REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2841** (CTA Case No. 10172)
	Members:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
HI-STAKES GAMING INCORPORATED, *Respondent.*	Promulgated: OCT 03 2024 4:00pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Decision dated July 28, 2023[2] (assailed Decision) and the Resolution dated November 20, 2023[3] (assailed Resolution) of the Court's Special Third Division (Court in Division) in CTA Case No. 10172, with the following dispositive portions:

Assailed Decision dated July 28, 2023:

> **WHEREFORE**, premises considered, the instant Petition for Review filed by Hi-Stakes Gaming Incorporated is

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1 *En Banc* (*EB*) Docket, pp. 7-32.
2 *Id.*, pp. 63-73.
3 *Id.*, pp. 51-55.

> hereby **GRANTED**. The Final Decision on Disputed Assessment dated 27 July 2015 assessing petitioner for deficiency taxes in the total amount of ₱6,539,087.94, inclusive of interest, surcharge, and compromise penalty is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**

Assailed Resolution dated November 20, 2023:

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

THE PARTIES

Petitioner is the duly appointed CIR empowered to perform the duties of said office, including, among others, the power to decide on disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[4]

Respondent Hi-Stakes Gaming Incorporated is authorized and licensed by the Philippine Amusement and Gaming Corporation (PAGCOR) to conduct, maintain, and operate the business of games, recreation, and amusement and is duly registered with the BIR.[5]

THE FACTS

The facts, as narrated by the Court in Division, are as follows:

> The BIR, through Regional Director Araceli L. Francisco, issued Letter of Authority ("LOA") No. LOA-21B-2013-00000065/LA201000058393, dated 9 July 2013, authorizing Group Supervisor Clarita Beltran and Revenue Officer Marie Ann Guevarra to examine the books of accounts and other accounting records of [respondent] for all internal revenue taxes covering taxable year 2011.

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[4] *Hi-Stakes Gaming, Incorporated v. Commissioner of Internal Revenue*, CTA Case No. 10172, July 28, 2023, *EB* Docket, pp. 63-64.

[5] *Id.* at p. 63.

On 13 October 2014, [respondent] received a Preliminary Assessment Notice, dated 7 October 2014, issued by Officer in Charge-Assistant Regional Director Conrado C. Lee ("OIC-Assistant RD Lee") covering taxable year 2011.

Thereafter, the BIR issued a Formal Letter of Demand, dated 28 October 2014, with assessment notices assessing [respondent] for alleged deficiency income tax in the amount of P6,055,509.36 for taxable year 2011 pursuant to ***Revenue Memorandum Circular ("RMC") No. 33-2013***.

On 20 November 2014, OIC-Assistant RD Lee issued a Letter acknowledging receipt of [respondent]'s protest to the PAN. [Respondent] filed a Letter of Protest/Request for Reconsideration to the FLD, dated 2 December 2014, in response.

[Petitioner] then issued the Final Decision of Disputed Assessment, dated 27 July 2015, to which [respondent] filed a Request for Reconsideration.

[The] CIR rendered its Final Decision dated 15 August 2019.

On 26 September 2019, [respondent] filed the instant Petition for Review.

On 9 October 2019, [petitioner] CIR was served with Summons.

On 10 January 2020, [petitioner] filed his Answer and raised the following special and affirmative defenses:

(1) The Court has no jurisdiction over the present case because the assessment has become final, executory, and demandable;
(2) Assuming that this Court has jurisdiction, [respondent] is liable to pay the assessed deficiency income taxes for taxable year 2011; and
(3) ***RMC No. 33-2013*** is valid insofar as it imposes income tax to licensees and contractees of PAGCOR.

Then, on 28 January 2020, [petitioner] transmitted the BIR Records of the case consisting of three hundred ninety-three (393) pages and filed the corresponding Compliance, of which the Court took note in a Minute Resolution dated 31 January 2020.

[Respondent] and [petitioner] filed their Pre-Trial Briefs on 27 August 2020 and 28 August 2020, respectively. Following this, the Pre-Trial Conference was held on 1 September 2020.

The parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 1 October 2020, which the Court admitted and approved in its Resolution dated 7 October 2020. Thus, on 20 January 2021, the Pre-Trial Order was rendered.

During trial, [respondent] presented the following witnesses:

(1) Raymundo V. Nazario, [respondent]'s President, who testified and identified his Judicial Affidavit during the hearing on 2 December 2020; and
(2) Girlie Garcia-Salazar, [respondent]'s former Chief Accountant, who testified and identified her Judicial Affidavit during the hearing on 11 February 2021.

[Respondent] formally offered its documentary evidence on 15 March 2021, with [petitioner]'s Comment [Re: [Respondent]'s Formal Offer of Evidence] filed through private courier and received by this Court on 26 May 2021.

In a Resolution dated 16 July 2021, the Court admitted all of [respondent]'s formally offered documentary evidence except Exhibits "**P-5**," "**P-6**", "**P-7**", "**P-14**", "**P-14-1**", and "**P-14-2**". Upon [respondent]'s Motion with [petitioner]'s Comment, the Court admitted Exhibit "**P-5**" and set a date for Commissioner's Hearing for comparison of photocopies with the originals of Exhibits "**P-14**", "**P-14-1**", and "**P-14-2**" in a Resolution, dated 5 January 2022. During the Commissioner's Hearing on 1 March 2022, [respondent] compared the photocopies with the originals of which the Court took note in a Minute Resolution dated 18 March 2022.

Thereafter, [petitioner] presented the following witnesses:

(1) Revenue Officer Marie Ann Santos, who testified and identified her Judicial Affidavit during the hearing on 22 February 2022; and
(2) Revenue Officer Katrina P. Pasion, who testified and identified her Judicial Affidavit during the hearing on 10 March 2022.

[Petitioner] formally offered his documentary evidence on 21 March 2022, with [respondent]'s Comment to the Formal Offer of Evidence filed on 3 March 2022. In a Resolution, dated 11 May 2022, the Court admitted all of [petitioner]'s formally offered evidence.

Thereafter, [petitioner] filed his Memorandum on 27 June 2022. [Respondent] filed its Memorandum on 25 July 2022. (*Emphases on the original*)

On July 28, 2023, the Court in Division promulgated the assailed Decision[6] cancelling the deficiency tax assessments of respondent for violation of its right to due process.

Aggrieved, petitioner filed a *Motion for Reconsideration Re: Decision dated July 28, 2023*[7] on September 26, 2023, to which respondent filed its *[Respondent']s Opposition (to the Motion for Reconsideration)*[8] on October 11, 2023.

On November 20, 2023, the Court in Division promulgated the assailed Resolution[9] denying petitioner's *Motion for Reconsideration Re: Decision dated July 28, 2023,* for lack of merit.

On December 14, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[10] which was granted by the Court *En Banc* on December 15, 2023.[11]

On January 2, 2024, petitioner filed a *Petition for Review.*[12]

In a Resolution dated February 21, 2024,[13] the Court *En Banc* ordered: (a) petitioner to submit the original or certified true copy of the assailed Decision; and, (b) respondent to file a comment on the *Petition for Review.*

On March 1, 2024, petitioner filed an *Ex-Parte Compliance,*[14] attaching the certified true copy of the assailed Decision.

On March 8, 2024, respondent filed its *Comment (on the Petition for Review dated December 22, 2023).*[15]

On March 21, 2024, the Court *En Banc* noted petitioner's *Ex-Parte Compliance* as sufficient compliance with the Resolution dated February 21, 2024, and submitted the case for decision.[16]

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6 *Supra*, note 2.
7 Division Docket – Vol. 2, pp. 534-557.
8 *Id.*, pp. 560-564.
9 *Supra*, note 3.
10 *EB* Docket, pp. 1-4.
11 Minute Resolution, *id.*, p. 6.
12 *Supra*, note 1.
13 *EB* Docket, pp. 57-58.
14 *Id.*, pp. 59-61.
15 *Id.*, pp. 74-84.
16 Minute Resolution, *id.*, p. 136.

THE ISSUE

Petitioner ascribes the following error on the part of the Court in Division:

> WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED WHEN IT GRANTED RESPONDENT'S PETITION FOR REVIEW AND CANCELLED AND WITHDRAWN (sic) THE FINAL DECISION ON DISPUTED ASSESSMENT DATED 27 JULY 2015 ASSESSING RESPONDENT FOR DEFICIENCY TAXES IN THE TOTAL AMOUNT OF ₱6,539,087.94, INCLUSIVE OF INTEREST, SURCHARGE, AND COMPROMISE PENALTY.

Petitioner's arguments:

Petitioner disagrees with the finding of the Court in Division that the assessment is void because the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) dated October 28, 2014, was issued on the 15th day from respondent's receipt of the Preliminary Assessment Notice (PAN), which is prior to the lapse of the 15-day period for respondent to respond to the PAN. Petitioner argues that a protest against the PAN is not mandatory and Revenue Memorandum Order (RMO) No. 26-2016[17] provides that an FLD/FAN "shall be issued fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not."

Petitioner further argues that even if the 15-day period for filing a protest to the PAN requires strict compliance, the assessment is still valid as the FLD/FAN dated October 28, 2014, was served to respondent only on November 5, 2014. This gave the revenue officers ample time between the receipt of respondent's protest to the PAN and the release of the FLD/FAN to review the issues raised by respondent.

Petitioner's witness, Revenue Officer (RO) Katrina Pasion, also testified that, after taking into account respondent's protest, respondent was not able to refute the findings in the PAN. So, an FLD/FAN was issued against respondent. Petitioner concludes that respondent was not deprived of its right to due process.

[17] SUBJECT: Policies and Guidelines in Handling Disputed Assessments.

In addition, petitioner claims that respondent failed to file a valid protest to the FLD/FAN within thirty (30) days from its receipt thereof. Petitioner insists that respondent's authorized representative received the FLD/FAN on November 5, 2014, but respondent, in its protest letter to the FLD/FAN, stated that it received the same on November 11, 2014. Respondent's unsupported protest letter cannot lie against petitioner's proof of service on November 5, 2014. The assessments have become final, executory, and demandable for respondent's failure to file its protest timely.

Petitioner asserts that respondent is liable to pay the assessed deficiency taxes because respondent's contractual relationship with PAGCOR is not in connection with the operation of a casino under Presidential Decree (PD) No. 1869; instead, respondent's franchise is limited only to conducting traditional bingo operations.

Respondent's arguments:

Respondent contends that its right to due process was violated when petitioner issued the FLD/FAN within the period to file a reply, echoing the ruling of the Court in Division on this matter.

Respondent argues that the basis of the assessment, *i.e.*, "other related services" referred to under RMC No. 33-2013, which was issued after the taxable year involved, cannot be applied retroactively in imposing income taxes for its income derived from its gaming operation in taxable year (TY) 2011.

Petitioner mistakenly applied Section 14(5) of PD No. 1869 in this case because the issue here is the tax treatment of respondent's income derived from its gaming operations, *i.e.*, traditional bingo and electronic bingo, which are covered under its gaming franchise with PAGCOR, and is not part of "other related services" referred to under RMC No. 33-2013. Section 13 (2) of PD No. 1869 exempts from taxes any form of income derived from gaming operations granted to PAGCOR, and such exemption extends to PAGCOR's franchise holders, contractees, and licensees, including respondent.

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THE COURT *EN BANC'S* RULING

The Court En Banc has jurisdiction over the present Petition for Review.

Section 2(a)(1), Rule 4[18] of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the resolutions on motions for reconsideration of the Court in Division.

In relation thereto, Section 3(b), Rule 8[19] of the RRCTA states that the party affected should file a petition for review within fifteen (15) days from receipt of a copy of the questioned resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period from the expiration of the original period to file the petition for review.

Following petitioner's receipt of a copy of the assailed Resolution on December 1, 2023,[20] petitioner filed a *Motion for Extension of Time (To File Petition for Review)*[21] with the Court *En Banc* on December 14, 2023. On January 2, 2024, or within the 15-day extended period granted,[22] petitioner filed the present *Petition for Review*.

Thus, the instant *Petition* is timely filed and the Court *En Banc* has jurisdiction over it.

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[18] 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:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

[19] SEC. 3. *Who may appeal; period to file petition*. – ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[20] Division Docket – Vol. 2, p. 567-a.

[21] *EB* Docket, pp. 1-3.

[22] Minute Resolution dated June 30, 2023, *EB* Docket, p. 4.

The Court in Division did not err in cancelling and withdrawing the assessment against respondent on the ground of violation of its right to due process.

Petitioner posits that a protest against a PAN is not mandatory because whether there is a protest against the PAN or not, an FLD/FAN will be issued by the BIR. What is important is that the taxpayer is given ample opportunity to raise defenses and support its allegations in the Final Decision on Disputed Assessment (FDDA), which was afforded to respondent.

Petitioner's argument is untenable.

As discussed in the assailed Decision, the governing provision in the issuance of PAN is Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.1 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, *viz.*:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
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> ....
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice**. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (*Emphasis added*)
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> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any

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> deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules, and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
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> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be *issued*** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, **an FLD/FAN shall be *issued* within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (*Emphases added*)

This means that a taxpayer has a 15-day period from receipt of the PAN to reply before the CIR can *issue* an FLD/FAN. Section 228 of the NIRC of 1997, as amended, allowed such period for a response to a PAN to be set by the implementing rules and regulations, *i.e.*, Section 3.1.1 of RR No. 12-99, as amended.[23]

Only after receiving the taxpayer's response or in case of the taxpayer's default will respondent *issue* the FLD/FAN.[24] It must be highlighted that RR No. 12-99, as amended, explicitly uses the word "issued" as opposed to "served," presumably in recognition of the intent behind the due process right to respond.[25]

The PAN is a part of due process and gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need to issue a FAN.[26] Due process demands that taxpayers receive the PAN *and* that they are given fifteen (15) days upon its receipt to respond thereto.[27] The said 15-day period should be strictly complied with.[28]

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23 *Commissioner of Internal Revenue v. Maxicare Healthcare Corp.*, G.R. No. 261065, July 10, 2023.
24 *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
25 *People v. Court of Tax Appeals-Third Division*, G.R. No. 248802 (Notice), June 21, 2021.
26 *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, cited in *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
27 *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*, G.R. No. 227616 (Notice), June 19, 2019.
28 *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023; *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021; *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

The assailed Decision aptly mentioned *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*,[29] citing *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[30] where the Supreme Court affirmed that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN should be strictly observed by the CIR.

> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR.** The Court highlighted that **"[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN**."
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> ....
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> As the Court also held in *Yumex*, "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." **"Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response**."
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> In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that **respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
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> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect. (*Emphases added*)

The CIR should have ascertained respondent's date of receipt of the PAN before issuing the FLD/FAN.[31] This is to give way to respondent's presentation of its side of the case, which is part of procedural due process.

As admitted by the parties and per the evidence on record, petitioner issued a PAN dated October 7, 2014,[32] which was received by respondent on October 13, 2014.[33] Thus, petitioner had fifteen (15) days, or until October 28, 2014, to reply to the

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29 G.R. No. 249153, September 12, 2022.
30 G.R. No. 222476, May 5, 2021.
31 *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
32 Exhibit "P-3", Division Docket – Vol. 1, pp. 33-36.
33 Exhibit "R-7-4", BIR Records, p. 151; par. 6, Joint Stipulation of Facts (JSFI), *vis-à-vis* II. Statement of Facts and Issues, A. Facts, par. 6, Amended Pre-Trial Order, Division Docket – Vol. 1, pp. 220 & 283, respectively.

PAN before issuing the FLD/FAN. However, the BIR had already issued the FLD/FAN on October 28, 2014,[34] before the lapse of the fifteen (15) days. Thus, respondent was deprived of the opportunity to respond to the PAN before being given the final assessment.[35]

For petitioner's failure to show substantial compliance with the due process requirement when he ignored the 15-day period by *issuing* the FLD/FAN even before said period lapses, the assessment is void and produces no effect.

Given the foregoing, the Court deems it unnecessary to address the other grounds raised by petitioner in this case.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED**. Accordingly, the assailed Decision dated July 28, 2023 and the Resolution dated November 20, 2023, issued by the Court's Special Third Division in CTA Case No. 10172, are **AFFIRMED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[34] Exhibit "P-5", Division Docket – Vol. 1, pp. 315-319; par. 6, JSFI, *vis-à-vis* II. Statement of Facts and Issues, A. Facts, par. 6, Amended Pre-Trial Order, Division Docket – Vol. 1, pp. 220 & 283, respectively.

[35] *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

ON LEAVE
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.

ROMAN G. DEL ROSARIO
Presiding Justice