REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

JAMES ALEKHINE YAP TAN, Petitioner,	**CTA EB CRIM. NO. 167**
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: JAN 2 2 2026 3:30

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed pursuant to Section 2(h)[2], Rule 4[3] of the Revised Rules of the Court of Tax Appeals (RRCTA) by petitioner James Alekhine Yap Tan (**petitioner/Tan**).

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1 Filed personally on 02 October 2024 and *via* email on 03 October 2024, *rollo*, pp. 23-60.

2 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

...

(h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).

3 Jurisdiction of the Court.

Previously, petitioner was charged before the Municipal Trial Court in Cities (**MTCC**), Branch 6, Cebu City, with a violation of Section 5(c)[4] in relation to Section 266[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, or for the offense of *Failure to Obey Summons*. The case was docketed as Criminal Case No. M-CEB-17-00447-CR-R00-00, entitled *People of the Philippines v. James Alekhine Yap Tan and Josephine Sularte Garay.*

After trial, the MTCC found petitioner (then accused) guilty of the crime charged, while acquitting accused Josephine Garay (**Garay**). Upon appeal to the Regional Trial Court, Branch 14, Cebu City (**RTC/ court *a quo***), the said court upheld his conviction. It affirmed *in toto* the MTCC's action.[6]

PARTIES OF THE CASE

Petitioner is the Chairman of the Board of Directors of Pump N' Go Power Fuel, Inc. (**Pump N' Go**), a corporation duly organized and existing under Philippine laws with business address at 304 V. Rama Ave., Calamba, Cebu City.[7]

Respondent People of the Philippines (**respondent**) is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes, and is headed by the Commissioner of Internal Revenue (**CIR**).[8]

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[4] **Sec. 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

...

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony[.]

[5] **Sec. 266.** *Failure to Obey Summons.*

[6] RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, *rollo*, pp. 62-68.

[7] Id., p. 62, *vis-à-vis* par 3.1, "III. The Parties", Petition for Review, id., p. 25.

[8] Par. 3.2, id.

FACTS OF THE CASE

On 02 February 2015, the BIR issued Letter of Authority (**LOA**) with Reference No. LOA-082-2014-00000104. The LOA authorized the examination of Pump N' Go's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, for TY 2013.[9]

In pursuance of the investigation (as authorized by the LOA), the BIR requested Pump N' Go to submit the documents and records that the former needed for its audit, through: (1) a "First Notice", (2) a "Second and Final Notice", and (3) a "Notice before the issuance of a Subpoena *Duces Tecum* (**SDT**)".[10]

Despite service of the said notices, Pump N' Go failed to submit its books of accounts and other pertinent records. Thus, on 24 November 2015, through the issuance of a Memorandum, the Revenue Officers (**RO**s) assigned to Pump N' Go's case recommended the issuance of an SDT.[11]

Accordingly, on 02 March 2016, the BIR issued the subject SDT with Reference No. RR13-2015-46, commanding Pump N' Go, through Tan, to appear before the BIR on 22 March 2016, and to bring and submit the following documents[12]:

> ...
>
> **2013 Books of Accounts and Other Accounting Records**
> DESCRIPTION
>
> a. Sales Invoices, Charge Invoices and Official Receipts (complete series covered by ATP, arranged by booklet numbers);
>
> b. Vouchers with attached supplier's invoices/official receipts (arranged according to date);

9 RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, id., p. 62.
10 Id., p. 63.
11 Id.
12 Id.

c. Books of Accounts – General Journal, Sales & Purchase Journal, Cash Receipts and Disbursements Journal, General Ledger and Subsidiary Ledgers; and,

d. Forms 2307 for 1st, 2nd, 3rd, and 4th quarters with their respective SAWT.[13]

...

However, on 22 March 2016, Pump N' Go failed to completely submit the documents required. On the same date, Garay, petitioner's then co-accused, filed with the BIR a letter praying for an extension to provide the documents required (though petitioner denied any knowledge of Garay's actions until a later date).[14]

In the months that followed, Pump N' Go purportedly made partial submissions pursuant to the BIR's requests and the SDT.[15] On 08 November 2016, Pump N' Go remitted to the BIR a payment through a BIR Payment Form (or BIR Form No. 0605), supposedly representing a compromise settlement amounting to ₱10,000.00, or the applicable amount for a Compromise Penalty for petitioner's *Failure to Obey Summons*.[16]

PROCEEDINGS BEFORE THE MTCC

Later, the City Prosecutor of Cebu charged petitioner and Garay for allegedly disobeying the BIR's SDT. The Information filed against them reads —

...

That on or about the 22nd day of March 2016, the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused [Tan and Garay,] conniving and confederating and mutually helping with each other, being then the Chairman and Accounting Head respectively, of Pump N' Go Power Fuel, Inc. with principal business address at 304 V. Rama Ave., Calamba, Cebu City, with deliberate intent, did then and there fail and refuse to obey the

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13 Id., *vis-à-vis* par. 5, Respondent's Comment, id., pp. 81-82, and par. 4.3, "IV. Statement of Facts and the Case", Petition for Review, id., p. 26.

14 RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, id., p. 63.

15 Pars. 4.5-4.7, "IV. Statement of Facts and the Case", Petition for Review, id., p. 26.

16 Par 4.7, id., *vis-à-vis* par. 6.65, "VI. Argument/Discussion", id., and RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, id., p. 65.

> summons issued by the Bureau of Internal Revenue, Revenue Region No. 13 which directed them to appear before said office on March 22, 2016 at 10:00 o'clock in the morning and present their book of accounts and other accounting records of Pump N' Go Power Fuel, Inc. for the year 2013, despite their receipt of *Subpoena Duces Tecum* issued upon them by the BIR Regional Director.[17]
>
> ...

When the trial before the MTCC ensued, respondent (as then plaintiff) presented the testimonies of RO Mary Nizalani A. Amoco, the RO assigned to Pump N' Go's case, and Atty. Isaac S. Darcera III, BIR Revenue Region No. 13's Legal Officer. They testified on the subject SDT's issuance and Pump N' Go's failure to appear on the 22 March 2016 hearing and submit the documents required.[18]

On the other hand, petitioner Tan was presented to counter the charges and testified that Pump N' Go paid the pertinent taxes and the compromise penalty on 07 November 2016 and 08 November 2016, respectively. Romeo Oliva Varona (**Varona**), a Document Examiner, was also presented to conduct a comparative examination and analysis of the signatures of the Regional Director Hermeno A. Palamine (**RD Palamine**) in the issued SDT and LOA.[19]

On 22 November 2021, the MTCC issued its Decision, finding petitioner liable for a violation of Section 266 of the NIRC of 1997, as amended:

> ...
>
> **WHEREFORE**, the Court finds accused ***James Alekhine Y. Tan*** **GUILTY** beyond reasonable doubt for violation of Section 5 (c) in relation to Section 266 of the NIRC and hereby **SENTENCES** him to *pay a FINE of Five Thousand Pesos (Php5,000.00), and suffer a straight penalty of one (1) year imprisonment.*
>
> ***Josephine Sularte Garay***, is hereby **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt.[20]
>
> ...

[17] Par. 4.8 "IV. Statement of Facts and the Case", Petition for Review, id., pp. 26-27.

[18] RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, id., p. 63.

[19] Id., pp. 63-64.

[20] Par. 4.15, "IV. Statement of Facts and the Case", Petition for Review, id., p. 28; Emphasis and italics in the original text.

The MTCC, however, acquitted accused Garay, holding that only petitioner was summoned and directed by the SDT (to produce the required documents).[21]

In so ruling, the MTCC found that, contrary to petitioner's (as then accused) claims, RD Palamine duly signed the subject SDT that accused Garay received on 04 March 2016 (validly through substituted service). The MTCC further found that, despite such notice and receipt, Pump N' Go still failed to comply with the SDT. The MTCC noted that Pump N' Go, through accused Garay's letter, requested to submit the required documents at a later date, on 11 April 2016, but still failed to comply when the date arrived. The MTCC was likewise unconvinced with Pump N' Go's subsequent payment of the assessed deficiency taxes and Compromise Penalty as grounds for the accused's exoneration and the case's dismissal.[22]

On 08 March 2022, petitioner filed a Motion for Reconsideration (**MR**) assailing the MTCC's Decision. On 29 July 2022, petitioner received a Decision dated 05 April 2022, denying petitioner's motion.[23]

PROCEEDINGS BEFORE THE RTC

Accordingly, petitioner appealed his case to the RTC, Branch 14, Cebu City, on 09 August 2022.[24]

On 19 June 2024, the RTC promulgated the assailed Decision[25], denying petitioner's appeal and affirming, *in toto*, the earlier Decision of the MTCC. The dispositive portion of which reads —

> ...
>
> **WHEREFORE**, premises considered, the appeal is hereby **DENIED.** The November 22, 2021 Decision of Municipal Trial Court in Cities, Branch 6, Cebu City, is hereby **AFFIRMED** in toto.

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[21] RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, id., p. 64.
[22] Id.
[23] Pars. 4.16-4.17, "IV. Statement of Facts and the Case", Petition for Review, id., p. 28
[24] Par. 4.18, id.
[25] Supra at note 6.

> Furnish the accused, Atty. Lloyd Ismael O. Del Socorro, Asst. City Pros. Leah T. Cruz, and Atty. Christine Grace Embay-Zamora, Legal Division BIR-Region 13 with copies of this Decision.
>
> **SO ORDERED.**[26]
>
> ...

In denying petitioner's appeal, the RTC found, contrary to petitioner's claims, that: (1) the subject SDT is constitutional; (2) the LOA's enforceability cannot be raised for the first time on appeal; (3) RD Palamine's signature in the assailed SDT is valid; (4) paying a Compromise Penalty does not *ipso facto* result in the dismissal of the criminal case; and (5) all the elements for a violation of Section 5(c), in relation to Section 266 of the NIRC of 1997, as amended, are present in petitioner's case.

Unsatisfied, on 03 July 2024, petitioner filed an MR of the assailed Decision of the RTC.[27] On 02 September 2024, the RTC issued the assailed Order[28], denying petitioner's MR. The relevant portion of the assailed Order reads as follows:

> ...
>
> **WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> Furnish the accused-appellant James Alekhine Yap Tan, Atty. Lloyd Ismael O. Del Socorro, Asst. City Pros. Leah T. Cruz, and Atty. Christine Grace Embay-Zamora, Legal Division BIR-Region 13 with copies of this Order.
>
> **SO ORDERED.**[29]
>
> ...

In denying the MR, the RTC noted that that the issues that petitioner raised therein merely rehashed the same issues already raised in petitioner's appeal and exhaustively passed upon in the assailed Decision.

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26 Emphasis in the original text.
27 RTC Order dated 02 September 2024, Annex "B" to the Petition for Review, p. 69.
28 Id., pp. 69-70.
29 Emphasis in the original text.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 17 September 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review"[30] (**Motion for Extension**) *via* registered mail, asking for an additional fifteen (15) days, or until 02 October 2024, to file his Petition for Review before the Court *En Banc*. Petitioner transmitted the same motion *via* electronic mail on 18 September 2024.[31]

On 01 October 2024, the Court *En Banc* received petitioner's Motion for Extension.[32] On 02 October 2024, before the Court *En Banc* could rule on the same, petitioner filed the instant Petition for Review.[33]

Thus, in a Minute Resolution dated 03 October 2024[34], the Court *En Banc* deemed granted the Motion for Extension. In another Minute Resolution dated 09 December 2024[35], the Court *En Banc* ordered respondent to file a comment or opposition to the petition within ten (10) days from receipt thereof.

On 13 January 2025, respondent filed a Comment dated 07 January 2025[36] (**Comment**) *via* LBC and electronic mail. Accordingly, in a Minute Resolution dated 23 January 2025[37], the instant case was submitted for decision.

ISSUES

In the present Petition for Review before the Court *En Banc*, petitioner assigns the following errors[38] to the RTC's actions:

30 *Rollo,* pp. 6-8.
31 Id., pp. 1-2.
32 Id., p. 6.
33 Supra at note 1.
34 *Rollo*, p. 77.
35 Id., p. 78.
36 Id., pp. 79-106.
37 Id., p. 113.
38 Par. 5.1, "V. Grounds in Support of the Petition", Petition for Review, id., p. 29.

I.
THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE SUBPOENA *DUCES TECUM* (SDT) WAS CONSTITUTIONAL;

II.
THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE ISSUE ON THE LETTER OF AUTHORITY'S (LOA'S) ENFORCEABILITY MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL;

III.
THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE SIGNATURE OF REGIONAL DIRECTOR (RD) PALAMINE ON THE SUBPOENA *DUCES TECUM* (SDT) PERSISTS;

IV.
THE REGIONAL TRIAL COURT ERRED IN RULING THAT PAYING THE COMPROMISE PENALTY CANNOT *IPSO FACTO* BE A GROUND TO DISMISS THE CASE; AND,

V.
THE REGIONAL TRIAL COURT ERRED IN RULING THAT ALL THE ELEMENTS FOR A VIOLATION OF SECTION 5(C) IN RELATION TO SECTION 266 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, ARE PRESENT.

ARGUMENTS

First, in support of his petition, petitioner avers that the SDT was tantamount to an unconstitutional search and seizure. Petitioner maintains that the subject SDT lacked materiality or relevance and particularity. He deems the RTC's declaration that the SDT was sufficiently specific as a dangerous precedent.

Second, petitioner argues that the LOA issued for the investigation of Pump N' Go for TY 2013 was invalid and unenforceable. Petitioner points to the BIR's failure to have the LOA revalidated while the latter had not concluded the audit within 120 days from the LOA's issuance.

Third, petitioner insists that the SDT does not bear the signature of RD Palamine, resulting in the SDT's invalidity. For petitioner, it could not have committed the offense charged if the SDT was null and void.

Fourth, petitioner maintains that the case should have been dismissed upon his payment of the Compromise Penalty amounting to ₱10,000.00. He highlights that the BIR had earlier accepted his payment and has even retained the same.

Finally, petitioner contends that he should have been acquitted as he is not among the corporate officers indicated in the law (with custody over the business's books of accounts) to whom an SDT may be issued. He argues that there must be a strict interpretation of the applicable rules as he is being charged with a criminal offense. For petitioner, he cannot be criminally charged as the alleged Chairman of the Board of Directors since his position is not among those (officers) to whom an SDT can be issued.

In its Comment, respondent counters that the SDT's wordings were sufficiently specific and particular. In terms of relevance, respondent references the investigation authorized by the issued LOA and maintains that the documents requested all pertain to the same TY covered by the LOA.

On the LOA's enforceability, respondent interposes that the revalidation requirement was no longer in effect by the time the subject audit investigation of Pump N' Go's books commenced.

As to the conditions surrounding RD Palamine's signature on the SDT, respondent maintains that the certified true copies of the SDTs (that petitioner forwarded to a Document Examiner for verification) bear RD Palamine's signature and were certified as true by the BIR.

Regarding petitioner's payment of an amount equivalent to a Compromise Penalty for *Failure to Obey Summons,* respondent disagrees that the same is a valid basis for the case's withdrawal. Respondent likewise questions the circumstances of petitioner's supposed payment, arguing that the same was apparently made through a partner bank (that could not have denied petitioner's attempt to pay) as opposed to a BIR office that would not have accepted the payment. Respondent calls attention to a compromise settlement's nature as an agreement with the taxpayer, emphasizing that no such agreement had been reached, as evidenced by the BIR's insistence in prosecuting the instant case. Respondent additionally raises that payment of the taxes involved is irrelevant to the present case.

Lastly, as to the offense charged, respondent maintains that all the elements thereof are present – as petitioner had been duly summoned to appear and produce records and had neglected to do so. Respondent highlights that the SDT's addressee is not among the elements to be proved in the offense of *Failure to Obey Summons.* In any case, respondent rejects petitioner's contention that he cannot be charged as Chairman of the Board of Directors, noting that the latter had admitted in trial that he was likewise President of Pump N' Go.

RULING OF THE COURT *EN BANC*

Before delving into the merits of the case, We find it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The RTC issued the Order denying petitioner's MR on 02 September 2024.[39] Petitioner received a copy of the said assailed Order on the same day.[40]

Under Section 2(f)[41], Rule 4[42] in relation to Section 9(c)[43], Rule 9[44] of the RRCTA, petitioner had 15 days from 02 September 2024, or

[39] Supra at note 28.
[40] Par. 3, Petitioner's "Motion for Extension of Time to File Petition for Review", supra at note 30.
[41] Supra at note 2.
[42] Supra at note 3.
[43] **SEC. 9**. *Appeal; Period to Appeal.* —

...

(c) An appeal to the Court in criminal cases decided by the Regional Trial Courts in the exercise of their appellate jurisdiction shall be taken by filing a petition for review as provided in Rule 43 of until 17 September 2024, within which to file its appeal before this Court.

On 17 September 2024, petitioner filed his Motion for Extension[45], asking for an additional 15 days, or until 02 October 2024, to file his Petition for Review before the Court *En Banc*. True enough, on 02 October 2024, petitioner filed the instant Petition for Review. In consideration thereof, the Court *En Banc,* in its Minute Resolution dated 03 October 2024[46], deemed the Motion for Extension granted.

Hence, the instant Petition for Review is deemed timely filed and the Court *En Banc* validly acquired jurisdiction over it.

We now proceed to the merits of the case.

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and regulations, the Court *En Banc* finds no merit in the present Petition for Review.

We shall tackle each of the issues raised by petitioner *in seriatim*.

THE ENUMERATION OF DOCUMENTS REQUIRED BY THE SUBJECT SUBPOENA *DUCES TECUM* (SDT) IS SUFFICIENTLY RELEVANT AND PARTICULAR.

In contesting the validity of the SDT, petitioner tags the same as unconstitutional, based on the Supreme Court's declarations in *Jose Sy Jong Chuy v. Pablo C. Reyes, Special Deputy of the Commissioner of Internal Revenue*[47] (Sy **Jong Chu**y). In *Sy Jong Chuy,* the High Court placed emphasis on the requirement to demonstrate materiality and particularity:

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the Rules of Court within fifteen days from receipt of a copy of the decision or final order appealed from. The Court *en banc* shall act on the appeal.

44 *Procedure in Criminal Cases.*

45 Supra at note 30.

46 Supra at note 34.

47 G.R. No. 38375, 22 December 1933.

> ...
>
> Answering the question at issue, we do so without vacillation by holding that the *subpoena duces tecum* was not properly issued in accordance with law because **the showing of relevancy was not sufficient** to justify enforcing the production of the Chinese books; because the *subpoena duces tecum* **failed to specify the particular books desired**, and because a ruling should be avoided which in any manner appears to sanction an unreasonable search and seizure. **In the absence of a showing of materiality, and in the absence of all particularity in specifying what is wanted by a *subpoena duces tecum***, the refusal of a merchant to obey a subpoena, commanding him to produce his commercial books, will be sustained. The courts function to protect the individual citizen of whatever class or nationality against an unjust inquisition of his books and papers.[48]
>
> ...

From the foregoing, We glean that the Supreme Court recognizes the validity of an SDT when it particularly specifies what pieces of documentation are being subpoenaed and there is a sufficient showing of relevance and materiality warranting their production.

In this respect, as to particularity, petitioner asserts that the items in the SDT were too "generic", effectively conferring upon the BIR some latitude to reject whatever documents a taxpayer provides, by deeming the same insufficient.[49] On the other hand, as to materiality and relevance, petitioner avows that the BIR listed items in the SDT without any explanation as to their materiality or relevance, and that the former simply assumed that there was a pending investigation that would have justified their inclusion in the SDT.[50] For petitioner, the lack of a clear statement as to the subpoenaed items' relevance renders the SDT null and void, as an unconstitutional search and seizure.[51]

We disagree with petitioner.

We preface Our discussion by acknowledging that petitioner is not mistaken in averring that the enumeration in an SDT must be both

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48 Italics in the original text, emphasis and underscoring supplied.
49 Par. 6.16, "VI. Argument/Discussion", *rollo*, p. 33.
50 Par. 6.8, id., p. 31.
51 Id.

relevant and *particular*. Section 3, Rule 21 of the Revised Rules of Court[52] sets forth the content requirements of a valid SDT:

> ...
>
> RULE 21
> *Subpoena*
>
> ...
>
> SECTION 3. *Form and Contents.* — A subpoena shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and in the case of a *subpoena duces tecum*, it shall also contain **a reasonable description of the books, documents or things demanded which must appear** to the court *prima facie* **relevant**.
>
> ...

The issuance of SDTs in connection with BIR investigations, as a matter of policy, is not novel by any measure, and has been part of BIR practice as early as Revenue Audit Memorandum Order (**RAMO**) No. 3-82[53]:

> ...
>
> 2. *Audit Procedure*
>
> 2.1 The Revenue Examiner shall request the taxpayer, *in writing*, to make available for inspection, the pertinent books of accounts, accounting records and *particular* or *specific documents* indicating therein the time and date within which these records should be made available.
>
> 2.2 The duplicate copy of this written request, duly acknowledged/received by the taxpayer or his authorized representative shall form part of the docket of the case.
>
> 2.3 If on the appointed time and date the requested records and/or documents are not presented, an explanation for such delay shall be sought and the Examiner shall again request in writing as to when he wants the records definitely presented, a date which should be reasonable enough in order not to prejudice the government interest.
>
> 2.4 If the taxpayer fails further to present the required records at subsequent appointed date, the Examiner should request an

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52 "2019 Amendments to the 1997 Rules of Civil Procedure", A.M. No. 19-10-20-SC dated 15 October 2019.

53 Procedure for Issuance of *Subpoena Duces Tecum.*

explanation in writing to be signed by the taxpayer or his authorized representative as to why the desired records are not still available.

2.5 *Memorandum of Interview* —

2.51 During all the stages of the above proceedings a memorandum of interview (an informal note or instrument embodying something that a person desires to fix in memory by the aid of written word) must be *promptly* prepared, signed and dated by the Examiner, indicating therein the *date, time, place* and *persons present as well as what transpired.*

2.52 Since the memorandum of interview may be used in the event of a trial, the Examiner should confine the memoranda to the facts developed in the interview, and should avoid opinions, conclusions and other extraneous matters.

2.6 The Examiner in consultation with his supervisory officials shall then submit a written report, pinpointing the particular records not made available to him, the responsible officers liable, and the facts relating to the unnecessary and/or unreasonable delay in his investigation.

3. *Transfer of the Case to the Legal Office*

3.1 The Division Chief or Revenue District Officer shall then forward the case to the Chief, Prosecution Division or Chief, Legal Branch, as the case may be, for issuance of the Subpoena Duces Tecum or filing the case in court if warranted under the circumstances.[54]

...

The pertinent procedure was later clarified further in Revenue Memorandum Order (**RMO**) No. 35-90[55]:

...

After compliance with the audit procedures outlined in paragraph 2, subparagraphs 2.1 to 2.6 of RAMO No. 3-82, the revenue official concerned shall transfer the records of the case to the Prosecution Division or Legal Branch, as the case may be, under an appropriate covering communication recommending the issuance of a subpoena, clearly setting forth the following information:

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[54] Italics in the original text.

[55] Prescribing Additional Guidelines in the Issuance and Enforcement of *Subpoena Duces Tecum*.

1) The name(s) and address(es) of the individual(s) who has/have control or custody over the books of accounts and other accounting records to be examined;

2) A particular but concise description of such books, records to be examined; [and,]

3) The taxable year involved.

...

In the present case, it is undisputed that SDT No. RR13-2015-46 (dated 02 March 2016) issued to petitioner commanded the production of the following items[56]:

...

2013 Books of Accounts and Other Accounting Records
DESCRIPTION

a. Sales Invoices, Charge Invoices and Official Receipts (complete series covered by ATP, arranged by booklet numbers);

b. Vouchers with attached supplier's invoices/official receipts (arranged according to date);

c. Books of Accounts – General Journal, Sales & Purchase Journal, Cash Receipts and Disbursements Journal, General Ledger and Subsidiary Ledgers; and,

d. Forms 2307 for 1st, 2nd, 3rd, and 4th quarters with their respective SAWT.

...

Likewise undisputed is the fact that the SDT arose as a consequence of the BIR's investigation, pursuant to the LOA issued for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2013.[57]

This Court finds that the documents indicated on the SDT are **not** *irrelevant* nor *immaterial*. The BIR merely required petitioner to produce its books of accounts, relevant source documents, and other

56 Supra at note 13, pp. 81-82.
57 Par. 3, Respondent's Comment, *rollo*, p. 80 *vis-à-vis* par. 4.1, "IV. Statement of Facts and the Case", Petition for Review, *rollo*, p. 25.

accounting records pertaining to TY 2013, which were the documents that the BIR needed to carry out its audit, pursuant to the LOA issued against petitioner – all of which falls in line with existing procedure. There is likewise no irregularity nor mismatch in the applicable year, between what has been set forth in the LOA and the SDT. Hence, We disagree with the petitioner's contention that the SDT is defective on account of being irrelevant.

As respondent aptly pointed out, petitioner is mistaken in declaring that the BIR "assumed" the existence of an investigation that would justify the enumeration in the SDT. The linkage between the LOA and the SDT is quite clear, both from the face of the issuances themselves, as well as petitioner's own narration of the events that transpired in the administrative level. Plainly stated, petitioner is in no position to claim unawareness of the relevant purpose of the SDT.

As to *particularity*, a reading of the enumeration in the SDT lends no ambiguity. All of the terminologies employed (*i.e.*, sales invoices, charge invoices, official receipts, vouchers, and different classes of books of accounts) are standard nomenclature in accounting and their usage in the SDT is specific enough in the context of the audit investigation (*i.e.*, all items or complete series within the applicable TY).

To be clear, the Supreme Court struck down the SDT in *Sy Jong Chuy* for being overbroad and, thus, unreasonable:

> ...
>
> But it is in the second respect that the subpoena is most fatally defective. It will be recalled that it required the prediction of "all the commercial books or any other papers on which are recorded your transactions showing income and expenses for the years 1925, 1926, 1927, 1928 inclusive", that these books numbered fifty-three in all, and that they are needed in the business of the corporation. In the parlance of the equity, the subpoena before us savored of a fishing bill, and such bills, are to be condemned. <u>**That this is so is shown by the phraseology of the subpoena which is a general command to produce all the books of account for four years. This, it seems to us, made the subpoena unreasonably broad in scope. The internal revenue officer had it within his power to examine any or all of the books of the corporation in the offices of the corporation and then having ascertained what particular books**</u>

> **were necessary for an official investigation had it likewise within his power to issue a *subpoena duces tecum* sufficiently explicit to be understood and sufficiently reasonable not to interfere with the ordinary course of business. But this method was not followed**. Obviously, if the special deputy could be in 1930 call for the production of the books of the corporation for 1925, 1926, 1927, and 1928, the officer could have called for the production of the books for the year just previous, or 1929, and for the books of the current year, and if this could be done, the intrusion into private affairs with disastrous paralyzation of business can easily be visualized.[58]
>
> ...

There, the SDT called for specific documentation confined to the same TY up for investigation, as authorized by the LOA. The examining officer in *Sy Jong Chuy* demonstrated an exercise of power that appeared excessive and capricious, while for the taxpayer's part extremely burdensome. The same could not be said for petitioner's case. As it stands, the items required in the subject SDT generally appear fair and reasonable, and can be practicably expected for a taxpayer to submit.

Finally, in the Petition for Review, petitioner argued that the RTC failed to rule and consider the constitutionality of the subject SDT.[59] However, a reading of the assailed Decision readily elucidates that both the RTC and MTCC already passed upon the same issue and, in fact, the same was the first issue that the RTC addressed in its ruling.

In any case, considering the discussions thus far, We find no error in the MTCC's pronouncements on the matter (as affirmed by the RTC).

THE NON-REVALIDATION OF THE LETTER OF AUTHORITY (LOA) AFTER 120 DAYS DID NOT AFFECT ITS VALIDITY.

Before delving into the issue itself, We must first address the action taken by the RTC. In so finding that the issue on the

58 Supra at note 47; Italics in the original text, emphasis and underscoring supplied.

59 Par. 6.1, "VI. Argument/Discussion", Petition for Review, *rollo*, p. 29.

enforceability of the LOA had only been raised for the first time on appeal, the RTC opted not to rule on the matter.

In *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[60], the Supreme Court recognized that this Court may consider arguments raised for the first time on appeal:

> ...
>
> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."
>
> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.
>
> From the foregoing, the Court so holds that <u>the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case</u>.
>
> ...

Finding one less barrier to resolving the question on the LOA's enforceability (considering the query no longer calls for the establishment of additional factual circumstances), We then turn our attention to an equally pressing misstep.

---

[60] G.R. No. 249153, 12 September 2022; Emphasis and italics in the original text, and underscoring supplied.

It must be emphasized that the instant petition does not appear to be the proper forum for petitioner to directly challenge the LOA's validity as the case does not involve the assessment's propriety. Neither does its validity or invalidity matter considering that it is not an element of the crime charged. As the records clearly show, petitioner has been charged with a violation of Section 266 of the NIRC of 1997, as amended, which states:

> ...
> **Sec. 266.** *Failure to Obey Summons.* — Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.
> ...

In relation thereto, Sections 5(c), 14, 253(d), and 256 of the same Code provides:

> ...
> **Sec. 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
> ...
>
> (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony[.]
> ...
>
> **Sec. 14.** *Authority of Officers to Administer Oaths and Take Testimony.* — The Commissioner, Deputy Commissioners, Service Chiefs, Assistant Service Chiefs, Revenue Regional Directors,

Assistant Revenue Regional Directors, Chiefs and Assistant Chiefs of Divisions, Revenue District Officers, special deputies of the Commissioner, internal revenue officers and any other employee of the Bureau thereunto especially deputized by the Commissioner shall have the power to administer oaths and to take testimony in any official matter or investigation conducted by them regarding matters within the jurisdiction of the Bureau.

...

Sec. 253. *General Provisions.* —

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

...

Sec. 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000) but not more than One hundred thousand pesos (₱100,000).

...

From the foregoing provisions of the NIRC of 1997, as amended, the crime of *Failure to Obey Summons* only requires the concurrence of the following elements[61]:

1. Offender is duly summoned;
2. Offender is summoned to appear and produce books of accounts, records, memoranda or other papers, or to furnish information required under the pertinent provisions of the 1997 NIRC, as amended;
3. Offender neglects to appear or to produce such documents; and,
4. In case the offender is an artificial person, such as a partnership or corporation, the accused is its partner,

61 See *Elma V. Ng v. People of the Philippines*, CTA EB Crim. Case No. 127, 30 September 2024; *Jimmy A. Ang and Olivia N. Ang v. People of the Philippines*, CTA EB Crim. Case No. 095, 02 August 2023; *Steven Go Lo v. People of the Philippines*, CTA EB Crim. Case No. 049, 02 October 2020.

president, general manager, branch manager, treasurer, officer-in-charge, or responsible officer or employee.

With the foregoing, the Court *En Banc* has initially found that it is no longer bound to belabor itself with matters involving the LOA. Nevertheless, for a complete and orderly disposition of the case at bar, We shall still proceed to resolve the same.

In attacking the LOA's validity, petitioner alludes to the lapse of its validity as it had supposedly prescribed, by the time the BIR issued the SDT. Petitioner submits that the LOA in this case was invalid and unenforceable, as it had not been revalidated (subsequent to its issuance but pending completion of the audit) before the expiration of the 120-day period under RMO No. 43-64[62] and Revenue Memorandum Circular (**RMC**) No. 40-06.[63] Petitioner thus concludes that, unless properly revalidated, the LOA shall be considered void and would prohibit the officers concerned from conducting any further investigations pursuant to such LOA.

Petitioner is mistaken.

As early as 2010, the BIR had already done away with the revalidation requirement. RMO No. 44-2010[64] issued on 12 May 2010 superseded RMC No. 23-2009[65], an earlier issuance that still includes the said requirement:

> ...
> IV. POLICIES AND GUIDELINES
> ...
>
> 8. Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the

---

62 Period of Limitation for Action on Cases Received.

63 Clarification on the Jurisdictions of the Large Taxpayer Service, the Enforcement Service and the Revenue Regions Including the Revenue District Offices and Divisions under Them, Performing Audit and Investigation Functions, and Guidelines for the Exercise of Such Jurisdictions and Functions.

64 Electronic Issuance of Letters of Authority.

65 Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

> prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.
>
> ...

Truth to tell, the earlier RMC No. 23-2009 itself already made clear that the LOA's non-revalidation does not result in its nullification:

> ...
>
> I. Revalidation of LAs
>
> The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. **Failure on the part of the RO to request for the revalidation of LA or the expiration of the "revalidation period" does not nullify the LA** nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary.[66]
>
> ...

In connection therewith, the Supreme Court later elucidated, in the case of *AFP General Insurance Corporation v. Commissioner of Internal Revenue*[67], the distinction between the requirement of revalidating an LOA that is unserved, as opposed to revalidating it after service, due to the lapse of the 120-day reglementary period:

> ...
>
> In the exercise of the power to assess and collect taxes, the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, its authority must be understood to take

[66] Emphasis and underscoring supplied.

[67] G.R. No. 222133, 04 November 2020; Citations omitted, emphasis supplied, italics and underscoring in the original text.

effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer. That a LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.

Read in these lights, the rules clearly impose a *30-day expiration period for service*. Upon expiration, the LOA becomes *wholly unenforceable*, inasmuch as it cannot be served without revalidation upon the taxpayer who, in turn, has the right to refuse the same.

The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR) to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.

...

Revalidating a served LOA in connection with the "120-day rule."

Alternatively, AGIC argues that the subject LOA also became null and void when it was not submitted for revalidation after the lapse of a supposed "120-day period."

AGIC relies on RMC 40-06, which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88, which provides as follows:

...

The foregoing issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.

AGIC claims that LOA No. 00021964 was nullified due to the assigned revenue officers' failure to: (1) render the investigation report within this period, and (2) submit the LOA for revalidation. Thus, the resulting tax assessments are also void.

Notably, the above-cited issuances mention a "120-day period/rule," but do not provide a complete context within which the rule was established. Thus, to evaluate the theory, the Court must look into other related tax issuances to determine the nature and intended effect of the reglementary period adverted to by AGIC.

An early tax issuance mentions both 30 and 120-day reglementary periods in imposing an LOA revalidation requirement, viz.:

...

RMO 43-64, read together with RMO 38-88, discredits AGIC's claim.

The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first

> **seeking the requisite revalidation. Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.**
>
> **Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity.**
>
> ...

Clearly from the foregoing disquisitions, RMO No. 44-2010 has already repealed the pertinent provisions present in earlier BIR issuances (requiring the revalidation of an "expired" LOA). Petitioner, thus, cannot rely on perceive defects in the LOA's enforceability (based on revalidation) in attempting to dissipate the efficacy of the proceedings that trail the LOA's issuance.

Furthermore, as the RTC highlighted in its assailed Decision, petitioner is only putting the matter forward as an issue for the first time before the courts. There has been no indication that petitioner raised the matter throughout the administrative proceedings.

In the absence of any showing that the failure to revalidate resulted in a violation of his due process rights in the administrative level, the non-revalidation should not serve to nullify the resulting assessment. In parallel with the above-discussed case, the fact that petitioner allowed the proceedings at the BIR level to conclude before objecting to the perceived irregularity only before the courts only supports the notion that such invocation is a mere afterthought to hopefully escape liability on a technicality.

THE SUBPOENA *DUCES TECUM* (SDT) REMAINS VALID DESPITE DISPUTES ON THE SIGNATURE AFFIXED THERETO.

A reading of petitioner's arguments on the matter elucidates that petitioner finds irregularity in the signature of RD Palamine on the subject SDT. By extension, petitioner takes issue on the prosecution's failure to formally offer in evidence the pertinent certified true copies (**CTCs**) of the SDTs presented by the BIR.

On the other hand, it is clear from respondent's actions throughout the proceedings in the MTCC and RTC, as well as its declarations in its Comment, that the BIR maintains its position that the subject SDT in this case was issued by RD Palamine.

For petitioner's part, he inquired into the signatures reflected on the SDT and the LOA that preceded it, both supposedly issued by RD Palamine and both bearing his signature. Through an expert witness, Varona, a Document Examiner, petitioner sought to compare and analyze RD Palamine's signatures on either document in an attempt to confirm the authenticity of the signature on the SDT. Petitioner's defense is premised on the notion that the lack of a proper signature on the SDT taints its validity.

We do not share petitioner's view.

The CIR's power to issue subpoenas emanates from Section 5[68] of the NIRC of 1997, as amended. Meanwhile, the RD's authority (as delegated from the CIR) is expressly spelled out as early as RMO No. 35-90[69]:

> ...
> C. Signatories
>
> For control and monitoring purposes, only the following revenue officials are hereby authorized to issue *subpoenas*, to wit:
>
> 1) National Office
> a. Assistant Commissioner, Legal Service
>
> 2) **Regional Office**
> a. **Director**, or in his absence, the

68 Supra at note 4.
69 Supra at note 55.

b. Assistant Director

This does not however preclude the Commissioner and Deputy Commissioners to exercise their authority under the National Internal Revenue Code to issue *subpoena* in appropriate cases.[70]

...

In the present case, the indicated signatory's authority to sign the SDT is *not* in issue. As the records bear, the SDT (and the copies thereof produced before the courts) were purportedly issued through RD Palamine and have his signature affixed on the face of the documents.

Relevantly, in *Spouses Fernando and Ma. Elena Santos v. Lolita Alcazar*[71], the Supreme Court ruled that when the adverse party did not reject in its pleadings the **due execution** of documents being introduced by other party as its evidence, the **authenticity** of said documents is also deemed admitted, *viz.*:

...

More to the point is the fact that petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment in their Answer. The effect of this is that the genuineness and due execution of the Acknowledgment is deemed admitted. "**By the admission of the genuineness and due execution [of such document] is meant that the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority**; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Hence, such defenses as that the signature is a forgery . . .; or that it was unauthorized . . .; or that the party charged signed the instrument in some other capacity than that alleged in the pleading setting it out . . .; or that it was never delivered . . ., are cut off by the admission of its genuineness and due execution."

"**There is no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party.**" With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper

[70] Emphasis supplied and italics in the original text.
[71] G.R. No. 183034, 12 March 2014; Citations omitted, emphasis and underscoring supplied.

> authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is "valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into." The absence of rebutting evidence occasioned by petitioners' waiver of their right to present evidence renders the Acknowledgment as the best evidence of the transactions between the parties and the consequential indebtedness incurred. Indeed, the effect of the admission is such that "a *prima facie* case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitles him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant."
>
> ...

Applying the Supreme Court's wisdom in the foregoing disquisitions, where the BIR itself attests to the due execution of the document in question (in this case, the SDT), petitioner's inquisition into the legitimacy of the signature appearing thereon is rendered a fruitless exercise.

As the RTC resolved –

> ...
>
> The Supreme Court in *AFP General Insurance Corp v. Commissioner of Internal Revenue*, held that tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment. Absent any competent contradictory evidence, the presumption of regularity stands.
>
> This court affirms the ruling of the MTCC. In here, there is no competent contradictory evidence that would overcome such presumption.[72]
>
> ...

Momentarily veering away from the controversy of alleged forged signatures, the fact that there had been no demonstrated irregularities

72 RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, *rollo*, p. 65; Citation omitted and italics in the original text.

(tainting the authority of RD Palamine in issuing the SDT) bears just as much weight. To overcome the presumption of regularity in the instant case, petitioner is bound to impugn the BIR's actions (*i.e.*, prove that the SDT had been issued in excess or outside of RD Palamine's authority or that the officer never intended to issue the SDT to begin with). No such circumstance attends the narrations in the present case, but the alternative finds abundance.

In this regard, We agree with the MTCC's findings, as so aptly affirmed by the RTC.

MERE PAYMENT OF AN AMOUNT CORRESPONDING TO A COMPROMISE PENALTY WOULD NOT AUTOMATICALLY RESULT IN A CASE'S DISMISSAL.

Petitioner points to an earlier payment amounting to ₱10,000.00 he made on 08 November 2016, supposedly prior to the filing with the court of the Information (pertaining to the present case) on 31 January 2017. The said payment, as petitioner represents, corresponds to the prescribed penalty for violations of Section 266 of the NIRC of 1997, as amended, as specified in the "Revised Schedule of Compromise Penalty"[73] annexed to RMO No. 07-2015.[74] Petitioner asserts that respondent authorized and received the payment in question, which should have resulted in the case's dismissal.

Petitioner's contention warrants scant consideration.

The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad, et al.*[75]:

[73] For violations involving "[f]ailure to obey summons; to testify; or to appear and produce books of accounts, records, etc. or to furnish information required under the NIRC", Annex "A" to Revenue Memorandum Order (RMO) No. 07-2015 prescribes a Compromise Penalty of ₱10,000.00 for the first offense and ₱20,000.00 for the second offense, with an indication that "[s]ubsequent violations shall not be subject to compromise.

[74] The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

[75] G.R. No. L-19627, 27 June 1968; Citation omitted and emphasis supplied.

> ...
>
> [A] compromise implies **agreement**. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. As penalty can be imposed only on a finding of criminal liability.
>
> ...

Clearly, there can be no compromise if there is no agreement between the parties. A compromise penalty *cannot* be imposed or collected without the agreement or conformity of the taxpayer.[76] A compromise, after all, by its nature, is *mutual* in essence.[77] It cannot be imposed in the absence of a preceding agreement. Thus, the fact that the taxpayer protested the assessment only signifies that there was no agreement to speak of.[78]

In the same vein, applying the foregoing, a compromise settlement could not be imposed on the taxing authority in the absence of any actual agreement.

In the present case, petitioner has not been able to demonstrate any such agreement with the BIR. While the invocation of the table of compromise penalties in RMO No. 07-2015 admits commonplace in administrative proceedings with the BIR, the mere fact of payment could not, by itself, operate as the consummation of a compromise settlement.

While petitioner has vehemently maintained its position that the BIR had accepted its payment, the RTC found otherwise:

> ...
>
> However, in the Manifestation filed by the BIR, dated August 1, 2022, they stressed that in a previous Manifestation made by the BIR, Pump N' Go Power Fuel Inc. only had until June 30, 2021 to avail of the tax amnesty on delinquencies pursuant to the Memorandum

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76 *Wonder Mechanical Engineering Corporation v. The Hon. Court of Tax Appeals, et al.*, G.R. No. L-22805 & L-27858, 30 June 1975.

77 See *Dr. Felisa L. Vda. De San Agustin, et al. v. Commissioner of Internal Revenue*, G.R. No. 138485, 10 September 2001.

78 See *Manila Bankers' Life Insurance Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 199729-30 and 199732-33, 27 February 2019.

> dated November 20, 2020 issued by Deputy Commissioner for the Legal Group Atty. Marissa O. Cabreros, and per Section 2 of Revenue Regulations No. 32-2020.
>
> The records of the BIR showed no application or approval of application for tax amnesty on delinquencies was made by the accused.
>
> Here, the accused-appellant merely relied on the issuance of BIR Form 0605, when they paid the compromise penalty on November 7, 2016. They failed to comply with the necessary steps required by R.A. 11213 and the relevant aforementioned BIR issuances. Thus, the instant case cannot be dismissed due to the payment of the compromise penalty.[79]
>
> ...

Relatedly, the MTCC and RTC mutually found that petitioner botched his opportunity to avail of the provisions of Republic Act (**RA**) No. 11213[80] or the *Tax Amnesty Act.* While an extensive dissection of the said Act is superfluous to Our instant verdict, the clear conclusion unraveled by the prior courts' findings is that petitioner had fallen short of availing any remedies that would have discharged his criminal liability.

Moreover, as respondent pointed out, the lack of agreement is further exhibited by the BIR's willingness to pursue the prosecution of the present case.[81]

Petitioner placed confidence in the case of *People of the Philippines v. Carlos Magdaluyo*[82], where the Supreme Court recognized an approved and paid compromise agreement as the basis for the case's dismissal:

> ...
>
> The Solicitor General contends that the trial court erred in dismissing the case. It is urged that since the information charging

---

79 RTC Decision dated 19 June 2024, Annex "A" to the Petition for Review, *rollo*, p. 66; Citation omitted.

80 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.

81 Par. 67, Respondent's Comment, *rollo*, p. 103.

82 G.R. No. L-16235, 20 April 1961; Italics in the original text, emphasis and underscoring supplied.

defendant with the offense in question was filed prior to his (defendant's) full payment of the tax liability and compromise penalty, the Commissioner of Internal Revenue lost the authority to compromise the criminal aspect of the tax case.

We find no merit in the contention. The argument might be correct, had no compromise agreement been entered into between defendant and the Commissioner, with the knowledge of and concurrence by the Pasay City Fiscal, prior to the filing of the information (on August 17, 1959) or that there was non-compliance with the compromise agreement. **The records disclose that the Commissioner of Internal Revenue has agreed to compromise the case** (see memorandum Annex I), and that the Pasay City Fiscal, upon being advised thereof has expressed his conformity to the agreement, considering the case as "closed and terminated." (See letter quoted above, dated January 24, 1959, or 7 months prior to the filing of the information on August 10, 1959).

Nor is there non-compliance with the compromise agreement which set no specific date within which defendant must fully pay the tax and penalty. In fact, the Commissioner of Internal Revenue agreed to the payment of said tax and penalty in installments (See letter of the Commissioner, Annex "L"), and defendant appears to have made payment as follows: P5,000.00 on February 16, 1959, P5,000.00 on March 16, 1959, P5,000.00 on May 19, 1959, P5,000.00 on July 7, 1959, and P5,438.40, on August 17, 1959.

The case of *Rovero v. Amparo, et al.* 91 Phil., 228 cited by the Solicitor General is not applicable to the instant case. We there held that the Commissioner of Customs may not, under Article 1369 of the Revised Administrative Code, compromise *decided* cases; in the instant case, the compromise was agreed upon prior to the filing of the information. U.S. v. Chua Puete and Que Ung Bo (22 Phil. 327) is also not in point, for it involves an offer of compromise which was *rejected* by the Collector of Internal Revenue and not approved or accepted by the Secretary of Finance; in the instant case, defendant's offer of compromise was duly *approved* by the Commissioner of Internal Revenue and concurred in by the City Fiscal. Morris v. U.S. (123 F. 2nd. 957) is irrelevant, as it refers to an offer of compromise made *after* the complaint was filed; here the compromise agreement was entered into, as already stated, long prior to the filing of the information against defendant. Finally, Section 9, Rule 123 of the Rules of Court is inapplicable because it has reference to criminal cases not allowed by law to be compromised; the instant case involves a tax case, which the law (Sec. 309 of the Tax Code) expressly allows to be compromised.

...

However, in contrast with the above-cited case, there was no showing of approval of any compromise agreement, and consequently, no compliance with any such terms thereof.

In fine, we find no error in the RTC's conclusions.

ALL ELEMENTS FOR THE CRIME CHARGED ARE PRESENT IN PETITIONER'S CASE.

To reiterate, the NIRC of 1997, as amended, punishes the crime of *Failure to Obey Summons* upon the concurrence of the following elements:

1. Offender is duly summoned;
2. Offender is summoned to appear and produce books of accounts, records, memoranda or other papers, or to furnish information required under the pertinent provisions of the 1997 NIRC, as amended;
3. Offender neglects to appear or to produce such documents; and,
4. In case the offender is an artificial person, such as a partnership or corporation, the accused is its partner, president, general manager, branch manager, treasurer, officer-in-charge, or responsible officer or employee.

From a plain reading of petitioner's arguments in the Petition for Review before this Court *En Banc*, petitioner zeroes in on his identity as accused.

Petitioner maintains that, as Chairman of the Board of Directors, he is not the employee or officer responsible for the custody of the books of accounts. Petitioner adds that, even assuming his position were not in issue, there was no showing that he actively participated in violating the SDT. To exemplify his stand, he manifests that, upon learning of the SDT, he immediately ordered his staff to comply and ultimately caused the payment of the pertinent tax liabilities. On these bases, petitioner believes that he should be acquitted.

Apart from the issues already earlier addressed herein, petitioner does not otherwise specifically attack the SDT's efficacy, its contents, its service (and Pump N' Go's receipt thereof), nor the outcomes of petitioner's actions taken in response thereto. As it stands, petitioner, as then accused, was duly summoned to appear and produce the specific books and records for TY 2013, as enumerated in the SDT dated 02 March 2016, but he neglected to appear and produce the required documents on the date set by the BIR.

We, thus, take a final look at petitioner's contention that he is *not* the proper party to be served Pump N' Go's SDT.

RMO No. 10-2013[83] provides a list of officers to whom an SDT may be served, to wit:

> ...
>
> 3.6 In case the request for issuance of SDT is found to be meritorious, the SDT shall be issued to the person liable for tax or required to file a return, or should the information or records be in the possession of a third party or office, then in that party's name, requiring the concerned person to appear and submit before the signatory of the SDT the mandated information/documents at an appointed time, date and place.
>
> ...
>
> a. In case of corporations, partnerships or associations, the SDT shall be issued to the partner, **president**, general manager, branch manager, treasurer, registered officer-in-charge, **employee/s or other persons responsible for the custody of the books of accounts and other accounting records mandated to be submitted or information mandated to be provided.**[84]
>
> ...

In this connection, the RTC found petitioner, by his own declarations, to be Pump N' Go's President, a proper recipient of Pump N' Go's SDT:

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83 Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

84 Emphasis supplied.

...

The accused is mistaken since the accused himself admitted in his Counter-Affidavit, dated March 23, 2017 and during his direct examination, that he is the President of Pump N' Go Power Fuel Inc., and such fact was undisputed.

Counter-Affidavit of James Alekhine Y. Tan
Dated March 23, 2017
Page 1, Paragraph 2

xxx

2. The first time I knew about this case was in 2016 when the company's accounting officer, Mrs. Josephine S. Garay ("Mrs. Garay") informed me that the Bureau of Internal Revenue (BIR) was asking for the 2013 Books of Accounts and other Accounting Records ("2013 Accounting Records") of the company, Pump N' Go Power Fuel, Inc. ("company"), **<u>of which I am the president.</u>** (emphasis supplied)

xxx

x--x

Transcript of Stenographic Notes
Taken during the testimony of the witness
JAMES ALEKHINE YAP TAN
(Direct Examination of the Witness for the Defense)
Page 3 of 21

CCN M-CEB-17-00447-CR
PP vs James Alekhine Y. Tan and
Josephine Salarte Garay
August 8, 2018 at 10:10 a.m.

xxx

Court	: Proceed. (to the defense Counsel) Are you going to use the Counter-Affidavit as witness' Judicial Affidavit?
Atty. Del Socorro	: Yes, Your Honor, with additional questions, Your Honor.
Court	: Ok, proceed.

xxx

x--x[85]

...

85 Emphasis, underscoring and italics in the original text.

Petitioner's declarations constitute judicial admissions that bind him absolutely (in the absence of causes to override them). In the case of *Marito and Maria Fe Serna v. Tito and Iluminada Dela Cruz*[86], the Supreme Court ruled, thusly:

> ...
>
> It is well settled that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. Judicial admissions are legally binding on the parties making them. Jurisprudence, however, provides the admitting party some leeway to vary or override such admissions, provided the matter was identified as an issue and the admitting party presents contrary evidence during trial.
>
> ...

Similarly, judicial admissions are evidence against the party who made them. They are considered conclusive and binding as to the party making such judicial admission. A judicial admission bars the admitting party from disputing it.[87] Even if We were to disregard the evidence pointing to petitioner's incumbency as Pump N' Go's President, We would nevertheless arrive at a similar conclusion by recognizing his other admissions surrounding his position as Chairman of Pump N' Go's Board of Directors.

In *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*[88], the Supreme Court excluded from applicability an item which did not share the same kind or class as those specifically mentioned in the rule's enumeration:

> ...
>
> The laws on the matter are succinct and clear and need no elaborate disquisition. Section 13 of the Local Tax Code provides:
>
>> Sec. 13. Amusement tax on admission. — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters,

---

86 G.R. No. 237291, 01 February 2021; Citations omitted.

87 See *Tranquilino Agbayani v. Lupa Realty Holding Corporation*, G.R. No. 201193, 10 June 2019, citing 29A Am. Jur. 2d, Evidence §§ 770-771.

88 G.R. No. 119122, 08 August 2000; Citation omitted, italics in the original text, emphasis and underscoring supplied.

cinematographs, concert halls, circuses and other places of amusement . . ."

The foregoing provision of law in point indicates that the province can only impose a tax on admission from the proprietors, lessees, or operators of *theaters, cinematographs, concert halls, circuses* and other places of amusement. The authority to tax professional basketball games is not therein included, as the same is expressly embraced in PD 1959, which amended PD 1456 thus:

...

While Section 13 of the Local Tax Code mentions "other places of amusement", professional basketball games are definitely not within its scope. Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Thus, in determining the meaning of the phrase "other places of amusement", one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.

...

In Pelizloy Realty Corporation v. The Province of Benguet[89] citing *National Power Corporation v. Honorable Zain B. Angas, et al.*[90], the Supreme Court explained the purpose and rationale behind the rule on *ejusdem generis* as follows:

...

The purpose of the rule on *ejusdem generis is to give effect to both the particular and general words, by* **treating the particular words as indicating the class and the general words as including all that is embraced in said class**, although not specifically named by the particular words. This is justified on the ground that if the law[-]making body intended the general terms to be used in their unrestricted sense, it would have not made an

[89] G.R. No. 183137, 10 April 2013.
[90] G.R. Nos. 60225-26, 08 May 1992.

enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].[91]

...

Applying the logic behind the same principle in *The Republic of the Philippines v. Dominador Santua*[92], the High Court interpreted the general words in an enumeration to refer only to similar items as those previously enumerated:

...

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. It partakes of a land registration proceeding. Thus, it must be granted only upon clear proof that the title sought to be restored was indeed issued to the petitioner. In this regard, Section 3 of Republic Act (RA) No. 26 enumerates the documents regarded as valid and sufficient bases for reconstitution of a transfer certificate of title:

SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property the description of which is given in said documents, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

[91] Citation omitted, emphasis supplied and italics in the original text.

[92] G.R. No. 155703, 08 September 2008; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> (f) *Any other document* which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.
>
> The instant petition for reconstitution is anchored on Section 3(f) of RA No. 26, with respondent proffering three significant documents - a tax declaration, survey plan and technical descriptions of each lot.
>
> **The Court has already settled in a number of cases that, following the principle of *ejusdem generis* in statutory construction, "any document" mentioned in Section 3 should be interpreted to refer to documents similar to those previously enumerated therein.** As aptly observed by the petitioner, the documents enumerated in Section 3(a), (b), (c), (d) and (e) are documents that had been issued or are on file with the Register of Deeds, thus, highly credible.
>
> ...

As applied to the present case, the pertinent enumeration in RMO No. 10-2013[93] (for the correct recipient of SDTs issued to corporations, partnerships, or associations) includes "employees or other persons responsible for the custody of the books of accounts and other accounting records mandated to be submitted or information mandated to be provided", in addition to partner, president, general manager, branch manager, treasurer, registered officer-in-charge.[94]

Thus, the enumeration must be understood to mean that "*partner, president, general manager, branch manager, treasurer, registered officer-in-charge, employee/s or other persons responsible for the custody of the books of accounts and other accounting records*" (mandated to be submitted or information mandated to be provided pursuant to the SDT) refers to an enumeration of an entity's officers or employees that are charged with, or at least, have access to or influence over its accounting records. *Ejusdem generis*, in essence, is an acknowledgment that the list of possible items fitting the criterion can be too numerous to exhaustively list and thus leaves the same up to interpretation.[95]

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93 Supra at note 83.
94 Supra at note 83.
95 See *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*, supra at note 88; *Pelizloy Realty Corporation v. The Province of Benguet*, supra at note 89; *National Power Corporation v. Honorable Zain B. Angas*, supra at note 90.

By petitioner's own narration in his own Petition for Review, We are able to synthesize that: (1) he is the Chairman of Pump N' Go[96]; (2) upon learning of the SDT, he immediately urged his staff to comply with the request set forth therein[97]; and (3) he moved 'heaven and earth' to ensure that Pump N' Go would be able to comply with the SDT.[98]

Through petitioner's own admissions, We are able to establish the implications of his authority within Pump N' Go. While petitioner may not readily be considered the *primary* custodian of Pump N' Go's accounting records, the concurrence of his actions paints a clear image of his responsibility, or at least his authority, over the same.

Such understanding is parallel with a recognition that a President (though it has earlier been established that petitioner is himself the President) or General Manager cannot be expected to personally collate and deliver accounting records to the BIR, but is understood to exercise reasonable discretion over how the said records are ultimately managed, handled, or transmitted.

With the above disquisitions, it becomes undeniable that no irregularity attended the service of the SDT on petitioner.

In close, as regards petitioner's conviction of the crime charged, the Court *En Banc* sees no cogent reason to disturb the factual findings of the trial court; it being the trier of facts firsthand. In *People of the Philippines v. Loreto Talmesa y Bagan*[99], the Supreme Court explains thusly –

> ...
> Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring

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96 Par 3.1, "III. The Parties", Petition for Review, *rollo*, p. 25.
97 Par. 6.102, "VI. Argument/Discussion", id., pp. 53-54.
98 Par. 6.104, id., p. 54.
99 G.R. No. 240421, 16 November 2020; Citations omitted.

> errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.
>
> ...

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner James Alekhine Yap Tan, personally on 02 October 2024 and *via* email on 03 October 2024, is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice