REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 992 (C.T.A. CASE NO. 8288)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
NEGROS CONSOLIDATED FARMERS MULTI-PURPOSE COOPERATIVE, Respondent.	Promulgated: MAR 05 2014

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated April 1, 2013, petitioner Commissioner of Internal Revenue (CIR) seeks to reverse the Decision dated December 12, 2012 as well as the Resolution dated March 5, 2013, rendered by the Court in Division declaring respondent exempt from Value-added tax (VAT) pursuant to Republic Act (R.A.) No. 6938, in relation to Section 109(l) of the National Internal Revenue Code (NIRC) of 1997, hence, entitled to the refund of erroneously paid advance VAT for the period covering May 12, 2009 to July 22, 2009 in the amount of P7,290,960.00.

The facts as culled from the record remain undisputed.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with the authority to act on claims for refund or tax credit of erroneously paid or illegally collected internal revenue taxes. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Respondent Negros Consolidated Farmers Multi-Purpose Cooperative, on the other hand, is a multi-purpose agricultural cooperative organized under R.A. No. 6938, otherwise known as the Cooperative Code of the Philippines, as evidenced by Cooperative Development Authority Certificate of Registration No. 9520-06000814 dated October 19, 2009. It has its office at Door No. 2, A. Chan Building, Mandalagan, Bacolod City, Philippines.

On May 19, 2010, respondent was issued a Certificate of Good Standing by the Cooperative Development Authority. It was granted tax exemption under Article 61 of R.A. No. 6938 and from VAT pursuant to Section 109(r) of R.A. No. 8424, as amended by R.A. No. 9337, as indicated in the exemption certificates issued by the BIR Revenue Commissioner, through Sixto S. Esquivias IV, then Deputy Commissioner for Legal and Enforcement Group, and Milagros V. Regalado, Assistant Commissioner for Legal Service.

Respondent's tax exemption was observed until February 3, 2009 when Rodita Galanto, Office-in-Charge (OIC) Regional Director of BIR Region 12-Bacolod City and her successor Jose N. Tan refused its request to issue Authorization Allowing the Release of Refined Sugar (AARRS) without advance payment of VAT since respondent was not considered as a producer who must be the tiller of the land it owned or leased, or who incurred cost for agricultural production of the sugarcane to be refined by the sugar refinery. This refusal continued until August 6, 2009.

To prevent huge losses to the cooperative by reason of such refusal to issue AARRS, respondent, through its President, Vicente Lovina, paid advance VAT under protest.

Thereafter, respondent sought the legal opinion of the BIR Legal Division on whether it was considered the producer of the sugar product of its members, thus exempt from VAT, given the contrary interpretation of OIC Regional Director Rodita B. Galanto of the word "producer" which deemed agricultural cooperatives as not the tiller of the land they owned or leased.

In his Ruling dated January 11, 2008, Assistant Commissioner for Legal Services, James H. Roldan stated that the sales of sugar produce by respondent to its members as well as to non-members are exempt from the payment of VAT pursuant to Section 109(L) of R.A. No. 9337, as implemented by Revenue Regulations (RR) No. 4-2007.

In view of the foregoing, respondent, on January 19, 2011, filed with petitioner an administrative claim for refund in the amount of P7,290,960.00 representing the advance VAT it incurred on its 71,480 LKG bags of refined sugar at P102.00 VAT per bag.

On May 12, 2011, respondent sought judicial intervention on ground of petitioner's inaction through a Petition for Review filed with the Court in Division.

In the Answer filed with the Court in Division, petitioner basically claimed that the *onus probandi* was on respondent to prove its entitlement to tax exemption, to the refund and the amount subject of the claim.

During the trial, only respondent presented evidence, through its Tax Consultant Jose V. Ramos. Petitioner, on the other hand, waived presentation of any for lack of final report on respondent's administrative claim for refund.

On December 12, 2012, the Court in Division granted the petition, in this wise:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED TO REFUND in favor of petitioner Negros Consolidated Farmers Multi-Purpose Cooperative the amount of SEVEN MILLION TWO HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY PESOS (P7,290,960.00), representing erroneously paid advance VAT for the period covering May 12, 2009 to July 22, 2009.
>
> SO ORDERED.

The ruling was effectively affirmed when the Court in Division denied petitioner's Motion for Reconsideration for lack of merit in its Resolution dated March 5, 2013.

Hence, the instant Petition for Review on the ground that respondent failed to sufficiently establish its entitlement to tax exemption.

While petitioner agrees that under Section 4.109-1(B)(1) of Revenue Regulation (RR) 16-2005, as amended by RR 4-2007, which implemented Section 109(L) of NIRC, sales by agricultural cooperatives to their members are exempt from VAT, she posits that the sales to non-members are exempt from VAT only if the producer of the agricultural products sold is the cooperative itself.

In this case involving sugar sold to non-members, respondent failed to establish that the sugar withdrawn then sold to non-members were actually produced by the members of the cooperative for the latter to be entitled to tax exemption. Neither was there any proof that respondent incurred the cost of agricultural production of the sugar withdrawn, to avail of the tax exemption and be entitled to refund.

Further, respondent is not a cooperative in good standing at the time of the withdrawal of the sugar subjected to advance VAT, which is a prerequisite for VAT exemption under Section 4(a) of RR No. 013-08. Allegedly, respondent's Certificate of Good Standing was issued by the Cooperative Development Authority (CDA) on October 19, 2009 or after the withdrawals of the refined sugar from May 12, 2009 to July 22, 2009.

Further, VAT exemption under Article 62(1) of R.A. No. 6938, Section 109(r) of R.A. No. 8424, as amended by R.A. No. 9337, and BIR Ruling Nos. ECCP-018-99, ECCP-004-2003 and ECCP-002-2008 covers only sales of sugar by the cooperative to its members or non-members. Nothing therein extended the VAT exemption to the withdrawal of refined sugar from the mills by the cooperative. In fine, respondent's withdrawal of refined sugar from the mills are not exempt from VAT.

It was also erroneous for the Court in Division to apply BIR Ruling No. ECCP-002-2008 dated January 11, 2008 which was based on the facts as presented by respondent. The latter however failed to substantiate the alleged facts, rendering BIR Ruling No. ECCP-002-2008 null and void.

Further, BIR Ruling Nos. ECCP-018-99, ECCP-004-2003 and ECCP-02-2008 dated May 24, 1999, April 23, 2003 and January 11, 2008, respectively, were deemed revoked when petitioner filed her Answer to the Petition for Review. They were also revoked by RR No. 06-07 issued on March 21, 2007, as amended, as can be deduced from the its repealing clause.

And since there was no court declaration nullifying RR No. 13-2008, the same remains valid and must therefore be complied with. The record however shows that respondent failed to present documents required for tax exemption by cooperatives under RR No. 13-2008 justifying a denial of its claim for refund given the principle that tax refunds are construed strictly against the claimant.

The legality of advance VAT payment upon withdrawal of refined sugar from refineries or mills was likewise affirmed in Revenue Regulation No. 07-89 dated November 8, 1989 and subsequent revenue regulations and issuances, which are deemed subordinate legislations.

For all the foregoing, respondent counters that Section 109 of the NIRC, as amended, as well as the regulations cited by petitioner are simply inapplicable since the instant case involves advance VAT assessed on respondent's withdrawal of sugar from the refinery or mill and not on its sale of sugar to members or non-members. Thus, the payment in advance of VAT for the withdrawal of sugar from the refinery or mill is without legal mooring.

The same is true with the alleged requirement to submit the list of members before a cooperative can withdraw its sugar from the mill. In any event, the issuance of Certificates of Advance VAT Payment and AARRS is sufficient proof that respondent complied with all the necessary requirements for such withdrawal.

This is also not to mention the fact that petitioner is deemed to have waived the defense of respondent's alleged inability to prove its claim that the sugar withdrawn from the refinery were produced by it through its members. Consequently, it is now irrefutable that by law, respondent was the producer of the sugar produced by its members, as appearing in the AARRS issued in its favor by no less than the BIR. The AARRS also proved that respondent complied with all the requirements of RR 13-2008. Anyhow, this issue was never raised during the trial, hence, it cannot be raised on appeal before the Court *En banc*.

The fact that the Court in Division did not rule on the validity of RR 13-2008 is of no moment for it simply exercised its power of judicial review and chose not to deal on the matter. Significantly, RR 13-2008, the pertinent law at the time of the withdrawal of refined sugar from May 12 to July 27, 2009, had already been repealed by R.A. 9520, specifically Section 143 thereof. It took effect on April 6, 2009.

Even assuming that the rulings issued by the BIR in its favor had been revoked, respondent was still VAT exempt under Articles 60 and 61 of the Cooperative Code, and Section 109(L) of the NIRC, as amended.

Contrary to petitioner's claim, respondent was a cooperative in good standing during the pertinent period from May 12 to July 22, 2009 when the advance VAT was imposed. The Certificate of Good Standing issued in its favor on October 19, 2009 was merely an annual renewal of the previously issued certificate.

Finally, the legal principle that tax refunds are construed strictly against the claimant is balanced against the equally vital principle that cooperatives enjoy a preferential tax treatment in view of the role they play in the attainment of economic development and social justice.

Petitioner's propositions are bereft of merit. All the issues raised in its Petition for Review had been fully addressed by the Court in Division leaving no reversible error that demands reversal of the assailed Decision and Resolution of December 12, 2012 and March 5, 2013, respectively.

The root of the controversy is respondent's status as an agricultural cooperative entitled to VAT exemption. Thus, the determination of its status in connection with its claim for refund is primordial.

It is worth to note that petitioner explicitly admitted in her Answer dated June 15, 2011 that respondent is "a multi-purpose agricultural cooperative duly organized in accordance with Philippine laws, more particularly R.A.

6938,"[1] also known as the Cooperative Code of the Philippines. The same admission appears in petitioner's Pre-Trial Brief dated November 4, 2011.[2] It is also part of the stipulations entered into by the parties as reflected in their Joint Stipulation of Facts and Issues dated November 21, 2011.[3]

Such admissions under Section 4, Rule 129 of the Rules of Court are deemed judicial admissions which require no proof. They may be contradicted only by a showing that they were made through palpable mistake or that no such admissions were made. The Court cannot lightly set aside these judicial admissions especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. To be sure, these admissions by petitioner in the course of the proceedings do not require proof.[4] Such admission made in the course of the trial, either by verbal or written manifestations, or stipulations, cannot be controverted by the party making such admission; they become conclusive on him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not.[5]

Even without the admissions and stipulations, respondent's Certificate of Registration dated October 19, 2009,[6] and Certificate of Good Standing dated May 19, 2010,[7] both issued by the Cooperative Development Authority, amply show that it is a duly registered agricultural cooperative.

On respondent's claim for VAT exemption, Section 109(L) of the National Internal Revenue Code (NIRC), as amended, pertinently provides:

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[1] Answer dated June 15, 2011 of herein petitioner (Division docket p. 91).
[2] Par. 2, Summary of Admitted Facts, Respondent's (herein petitioner) Pre-Trial Brief, Division docket p. 132.
[3] Par. 3, Joint Stipulation Of Facts And Issues dated November 21, 2011, Division docket p. 145.
[4] Toshiba Information Equipment (Phils.), Inc. vs. CIR, G.R. No. 157594, March 15, 2010.
[5] Canada vs. All Commodities Marketing Corporation, G.R. No. 146141, October 17, 2008.
[6] Exhibit C, Division docket p. 21.
[7] Exhibit D, Division docket p. 22.

> SEC. 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> x x x x x x x x x
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> (L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

Plain from the foregoing that transactions such as sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sales of their produce, whether in its original state or processed form, to non-members, are exempt from VAT. Jurisprudence has it that when the language of the law is clear and explicit, there is no room for interpretation, only application.[8]

Exempt transaction is defined as one "involving goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT, under the Tax Code, without regard to the tax status of the party in the transaction." [9] Undoubtedly, respondent is a *bona fide* agricultural cooperative and as such, it is exempt from the payment of VAT.

Such tax privilege in favor of respondent is amplified in Article 61 of R.A. No. 6938, as amended by R.A. No. 9520, otherwise known as the Cooperative Code of the Philippines,

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[8] Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan, G.R. No. 191084, March 25, 2010.
[9] Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc., G.R. No. 168129, April 24, 2007.

the relevant portions of which are quoted below for easy reference, thus:

> ART.61. *Tax and Other Exemptions.* **Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transactions with members.** In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including not limited to final taxes on members' deposits and documentary tax. **Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions**:
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> (1) **Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature.** Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the department of trade and industry (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.
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> (2) **Cooperatives with accumulated reserves and divided net savings of more than Ten million pesos (P10,000,000.00)** shall fee the following taxes at the full rate:

(a) Income Tax - xxx;

(b) **Value-Added Tax – On transactions with non-members: *Provided, however,* That cooperatives duly registered with the Authority; are exempt from the payment of value-added tax; subject to Section 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: *Provided,* That the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members**: *Provided, further,* That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative: *Provided , finally,* That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

Xxx xxx xxx.

From the foregoing, it is clear that cooperatives, such as respondent, are exempt from VAT, for sales or transactions with members and under certain conditions, with non members.

Respondent is also exempt from VAT insofar as its transactions with non-members, provided that the goods subject of the transaction are produced by the members of the cooperative, that the processed goods are sold in the name and for the account of the cooperative, and finally that at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds.

Significantly, the record reveals that respondent has complied with the requisites to merit a favorable BIR ruling as indicated in BIR Ruling ECCP-002-2008 dated January 11, 2008,[10] viz:

> x x x x x x x x x
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> As a multi-purpose cooperative, COFA (herein respondent) is an agricultural co-producer of the sugarcane produced by all its cooperative members. Being a juridical person, it is legally impossible for the cooperative to do the actual tillage of the land but the cooperative and all its members altogether carry out the sugar farming activities during the agricultural crop year. The cooperative members have consistently provided the sugar farms/plantations and the tillage while COFA, in its capacity as co-producer, has provided the following services to its members as its co-producers- x x x
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> x x x x x x x x x
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> Moreover, being the exclusive marketing arm of the harvested sugarcane from the various farms of its members, the cooperative does not engage in the purchase of sugarcane produced by non-members. As such, the sugarcane produced by the cooperative members will be harvested, hauled, delivered and milled to the sugarmill in the name of COFA. The sugarmill issues the quedan of the raw sugar in the name of COFA pursuant to the membership agreement that the cooperative will be solely and exclusively tasked to market the sugar, molasses and other derivative products. Thereafter,

[10] Exhibit H, Division docket pp. 79-82.

> COFA turns over to its members the net proceeds of the sale of the sugarcane produce. When COFA further decides to process the produced raw sugar of its members into refined sugar, the sugarmill issues refined sugar quedan in the name of COFA.
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> x x x x x x x x x
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> The farmer-members of COFA joined together to form the COFA with the objective of producing and selling of sugar as its products. The members thereof made their respective equitable contributions required to achieve their objectives. Consequently, the proceeds of the sale thereof are intended to be shared among them in accordance with cooperative principles.
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> x x x x x x x x x

On the allegation that BIR Ruling ECCP-002-2008 dated January 11, 2008 is deemed invalidated by reason of respondent's failure to present evidence to prove the facts upon which the said BIR ruling was based, suffice it to say that no evidence was presented that an investigation was conducted on the alleged misrepresentation by respondent which caused a change in the circumstances justifying invalidation of BIR Ruling ECCP-002-2008. Without such controverting evidence, the Court cannot simply disregard the same on mere self-serving allegation by petitioner. After all, the fundamental rule is that upon him who alleges rests the burden of proof.[11]

Untenable as well, for lack of legal basis, is petitioner's contention that her Answer was a revocation BIR Ruling ECCP-002-2008. Obviously, petitioner ignored the doctrine that rulings, circulars, rules and regulations she promulgated would have no retroactive application if to so apply them

[11] Aricheta vs. People, G.R. NO. 172500, September 21, 2007.

would be prejudicial to the taxpayers.[12] The Supreme Court enlightened us on the matter, in this fashion:

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
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> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.,* and *Commissioner of Internal Revenue v. Court of Appeals*. The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.
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> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that

[12] Intel vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007.

> applying such ruling retroactively would be prejudicial to the taxpayer.[13]

Thus, even if petitioner's Answer [14] is deemed a revocation of BIR Ruling ECCP-002-2008, such cannot be applied retroactively to the subject transactions which occurred prior to the filing of the Answer or from May 12, 2009 to July 22, 2009.

On the application of Revenue Regulations (RR) No. 13-2008 together with the alleged non-compliance by respondent with the requirements therein, let it be stressed that while "[i]t is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts," this interpretation is not conclusive and will have to be "ignored if judicially found to be erroneous" and "clearly absurd x x x or improper," as obtaining in the case at bar. An administrative issuance that overrides the law it merely seeks to interpret, instead of remaining consistent and in harmony with it, will not be countenanced by this Court.[15]

Only Congress can repeal or amend the law.[16] In cases of conflict between the law - in this case, the NIRC, as amended and the Cooperative Code of the Philippines, as amended - and the rules and regulations implementing the law, the law shall always prevail. Should Revenue Regulations deviate from the law they seek to implement, they will be struck down.[17]

Finally, contrary to petitioner's protestation, respondent at the time of the subject transactions was a cooperative in good standing as indicated in the Certification of Good Standing issued and renewed by the Cooperative Development Authority on May 19, 2010, hence, entitled to

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[13] Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc., G.R. No. 168129, April 24, 2007.
[14] Division docket pp. 91-97.
[15] Commissioner of Internal Revenue vs. American Express, G.R. No. 152609, June 29, 2005.
[16] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, G.R. No. 150947, July 15, 2003.
[17] Commissioner of Internal Revenue vs. Bicolandia Drug Corporation, G.R. No. 148083, July 21, 2006.

the tax exemption accorded such cooperatives. Obviously, petitioner failed to recall that she failed to raise this issue before the Court in Division.

The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law.[18]

WHEREFORE, the Petition for Review dated April 1, 2013 filed by petitioner Commissioner of Internal Revenue, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[18] Commissioner of Internal Revenue vs. Eastern Telecommunications, G.R. No. 163835, July 07, 2010.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice