Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

THE INSULAR LIFE ASSURANCE CO., LTD.,
Respondent.

CTA EB CASE NO. 585
(CTA Case No. 7292)

For: Cancellation of Assessment for Alleged Deficiency Documentary Stamp Tax

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAR 1 4 2011 *Apolinario 9:15 a.m.*

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed by petitioner Commissioner of Internal Revenue against respondent The Insular Life Assurance, Co., Ltd. on January 26, 2010 for the Court *en banc*, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, of the Decision[1] dated April 21, 2009 and the Resolution[2] dated January 4, 2010 rendered by the former Second Division of this Court in CTA Case No. 7292. The dispositive portions thereof read as follows:

Decision dated April 21, 2009:

"**WHEREFORE**, premises considered, the *Petition for Review* is hereby **GRANTED**. Accordingly, the *Formal Letter of Demand and Assessment Notice* dated July 29, 2004 are hereby **CANCELLED**.

SO ORDERED.

Resolution dated January 4, 2010:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

The antecent facts as culled from the records of the case are as follows:

Petitioner Commissioner of Internal Revenue is the official duly authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, to assess and collect internal revenue

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring.
[2] *Ibid.*

taxes, as well as the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.[3]

Respondent The Insular Life Assurance, Co., Ltd. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at IL Corporate Center, Insular Life Drive, Filinvest Corporate City, Alabang, Muntinlupa City.[4] It is registered as a non-stock mutual life insurer with the Securities and Exchange Commission.[5]

On October 7, 2004, respondent received an Assessment Notice[6] with Formal Letter of Demand[7] both dated July 29, 2004, assessing respondent for deficiency DST on its premiums on direct business/sums assured for calendar year 2002, computed as follows:

Documentary Stamp Tax	
Deficiency Documentary Stamp Tax – Basic	P 70,732,389.83
Add: Increments (Interest and Compromise Penalty)	23,201,969.38
Total Amount Due	**P 93,934,359.21**

Thereafter, respondent filed its Protest Letter[8] on November 4, 2004, which was subsequently denied by petitioner in a Final Decision

[3] Par. 2.01, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 162.
[4] Par. 1.01, JSFI, Division Docket, p. 162.
[5] Respondent's Amended Articles of Incorporation, Exhibit "C", Docket, pp. 300-309.
[6] Exhibit "A", Division Docket, p. 298.
[7] Exhibit "A", Division Docket, pp. 296-297.
[8] Exhibit "F", Division Docket, pp. 332-339.

on Disputed Assessment[9] dated April 15, 2005 for lack of factual and legal bases. Apparently, respondent received the aforesaid Final Decision on Disputed Assessment only on June 23, 2005.[10]

On July 15, 2005, respondent filed a Petition for Review before this Court.

On April 21, 2009, the former Second Division of this Court rendered a Decision in favor of respondent, thus, granting the Petition for Review and held, among others, that respondent sufficiently established that it is a cooperative company and therefore, it is exempt from the DST on the insurance policies it grants to its members.

Consequently, on May 13, 2009, petitioner filed a Motion for Reconsideration.

On January 11, 2010, petitioner received a Resolution dated January 4, 2010 of the former Second Division of this Court denying his Motion for Reconsideration for lack of merit. It held, among others, that the Supreme Court in *Republic of the Philippines vs. Sunlife Assurance*

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[9] Exhibit "B", Division Docket, p. 299.
[10] *Ibid.*

Company of Canada[11] already laid down the rule that registration with the Cooperative Development Authority is not essential before respondent may avail of the exemptions granted under Section 199 of the 1997 NIRC, as amended.

Undaunted, petitioner filed a Petition for Review before the Court *en banc* on January 26, 2010.

The sole issue in the instant petition is whether the Court *a quo* erred in holding that respondent has sufficiently established that it is a cooperative company and thus, it is exempt from payment of the DST on the insurance policies it grants to its members pursuant to Section 199(a) of the NIRC of 1997, as amended.

Petitioner principally argues that respondent, not being registered with the Cooperative Development Authority (CDA), is not considered a cooperative company, and thus, it is not entitled to the exemption provided under Section 199(a) of the NIRC of 1997, as amended. Otherwise stated, it is petitioner's contention that registration with CDA is a requisite for a taxpayer to be considered as a

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[11] G.R. No. 158085, October 14, 2005.

cooperative company endowed with tax exemptions under the NIRC of 1997, as amended.

However, respondent states that it has complied with the requisites of a cooperative company under Section 123 of the NIRC of 1997, as amended. Further, respondent argues that the Supreme Court in *Republic of the Philippines vs. Sunlife Assurance Company of Canada*[12] *(Sunlife case)* already ruled that registration with the CDA is not essential before exemptions under Sections 123 and 199 (a) of NIRC of 1997 may be availed of by a cooperative company or association.

The instant Petition is devoid of merit.

Suffice it to say that the sole issue is not novel as the same has already been passed upon and settled by the Supreme Court in the (*Sunlife* case) [13] where the Supreme Court sufficiently explained that registration with the Cooperative Development Authority (CDA) is ***not*** necessary in order for a cooperative company to be exempt from payment of the documentary stamp taxes under Section 199(a) of NIRC of 1997, as amended, *viz*:

[12] G.R. No. 158085, October 14, 2005.
[13] *Ibid.*

Under the Tax Code although respondent is a cooperative, registration with the Cooperative Development Authority (CDA) is not necessary in order for it to be exempt from the payment of both percentage taxes on insurance premiums, under Section 121; and documentary stamp taxes on policies of insurance or annuities it grants, under Section 199.

First, the Tax Code does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and documentary stamp taxes.

A provision of Section 8 of Revenue Memorandum Circular (RMC) No. 48-91 requires the submission of the Certificate of Registration with the CDA, before the issuance of a tax exemption certificate. That provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code. One, as we will explain below, the Circular does not apply to respondent, but only to cooperatives that need to be registered under the Cooperative Code. Two, it is a mere issuance directing all internal revenue officers to publicize a new tax legislation. Although the Circular does not derogate from their authority to implement the law, it cannot add a registration requirement, when there is none under the law to begin with.

Second, the provisions of the Cooperative Code of the Philippines do not apply. Let us trace the Code's development in our history.

As early as 1917, a cooperative company or association was already defined as one "conducted by the members thereof with money collected from among themselves and solely for their own protection and not profit." [*La Compañia General de Tabacos de Filipinas v. Collector of Internal Revenue, 48 Phil. 35, 44, September 26, 1925, per Johns, J. (citing §1505 of the Administrative Code of 1917)*]. In 1990, it was further defined by the Cooperative Code as a "duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles."

The Cooperative Code was actually an offshoot of the old law on cooperatives. In 1973, Presidential Decree (PD) No.

175 was signed into law by then President Ferdinand E. Marcos in order to strengthen the cooperative movement [*Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja, 165 SCRA 725, 732, September 26, 1988, per Gancayco, J.*]. The promotion of cooperative development was one of the major programs of the "New Society" under his administration. It sought to improve the country's trade and commerce by enhancing agricultural production, cottage industries, community development, and agrarian reform through cooperatives *[Fajardo & Abella, Cooperative (Kilusang Bayan), 1981, p. 211]*.

The whole cooperative system, with its vertical and horizontal linkages — from the market cooperative of agricultural products to cooperative rural banks, consumer cooperatives and cooperative insurance — was envisioned to offer considerable economic opportunities to people who joined cooperatives. As an effective instrument in redistributing income and wealth, cooperatives were promoted primarily to support the agrarian reform program of the government *[Fajardo & Abella, Cooperative (Kilusang Bayan); id., pp. 27 & 212; and 1st paragraph of the Foreword of Clemente E. Terso Jr., CESO II, director of the Bureau of Cooperatives Development]*.

Notably, the cooperative under PD 175 referred only to an organization composed primarily of small producers and consumers who voluntarily joined to form a business enterprise that they themselves owned, controlled, and patronized. The Bureau of Cooperatives Development — under the Department of Local Government and Community Development (later Ministry of Agriculture) — had the authority to register, regulate and supervise only the following cooperatives: (1) barrio associations involved in the issuance of certificates of land transfer; (2) local or primary cooperatives composed of natural persons and/or barrio associations; (3) federations composed of cooperatives that may or may not perform business activities; and (4) unions of cooperatives that did not perform any business activities. Respondent does not fall under any of the above-mentioned types of cooperatives required to be registered under PD 175.

When the Cooperative Code was enacted years later, all cooperatives that were registered under PD 175 and previous laws were also deemed registered with the CDA. Since respondent was not required to be registered under the old law on cooperatives, it followed that it was not required to be registered even under the new law.

Furthermore, only cooperatives to be formed or organized under the Cooperative Code needed registration with the CDA. Respondent already existed before the passage of the new law on cooperatives. It was not even required to organize under the Cooperative Code, not only because it performed a different set of functions, but also because it did not operate to serve the same objectives under the new law — particularly on productivity, marketing and credit extension.

The insurance against losses of the members of a cooperative referred to in Article 6(7) of the Cooperative Code is not the same as the life insurance provided by respondent to member-policyholders. The former is a function of a service cooperative, the latter is not. Cooperative insurance under the Code is limited in scope and local in character. It is not the same as mutual life insurance.

We have already determined that respondent is a cooperative. The distinguishing feature of a cooperative enterprise is the mutuality of cooperation among its member-policyholders united for that purpose [Ohio Farmers Indemnity Co. v. Commissioner of Internal Revenue, supra]. So long as respondent meets this essential feature, it does not even have to use and carry the name of a cooperative to operate its mutual life insurance business. *Gratia argumenti* that registration is mandatory, it cannot deprive respondent of its tax exemption privilege merely because it failed to register. The nature of its operations is clear; its purpose well-defined. Exemption when granted cannot prevail over administrative convenience.

Third, not even the Insurance Code requires registration with the CDA. The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special laws govern *[De Leon, The Law on Insurance (with Insolvency Law); id., p. 1]*.

True, the provisions of the Insurance Code relative to the organization and operation of an insurance company also apply to cooperative insurance entities organized under the Cooperative Code. The latter law, however, does not apply to respondent, which already existed as a cooperative company engaged in mutual life insurance prior to the passage of that law. The statutes prevailing at the time of its organization and mutualization were the Insurance Code and the Corporation Code, which imposed no registration requirement with the CDA. [Emphasis supplied]

Based on the foregoing pronouncement by the Supreme Court, it is pristine clear that registration with the CDA is ***not*** necessary in order for a cooperative company to be exempt from payment of the documentary stamp taxes under Section 199(a) of NIRC of 1997, as amended due to the following reasons:

(a) the Tax Code does not require registration with the CDA;

(b) the provisions of the Cooperative Code of the Philippines do not apply; and

(c) the Insurance Code does not require registration with the CDA.

Thus, the doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) applies in the instant case and this Court is bound by the rule established by the Supreme Court in the above-cited decision.

Basic is the rule that the doctrine of *stare decisis* is embodied in Article 8 of the Civil Code of the Philippines, which provides:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

Similarly, in *Fermin v. People,* [14] the Supreme Court ratiocinated the doctrine of *stare decisis* in this wise:

> The doctrine of *stare decisis* enjoins adherence to judicial precedents. *It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.* That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. *The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.* [Emphasis supplied]

Hence, "[w]hen a court lays down a principle of law applicable to a certain state of facts, it must adhere to such principle and apply it to all future cases in which the facts sued upon are substantially the same. Once a case is decided one way, then another case involving exactly the same point at issue should be decided the same way. It proceeds from the principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike."[15]

In an attempt, however, to convince this Court to deviate from applying the principle of law laid down in the *Sunlife case,* petitioner states that the *Sunlife case* is not on all fours with the instant case as respondent failed to establish that its activities are similar to that of the

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[14] G.R. No. 157643, March 28, 2008, 550 SCRA 132.
[15] *Sps. Ladanga v. Aseneta*, G.R. No. 145874, September 30, 2005.

Sunlife case where the latter satisfied the condition that it is a cooperative engaged in mutual life insurance business whose activities were authorized prior to the effectivity of Presidential Decree No. 175.

Respondent maintains that the difference in the taxable years in the *Sunlife* case and the instant case is immaterial to the resolution of the issue regarding the exemption of respondent from the DST because the facts of the *Sunlife* case show that it was decided under the same NIRC under which respondent has sought exemption. Thus, respondent is entitled to the exemption provided under Sections 123 and 199(a) of the NIRC of 1997, as amended.

The records of the instant case reveal that the facts, applicable laws and issues are substantially the same as in the above-cited case of *Republic of the Philippines v. Sunlife Assurance Company of Canada, supra*. The following facts obtaining in the *Sunlife case* is also present in the instant case: *first*, they are both engaged in mutual life insurance business in the Philippines; *second*, the structures of both corporations were converted from stock life insurance corporation to non-stock mutual life insurance corporation for the benefit of its policyholders pursuant to Section 266, Title 17 of the Insurance Code of 1978 and they were made prior to the effectivity of Republic Act (RA) No. 6938, ℓ otherwise known as the "Cooperative Code of the Philippines"; *third*, both corporations claim to be a purely cooperative corporation duly licensed to engage in mutual life insurance business; *fourth*, both corporations claim exemption from payment of the documentary stamp taxes (DST) under Section 199(1) of the Tax Code (now Section 199(a) of NIRC of 1997, as amended); and *fifth*, petitioner CIR requires registration with the CDA before it grants tax exemptions under the Tax Code.

Considering the well-settled doctrine of *stare decisis*, this Court is guided by the above-cited decision in *Sunlife Case* that respondent is not required to be registered with the CDA in order to avail itself of the tax exemptions under the Tax Code. Neither the Tax Code nor the Insurance Code prescribes its registration. Instead, it is sufficient that respondent proves that it is a *bona fide* cooperative under the requirements of the Tax Code in order to avail itself of the tax exemptions.

The NIRC of 1997 defines a "cooperative" as an association "conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit."[16] Thus, as defined, cooperative companies are: (1) conducted by the members thereof, (2) with the money collected from among themselves and solely for their own protection and, (3) not for profit.[17]

In the instant case, the Court *a quo* was correct in holding that respondent has sufficiently complied with the requisites of a cooperative company exempt from payment of the documentary stamp taxes under Section 199(a) of the NIRC of 1997, as amended.

As previously held by this Court in *The Insular Life Assurance, Co., Ltd. v. Commisisoner of Internal Revenue*,[18] whereby the parties, facts and circumstances are analogous to the instant case, this Court has declared:

> "First, petitioner is managed by its members. A stock insurance company doing business in the Philippines may alter its organization and transform itself into a mutual insurance company. Article 7 of its Amended Articles of Incorporation shows that petitioner has been converted from a stock life insurance company to a nonstock mutual life insurance corporation pursuant to Section 266, Title 17 of the Insurance Code of 1978. Under such set-up, the ownership of petitioner is vested in its members who are entitled to one vote each and who, in turn, elect from among themselves the members of its board of trustees. The board of trustees, on their part, exercises the powers and conducts the business of the corporation. L

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[16] Section123(2) of the National Internal Revenue Code of 1997.
[17] *The Insular Life Assurance Company, Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 5336, December 29, 1997.
[18] CTA Case No. 7291, August 12, 2008.

Seen from the above, all the members of petitioner have actual democratic participation in their choice of who should represent them in the running of corporate affairs. In this sense, petitioner is solely conducted, managed or guided by its member-policyholders.

Second, petitioner is operated with money collected from its members by way of premiums for their exclusive benefit and protection from risks assumed by their insurance policy. Since petitioner is composed of members who are all policyholders thereof, all premiums collected are entirely sourced from the members only. Such premiums are thereafter pooled in a common fund to answer directly for the cost of insurance protection, which includes operating costs and payment of indemnity and benefit claims of the member-policyholders. The cash paid in for premiums constitute the assets of petitioner.

Third, petitioner is licensed for the mutual protection of its members, not for the profit of anyone. Petitioner invests the common fund in order to earn additional income to ensure that sufficient funds are available to meet benefit claims of members-policyholders and to pay operating expenses. The effect of investment income is to reduce the cost of insurance to the policyholders. As such, these investments ultimately redound to the protection and benefit of its members-policyholders. In case there is surplus over the intended benefit claims and the incidental expenses, they are distributed back to the policyholders as return of premiums.

It does not follow that because petitioner is registered as a non-stock corporation and thus exists for a purpose other than profit, the company can no longer make any profits. Earning profits is merely its secondary, not primary, purpose. In fact, it may not lawfully engage in any business activity for profit, for to do so would change or contradict its nature as a non-profit entity. It may, however, invest its corporate funds in order to earn additional income for paying its operating expenses and meeting benefit claims. Any excess profit it obtains as an incident to its operations can only be used, whenever necessary or proper, for the furtherance of the purpose for which it was organized." [Emphasis supplied]

A scrutiny of the records of the instant case would show that the ownership of respondent's corporation is vested in its members[19] who are the individual policyholders of life, health or accident insurance or annuity contracts and the master policyholder of any group insurance policy or plan.[20] Each member of record who owns an insurance policy or contract is entitled to one (1) vote only regardless of the number of policies or amount of insurance he owns.[21] These members shall then elect from among themselves the members of its Board of Trustees.[22] All powers of the corporation including the conduct of business and the control of properties are exercised by the Board of Trustees.[23] Otherwise stated, respondent's business is entirely managed by its members who compose the Board of Trustees.

Similarly, the operations of respondent's business are funded by its members through the payment of capital in the way of premiums, which, in turn, are paid in consideration for insurance policies that would entitle the members to benefits and protection from risks assumed, in accordance with their respective insurance policies.[24]

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[19] Section 3.1, Article III, respondent's Amended By-Laws (BL), Exhibit "D", Division Docket, p. 201.
[20] Section 3.2, Article III, respondent's Amended BL, Exhibit "D", Division Docket, p. 201.
[21] Section 3.3, Article III, respondent's Amended BL, Exhibit "D", Division Docket, p. 201.
[22] Sec. 4.1, Article III, respondent's amended BL, Exhibit "D", Division Docket, p. 205.
[23] *Ibid.*
[24] Exhibit "M", Division Docket, p. 414.

Such premiums are thereafter pooled in a common fund to answer directly for the cost of insurance protection, which includes operating costs and payment of indemnity and benefit claims of the member-policyholders.[25]

Finally, respondent is not organized for profit but licensed for the mutual protection of its members. Respondent invests the common fund in order to earn additional income to ensure that sufficient funds are available to meet benefit claims from the member-policyholders and to pay operating expenses.[26] Such investments ultimately redound to the benefit of its member-policyholders as it reduces their cost of insurance.[27] Moreover, any surplus over the intended benefit claims and incidental expenses are distributed back to the policyholders as return of premiums.[28]

Notably, the Supreme Court in the *Sunlife case* likewise ruled that a mutual life insurance corporation is a cooperative that promotes the welfare of its own members, and not for profit. It underscored the importance of generating additional income through investment of its

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[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*

corporate funds in order to pay its operating expenses and meet its benefit claims, thus:

> *[A] mutual life insurance corporation is a cooperative that promotes the welfare of its own members. It does not operate for profit, but for the mutual benefit of its member-policyholders.* They receive their insurance at cost, while reasonably and properly guarding and maintaining the stability and solvency of the company [*Mutual Benefit Life Insurance Co. v. Herold,* 198 F 199, 204, July 29, 1912]. The economic benefits filter to the cooperative members. Either equally or proportionally, they are distributed among members in correlation with the resources of the association utilized [*Nueva Ecija I Electric Cooperative, Inc. v. NLRC*, 380 Phil. 44, 58, January 24, 2000].
>
> *It does not follow that because respondent is registered as a non-stock corporation and thus exists for a purpose other than profit, the company can no longer make any profits. Earning profits is merely its secondary, not primary, purpose.* In fact, it may not lawfully engage in any business activity for profit, for to do so would change or contradict its nature[29] as a non-profit entity. *It may, however, invest its corporate funds in order to earn additional income for paying its operating expenses and meeting benefit claims.* Any excess profit it obtains as an incident to its operations can only be used, whenever necessary or proper, for the furtherance of the purpose for which it was organized. [Emphasis supplied]

In fine, it has been sufficiently established that respondent is a purely cooperative company under Section 123 of the NIRC of 1997, as amended, and conducted solely by members thereof for the exclusive benefit of each member and not for profit, and following the pronouncement of the Supreme Court in the aforementioned *Sunlife* case that cooperatives do not have to be registered with the CDA.

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[29] Section14(2) of BP 68.

Thus, We hold that respondent is entitled to exemption from payment of the documentary stamp taxes for the taxable year 2002 under Section 199(a) of NIRC of 1997, as amended.[30]

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated April 21, 2009 and Resolution dated January 4, 2010 are **AFFIRMED.**

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[30] ***Section 199. Documents and Papers Not Subject to Stamp Tax.*** – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

> (a) Policies of insurance or annuities made or granted by a fraternal or benficiary society, order, association, or **cooperative company**, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit. [Emphasis supplied]

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D ACOSTA
Presiding Justice