. 27.

On March 19, 2007, respondents were ordered to file comment to the petition, which respondents failed to comply.

On May 7, 2007, both parties were ordered to submit their simultaneous memoranda, within thirty (30) days from notice. Only petitioner filed its memorandum.

On May 8, 2008, the First Division rendered the assailed decision, dismissing PLDT's petition for lack of merit and affirmed the RTC Orders dated August 11, 2006 and December 6, 2006.

On June 2, 2008, PLDT filed a "Motion For Reconsideration", which was denied by the First Division in a Resolution dated July 11, 2008.

Hence, this Petition For Review raising the following:

ISSUES

I

WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN AFFIRMING THE DISMISSAL OF THE REGIONAL TRIAL COURT OF THE PETITION FILED BY PETITIONER PURSUANT TO SECTION 195 OF THE LGC.

II

WHETHER OR NOT THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 57, HAS JURISDICTION ON THE CASE FILED BY PETITIONER, PURSUANT TO THE PROVISIONS OF THE LGC.

III

WHETHER OR NOT THE REGIONAL TRIAL COURT OF MAKATI CITY IS THE PROPER VENUE OF THE PETITION FILED BY PETITIONER UNDER SECTION 195 OF THE LGC.

IV

WHETHER OR NOT THE RULE FOR PERSONAL ACTIONS IS APPLICABLE IN THE CASE FILED BEFORE THE REGIONAL TRIAL COURT OF MAKATI CITY, THE PRINCIPAL PLACE OF BUSINESS OF PETITIONER.

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WHETHER OR NOT ATTY. FLORENTINO D. MABASA IS AUTHORIZED TO SIGN FOR AND IN BEHALF OF THE PETITIONER IN THE VERIFICATION.

VI

WHETHER OR NOT PETITIONER IS LIABLE TO PAY BOTH LOCAL BUSINESS TAX AND FRANCHISE TAX TO RESPONDENT CITY BASED ON THE SAME GROSS RECEIPTS EARNED WITHIN THE TERRITORIAL JURISDICTION OF RESPONDENT CITY WITHIN THE SAME TAXABLE YEAR, PURSUANT TO THE PROVISIONS OF THE LGC.

VII

WHETHER OR NOT RESPONDENT SHOULD AMEND THE OFFICIAL RECEIPT ISSUED TO PETITIONER TO REFLECT THE PAYMENT OF FRANCHISE TAX INSTEAD OF BUSINESS TAX.

On September 5, 2008, without necessarily giving due course to the petition, We required the respondents to file a comment, not a motion to dismiss, within ten (10) days from notice, afterwhich, the petition shall be deemed submitted for decision.

On October 29, 2008, respondents filed their comment to the Petition For Review.

On November 4, 2008, the Court *En Banc* ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having filed their respective memorandum, the case was deemed submitted for decision on January 30, 2009.

Principal Issue

The issues raised by petitioner boil down to the principal issue of which Court has competent jurisdiction over an appeal from the denial of a tax protest by the Local City Treasurer under *Section 195 of the Local Government Code*.

THE COURT *EN BANC'S* RULING

The petition lacks merit.

Petitioner's Arguments

PLDT contends that the appeal from the local treasurer's denial of an assessment protest instituted before the RTC is a personal action, as such, *Section 2 of Rule 4 on Venue of Actions of the 1997 Rules of Court* applies; that pursuant to said section, personal actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff; that it holds its principal place of business at Ramon Conjuangco Building, Makati Avenue, Makati City, and being a juridical entity, it is a resident of the place where its principal place of business is located. Hence, PLDT, as a resident of Makati City, opted to file the original petition before the RTC of Makati City; that pursuant to *Section 19 of BP 129, in relation to Section 195 of the Local Government Code*, an appeal from the denial of the protest of the city treasurer of a local assessment falls within the jurisdiction of the regional trial court, being a court of competent jurisdiction authorized to hear petitions instituted by herein petitioner.

Respondents' Counter-Arguments

Respondents counter that a review of the decision of the OIC-City Treasurer is not an original action filed, the respondent OIC-City Treasurer is acting as an administrative body or quasi-judicial body when it assessed petitioner of its financial tax liability of business tax; that the situs of the assailed business tax was imposed on the income derived in the City of Balanga, thus petitioner should have filed its appeal with the

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RTC of Balanga City; that being an action for review of an administrative decision, the review should be filed in the proper courts in the City of Balanga; that pursuant to the provision of *BP 129, as amended by RA 7691* and the *Supreme Court Supervisory Circular No. 14*, the territorial jurisdiction of all Regional Trial Courts determines the venue of actions, hence, petitioner should have filed its appeal with the Regional Trial Court in the third Judicial Region, and not in the National Capital Judicial Region considering that petitioner is seeking the review by the OIC-City Treasurer of Balanga City of the denial of its administrative protest.

To tackle the principal issue, We deem it necessary to first discuss whether or not the RTC in deciding an appeal taken from a denial of a tax protest by a local treasurer under *Section 195 of the Local Government Code* exercises "original jurisdiction" or "appellate jurisdiction". In the case of *Yamane vs. BA Lepanto Condominium Corporation, 474 SCRA 267-271*, the Supreme Court ruled that the review taken by the RTC over the denial of a tax protest by the local treasurer would fall within the RTC's original jurisdiction:

"*First*, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises 'original jurisdiction' or 'appellate jurisdiction.' The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the taxpayer whose protest is denied by the local treasurer is '*to appeal* with the court of competent jurisdiction.' Apparently though, the Local Government Code does not elaborate on how such 'appeal' should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus*, where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: 'Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review.

The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, the review taken by the RTC over the denial of the protest by the local treasurer would fall within the court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, *Batas Pambansa Blg. 129 (*B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase 'appellate jurisdiction.' The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.

Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by

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Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.

From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. *First,* in this particular case there are nonetheless significant reasons for the Court to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. *Second,* the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA).

Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction. Moreover, the provision also states that the review is triggered 'by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure.

Republic Act of 9282, however, would not apply to this case simply because it arose prior to the effectivity of that law. To declare otherwise would be to institute a jurisdictional rule derived not from express statutory grant, but from implication. The jurisdiction of a court to take

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cognizance of a case should be clearly conferred and should not be deemed to exist on mere implications, and this settled rule would be needlessly emasculated should we declare that the corporation's position is correct in law.

Be that as it may, characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animates our civil procedure – the just, speedy and inexpensive disposition of every action and proceeding. Indeed, we have repeatedly upheld – and utilized ourselves – the discretion of courts to nonetheless take cognizance of petitions raised on an erroneous mode of appeal and instead treat these petitions in the manner as they should have appropriately been filed. The Court of Appeals could very well have treated the Corporation's petition for review as an ordinary appeal.

Moreover, we recognize that the Corporation's error in elevating the RTC decision for review *via* Rule 42 actually worked to the benefit of the City Treasurer. There is wider latitude on the part of the Court of Appeals to refuse cognizance over a petition for review under Rule 42 than it would have over an ordinary appeal under Rule 41. Under Section 13, Rule 41, the stated grounds for the dismissal of an ordinary appeal prior to the transmission of the case records are when the appeal was taken out of time or when the docket fees were not paid. On the other hand, Section 6, Rule 42 provides that in order that the Court of Appeals may allow due course to the petition for review, it must first make a *prima facie* finding that the lower court has committed an error that would warrant the reversal or modification of the decision under review. There is no similar requirement of a *prima facie* determination of error in the case of ordinary appeal, which is perfected upon the filing of the notice of appeal in due time.

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> Evidently, by employing the Rule 42 mode of review, the Corporation faced a greater risk of having its petition rejected by the Court of Appeals as compared to having filed an ordinary appeal under Rule 41. This was not an error that worked to the prejudice of the City Treasurer."

Pursuant to the aforequoted decision of the Supreme Court, the review taken by the RTC over the denial of the protest by the local treasurer would fall within the RTC's original jurisdiction. In short, the review is the initial judicial cognizance of the matter, as the denial of the protest is not the judgment or order of a lower court, but of a local government official.

Having determined the nature of the jurisdiction of the RTC over a denial of a protest by a local treasurer under *Section 195 of the LGC,* We now come to the pivotal issue of which RTC has competent jurisdiction over the appeal taken by petitioner PLDT from the denial of its tax protest by the local City Treasurer of Balanga City.

Petitioner PLDT contends that the RTC of Makati City is the court of competent jurisdiction. We do not agree.

Section 18 of BP 129, as amended by RA 7691, provides:

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> "SEC. 18. *Authority to define territory appurtenant to each branch.* — The Supreme Court shall define the territory over which a branch of the Regional Trial Court shall exercise its authority. The territory thus defined shall be deemed to be the territorial area of the branch concerned for purposes of determining the venue of all suits, proceedings or actions, whether civil or criminal, as well as determining the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts over the said branch may exercise appellate jurisdiction. The power herein granted shall be exercised with a view to making the courts readily accessible to the people of the different parts of the region and making the attendance of litigants and witnesses as inexpensive as possible."

Corollary thereto, *Supreme Court Supervisory Circular No. 14*, states:

> "xxx xxx
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> C. PROCEDURE IN THE REGIONAL TRIAL COURTS
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> 13. *Venue of actions*. The venue of all actions whether civil or criminal, and in special proceedings, filed in the regional trial courts shall mean such area defined by the Supreme Court as the territory over which a particular branch shall exercise authority in accordance with Section 18 of B.P. Blg. 129.
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> All provisions of the Rules of Court referring to "provides" shall be deemed to mean such area."

The territory defined in the law shall be deemed to be the territorial area of the branch concerned for the purpose of determining (1) the venue of all suits, proceedings or actions, whether civil or criminal, as well as (2) determining the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts over which the said branch may exercise appellate jurisdiction. The intendment of the law in this regard is

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to make, at all times, "the courts accessible to the people of the different parts of the region and making attendance of litigants and witnesses as inexpensive as possible" and to make more speedy the dispatch of judicial business *(Dean Wenceslao G. Laureta, Commentaries on the Interim Rules and Guidelines [Rules of Court] and The Judiciary Reorganization Act of 1981 [B.P. Blg. 129], p. 113 [1983]).*

In short, the Regional Trial Courts shall exercise their respective jurisdiction within their territorial limits and territorial limits pertain to the venue over which a judicial power is exercised *(Dean Wenceslao G. Laureta, Commentaries on the Interim Rules and Guidelines [Rules of Court] and The Judiciary Reorganization Act of 1981 [B.P. Blg. 129], p. 31 [1983]).*

In the case of *Santos vs. Moreno, 21 SCRA 1141,* the Supreme Court held:

> "The mere fact that the resolution of the controversy in this case would wholly rest on the ownership of the streams involved herein would not necessarily classify it as a real action. The purpose of this suit is to review the decisions of the Secretary of Public Works and Communications, to enjoin him from enforcing them and to prevent him from making and issuing similar decisions concerning the streams in question. The acts of the Secretary are the object of the litigation, that is, petitioner-appellee seeks to control them. Hence, the suit ought to be filed in the CFI whose territorial jurisdiction encompasses the place where the respondent

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> Secretary is found or is holding office. For the rule is that outside its territorial limits, the court has no power to enforce its order."

Pursuant to the foregoing, where the acts of the public official are the object of the litigation, meaning, petitioner seeks to control them, then the suit must be filed in the RTC whose territorial jurisdiction encompasses the place where the respondent public official is found or holding office. For the rule is, outside its territorial limits, the court has no power to enforce its order.

In the instant case, PLDT was not only seeking for a review of the denial by the City Treasurer of Balanga City of the tax protest of PLDT, but petitioner was also asking the court to order respondents to perform specific acts, such as, to order respondents to cancel the assessment, to amend the official receipts issued to petitioner, and to enjoin respondents from imposing franchise and business taxes against PLDT; in other words, petitioner PLDT seeks to control the acts of the City Treasurer of Balanga City. Hence, the suit ought to be filed in the RTC of Balanga City which has territorial jurisdiction over the City Treasurer of Balanga

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City. For it is the RTC of Balanga City that has power to enforce its orders over the City Treasurer of Balanga City.

Thus, the RTC of Balanga City, and not the RTC of Makati, therefore, is the court of competent jurisdiction over the appeal from the denial by the local City Treasurer of Balanga City of the tax protest of PLDT. As aptly ruled by the First Division:

> "Pursuant to the above quoted portions of B.P. 129 and Supreme Court Supervisory Circular No. 14, the territorial jurisdiction of all Regional Trial Courts determine the venue of actions. Hence, petitioner should have filed its appeal to the Regional Trial Court in the third Judicial Region, not in the National Capital Judicial Region.
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> Besides, in its petition filed before the lower court, petitioner prayed as follows:
>
> > 'WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that judgment be rendered in favor of Petitioner as follows:
> >
> > 1. Declare Petitioner not subject to business tax, being a franchise holder and not being engaged in a business which is subject to the business tax;
> >
> > 2. Order Respondents to withdraw and cancel the assessment issued to Petitioner for business tax in addition to the franchise tax already paid in the total amount of One Hundred Seventy Six Thousand Five Hundred Twenty Seven and 15/100 (P176,527.15);

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> 3. Other Respondents to amend the official receipts issued to Petitioner to reflect the payment of franchise tax instead of business tax; and
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> 4. Order Respondents to henceforth cease and desist from imposing both a business and franchise tax on the same gross receipts realized within the same territorial jurisdiction.
>
> Petitioner likewise prays for other relief's which this Honorable Court may deem just and equitable under the circumstance.'

The well established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. Petitioner was not only seeking for a review of the denial by respondent City Treasurer of petitioner's protest but petitioner was also asking the trial court to order respondents from performing specific acts like the cancellation of the assessment and amendment of official receipts; and, at the same time, to enjoin the respondents from imposing franchise and business taxes against petitioner.

The facts from which the various issues arose, originated in the Province of Bataan. As in criminal cases, crimes committed in Bataan must be tried in Bataan, unless for good reason it is moved by the Supreme Court to other Courts outside Bataan. Hence, as it cannot exercise its jurisdiction over respondents where the latter are not stationed within its territory, the court *a quo* is correct in dismissing the petition."

Finding no reversible error in the assailed Decision dated May 8, 2008 and Resolution dated July 11, 2008, We affirm the First Division.

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In view of the foregoing, We find it unnecessary to pass upon the other issues raised by petitioner.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice