REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8608

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
JUL 1 3 2015 4:00 PM

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DECISION

COTANGCO-MANALASTAS, *J.*:

The instant Petition for Review filed by Total (Philippines) Corporation on February 7, 2013, prays for the reversal of the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated September 19, 2012, and the Final Decision on Disputed Assessment (FDDA) dated January 8, 2013, and for the cancellation and setting aside of the deficiency value-added tax (VAT) assessment for the year 2006, as well as the corresponding interests and compromise penalties issued against it, amounting to P10,380,093.06.[1]

FACTS

Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the Penthouse,

[1] Par. 1, Summary of the Case, Pre-Trial Order, docket, p. 868.

Philplans, Corporate Center 1012 Triangle Drive, North Bonifacio Global City, Taguig City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered under the National Internal Revenue Code (NIRC) of 1997, as amended, to authorize the examination of any taxpayer and the assessment of the correct amount of taxes as well as to decide disputed assessments arising under said law and other laws administered by the BIR. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns[3] for taxable year 2006 on the following dates:

Quarterly Return	Required Filing Date[4]	Date of Actual Filing
1st Quarter	April 25, 2006	April 25, 2006 (original)[5]
		April 26, 2006 (amended)[6]
2nd Quarter	July 25, 2006	July 25, 2006[7]
3rd Quarter	October 25, 2006	October 25, 2006 (original)[8]
		October 30, 2006 (amended)[9]
4th Quarter	January 25, 2007	January 24, 2007 (original)[10]
		January 30, 2007 (amended)[11]

By virtue of Letter of Authority (LOA) No. 00011743, issued by the BIR Large Taxpayer Service – Excise Audit Division I dated August 31, 2007, respondent conducted a tax investigation on petitioner for taxable year 2006.[12]

On different dates, several Waivers of the Defense of Prescription under the Statute of Limitations ("Waivers" for brevity) were executed by petitioner, with the following details:[13]

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[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 859.
[3] BIR Form No. 2550-Q.
[4] SEC. 114. *Return and Payment of Value-added Tax.* -
(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts **within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.
[5] Exhibit "SSS", docket, pp. 1631 to 1632.
[6] Exhibit "TTT", docket, pp. 1633 to 1634.
[7] Exhibit "UUU", docket, pp. 1635 to 1636.
[8] Exhibit "VVV", docket, pp. 1637 to 1638.
[9] Exhibit "WWW", docket, pp. 1639 to 1640.
[10] Exhibit "XXX", docket, pp. 1641 to 1642.
[11] Exhibit "YYY", docket, pp. 1643 to 1644.
[12] Par. 3, Summary of Admitted Facts, JSFI, docket, p. 860.
[13] Par. 4, Summary of Admitted Facts, JSFI, docket, p. 860.

WAIVER	DATE OF EXECUTION	EXPIRY DATE	SIGNING OFFICER	DATE SIGNED BY BIR	DATE RECEIVED BY THE TAXPAYER
1st	May 26, 2009	Dec. 31, 2009	OIC-ACIR-LTS[14]	No date	June 17, 2009
2nd	Dec. 14, 2009	June 30, 2010	OIC-ACIR-LTS	No date	Dec. 29, 2009
3rd	Dec. 20, 2010	June 30, 2011	OIC-ACIR-LTS	No date	Dec. 28. 2010
4th	May 23, 2011	Dec. 31, 2011	OIC-ACIR-LTS	June 13, 2011	June 28, 2011
5th	Dec. 7, 2011	June 30, 2012	OIC-ACIR-LTS	Dec. 13, 2011	No receipt
6th	May 14, 2012	Sept. 30, 2012	OIC-ACIR-LTS	June 6, 2012	June 18, 2012

An informal conference was held on January 13, 2012, following the receipt by petitioner of a Notice for Informal Conference dated December 2, 2011.[15]

On July 25, 2012, petitioner received the Preliminary Assessment Notice (PAN) issued by respondent, alleging that the former is liable for deficiency taxes amounting to P33,328,388.20, inclusive of statutory increments.[16] Included in the deficiency tax assessment is the alleged interest income from affiliates not subjected to VAT, in the amount of P44,296,477.00.[17]

On August 10, 2013, which was fifteen (15) days from the receipt of the said PAN, petitioner filed a reply to the PAN disputing the findings of respondent.[18]

Petitioner subsequently received the FLD and FAN, both dated September 19, 2012, alleging that petitioner is liable for deficiency taxes.[19]

Petitioner filed its formal letter of protest on October 16, 2012 on the deficiency VAT assessment arising from interest-earning loans extended by petitioner to its affiliates, Filipinas Third Millennium Realty Corporation, Peninsula Land Bay Realty Corporation, and La Defense Filipinas Holdings Corporation, amounting to P39,223,837.16.[20]

On January 9, 2013, petitioner received the FDDA dated January 8, 2013. Based on the FDDA, petitioner is still liable

[14] Officer-in-Charge Assistant Commissioner of the Large Taxpayers Service.
[15] Par. 5, Summary of Admitted Facts, JSFI, docket, p. 860.
[16] Par. 6, Summary of Admitted Facts, JSFI, docket, p. 860.
[17] Exhibit "J", docket, pp. 1029 to 1040.
[18] Par. 7, Summary of Admitted Facts, JSFI, docket, p. 861.
[19] Par. 8, Summary of Admitted Facts, JSFI, docket, p. 861.
[20] Par. 9, Summary of Admitted Facts, JSFI, docket, p. 861.

for VAT deficiency in the amount of P10,380,093.06, inclusive of interest and compromise penalties, broken down as follows:[21]

Tax	Basic Tax Due	Interest	Compromise Penalty	Total
VAT	P4,706,860.46	P5,648,232.60	P25,000.00	P10,380,093.06

On February 7, 2013, petitioner filed the instant Petition for Review[22], pursuant to Section 228 of the NIRC of 1997, which provides that if the protest is denied in whole or in part, the taxpayer has thirty (30) days from the receipt of the decision denying said protest to appeal to the Court of Tax Appeals (CTA).

Petitioner claims that the Waivers executed by it are defective and therefore not valid and binding. It contends that according to Revenue Memorandum Order (RMO) No. 20-90, waivers involving assessment amounting to more than P1,000,000.00 should be signed by the BIR Commissioner. Since the subject Waivers were signed by OIC-ACIR-LTS Zenaida G. Garcia and OIC-ACIR-LTS Alfredo V. Misajon, they are defective and did not produce any binding effect. Moreover, petitioner argues that contrary to what RMO No. 20-90 requires, the dates of acceptance by the officials of respondent were not indicated in the First and Second Waivers. Also, the Waivers did not specify the kind and amount of tax due and were not notarized.[23]

Petitioner posits that a defective waiver does not extend the prescriptive period, and thus the period to assess petitioner had already prescribed when the final assessment was issued. It cites Section 203 of the NIRC of 1997, which provides for a three-year prescriptive period.[24]

Petitioner also contends that even assuming that the waivers were valid, it cannot be assessed for deficiency VAT, considering that the alleged interest income was not earned by petitioner in the ordinary course of its trade or business. Petitioner adds that it is not a lending investor and that there

[21] Par. 10, Summary of Admitted Facts, JSFI, docket, p. 861.
[22] Docket, pp. 6 to 36.
[23] Petition for Review, docket, pp. 13 to 21.
[24] Petition for Review, docket, p. 22.

is no specific law providing that interest income earned by non-lending investors are subject to VAT.[25]

It further claims that Section 108 of the NIRC of 1997 and Revenue Regulations (RR) No. 16-05 specifically enumerate all the entities engaged in the sale of services subject to VAT. According to petitioner, an isolated lending activity is not among those enumerated activities. Applying the settled rule in statutory construction that the mention of one thing implies the exclusion of another thing not mentioned, petitioner maintains that the isolated lending activity must not be subject to VAT.[26]

Finally, petitioner argues that the alleged interest income being subjected to VAT was neither actually nor constructively received. Petitioner claims that under Section 108 of the NIRC of 1997, as amended, the VAT on sale of services accrues only upon actual or constructive receipt of the consideration for the service rendered.[27]

In her Answer[28] filed on April 30, 2013, respondent alleged by way of special and affirmative defenses that the guidelines confined in RMO No. 20-90 should not be used to thwart the collection of just taxes. She claims that a taxpayer may be prevented from setting up the defense of prescription, if by the taxpayer's repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone the collection of taxes.[29] Respondent adds that Revenue Delegation Authority Order (RDAO) No. 5-2001 grants the Assistant Commissioner for Large Taxpayers Service the authority to sign and accept a Waiver of the Defense of Prescription under the Statute of Limitations.[30]

Respondent also argues that the waivers executed by petitioner led her to believe that a binding agreement was reached leading to the postponement of tax collection.[31] She posits that based on Section 108 of the NIRC of 1997, petitioner is liable for deficiency VAT for taxable year 2006 on income earned from loans extended to its affiliates since they

[25] Petition for Review, docket, pp. 22 to 28.
[26] Petition for Review, docket, pp. 28 to 31.
[27] Petition for Review, docket, p. 31.
[28] Docket, pp. 119 to 129.
[29] Answer, docket, pp. 121 to 123.
[30] Answer, docket, p. 123.
[31] Answer, docket, pp. 123 to 126.

were extended by petitioner as a form of service for a fee, remuneration or consideration.[32] Finally, she asserts that in the absence of proof to the contrary, petitioner is liable for deficiency VAT for taxable year 2006 because the presumption under the law is in favor of the correctness of tax assessments.[33]

Petitioner filed its Pre-Trial Brief[34] on May 30, 2013; while respondent filed her Pre-Trial Brief[35] through registered mail on July 1, 2013.[36] As directed by the Court, the parties submitted a Joint Stipulation of Facts and Issues[37] on August 5, 2013; which the Court adopted in its Pre-Trial Order[38] on August 15, 2013.

Petitioner presented as a witness Mr. Dennis Odra[39], its Tax Manager. Petitioner likewise formally offered several pieces of documentary evidence on February 18, 2014,[40] which were all admitted by the Court.[41]

On the other hand, respondent presented Revenue Officer Armie A. Buena[42] as her lone witness. In addition, she presented documentary evidence on June 27, 2014.[43] Petitioner filed its Comment/Opposition (To Respondent's Motion for Leave to Admit Attached Formal Offer of Evidence filed on June 27, 2014)[44] on July 14, 2014, and its Comment (To Respondent's Formal Offer of Evidence filed on June 27, 2014)[45] on August 18, 2014. The Court admitted Exhibits "1" to "6", "8", and "9" in its Resolution dated September 22, 2014. However, it denied the admission of Exhibit "7" on the ground that it is a general offer, which is prohibited for being too broad and unspecified.[46]

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[32] Answer, docket, pp. 126 to 127.
[33] Answer, docket, pp. 127 to 128.
[34] Docket, pp. 132 to 141.
[35] Docket, pp. 829 to 834.
[36] Received by the Court on July 12, 2013.
[37] Docket, pp. 859 to 866.
[38] Docket, pp. 868 to 873.
[39] Minutes of Hearing dated August 28, 2013, docket, p. 874; Minutes of Hearing dated February 5, 2014, docket, p. 987.
[40] Formal Offer of Evidence, docket, pp. 988 to 1005.
[41] Resolutions dated March 21, 2014 and May 20, 2014, docket, pp. 1662 to 1663 and 1678 to 1680, respectively.
[42] Minutes of the Hearing dated June 9, 2014, docket, p. 1681.
[43] Motion for Leave to Admit Attached Formal Offer of Evidence, docket, pp. 1682 to 1694.
[44] Docket, pp. 1698 to 1702.
[45] Docket, pp. 1706 to 1714.
[46] Docket, pp. 1716 to 1717.

As directed by the Court, respondent filed her Memorandum[47] on November 24, 2014, while petitioner filed its Memorandum[48] on November 25, 2014. The case was then submitted for decision on December 1, 2014.[49]

ISSUES

The issues[50] stipulated by the parties for this Court's resolution are as follows:

1. Whether or not the period to assess petitioner for VAT for taxable year 2006 had already prescribed;

2. Whether petitioner is liable to pay deficiency VAT in the amount of P10,380,093.06 from interest income received by petitioner from its affiliates; and

3. Whether or not the Waivers of the Defense of Prescription under the Statute of Limitations were valid and binding.

DISCUSSION/RULING

Section 203 of the NIRC of 1997, as amended, authorizes the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return, or the actual date of filing of such return, whichever comes later. Thus, an assessment notice issued after the three-year prescriptive period is considered invalid and ineffective. Section 203 of the NIRC of 1997 is quoted hereunder for easy reference:

> **"SEC. 203. *Period of Limitation Upon Assessment and Collection*.** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a

[47] Docket, pp. 1728 to 1739.
[48] Docket, pp. 1740 to 1775.
[49] Resolution, docket, p. 1776.
[50] Issues, JSFI, docket, pp. 861 to 862.

> return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

In relation thereto, Section 114(A)[51] of the NIRC of 1997, as amended, and Section 4.114-1(A) of RR No. 16-2005 provides that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter. Summarized below are the dates of filing of petitioner's Quarterly VAT Returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT for the four (4) quarters of calendar year ending December 31, 2006:

Quarterly Return	**Required Filing Date**	**Date of Actual Filing**	**Last Day to Assess**
1st Quarter	April 25, 2006	April 25, 2006 (original)	April 26, 2009
		April 26, 2006 (amended)	
2nd Quarter	July 25, 2006	July 25, 2006	July 25, 2009
3rd Quarter	October 25, 2006	October 25, 2006 (original)	October 30, 2009
		October 30, 2006 (amended)	
4th Quarter	January 25, 2007	January 24, 2007 (original)	January 30, 2010
		January 30, 2007 (amended)	

From the foregoing, respondent had until April 26, 2009, July 25, 2009, October 30, 2009 and January 30, 2010 within which to assess petitioner for deficiency VAT for the first, second, third and fourth quarter of taxable year 2006, respectively. However, the FLD and the FAN were issued by respondent only on September 19, 2012 and received by petitioner on September 21, 2012[52]. Clearly, the FLD and the FAN were issued beyond the last day prescribed under Section 203 of the NIRC of 1997, as amended, to assess petitioner for deficiency VAT for taxable year 2006. Respondent does not deny that the assessment notices were issued beyond the

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[51] SEC. 114. *Return and Payment of Value-added Tax.* –
(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.
xxx

[52] Exhibits "L" and "M".

three-year prescriptive period, but claims that the period was extended by the waivers executed by petitioner.

The Court does not agree with respondent.

Section 222(b) of the NIRC of 1997, as amended, provides that an assessment notice may be issued after the lapse of the three-year prescriptive period, as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

Based on the above-cited provision, the period to assess and collect taxes may only be extended upon a written agreement between the BIR Commissioner and the taxpayer executed before the expiration of the three-year prescriptive period. RMO No. 20-90 issued on April 4, 1990 and RDAO No. 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted

and agreed to the waiver. **The date of such acceptance by the BIR should be indicated.** However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[53] *(Emphases supplied)*

RMO No. 20-90 must be strictly followed. A waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[54]

After a careful scrutiny of the subject waivers, *We* find the same to be defective and did not validly extend the original three-year prescriptive period because the date of acceptance by OIC-ACIR-LTS Zenaida G. Garcia was not indicated in the First and Second Waivers[55] in violation of RMO No. 20-90.

The date of acceptance is necessary to fix with certainty if the waiver was actually agreed upon before the expiration of the three-year prescriptive period[56].

Likewise, the BIR failed to verify whether a notarized written authority was given to the individuals signing the subject waivers on behalf of petitioner in violation of RDAO No.

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[53] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[54] *Commissioner of Internal Revenue vs. FMF Development Corporation,* G.R. No. 167765, June 30, 2008, citing *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.

[55] Exhibits "D" and "E".

[56] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

05-01 which provides that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized.

The Court also noted that the Third Waiver[57] was executed on December 20, 2010, which was beyond June 30, 2010, the expiry date indicated on the Second Waiver which is in violation of Section 222(b) of the NIRC of 1997, as amended, which provides that "[t]he period so agreed upon may be extended by subsequent written agreement made **before** the expiration of the period previously agreed upon". As expounded by RMO No. 20-90, both the date of execution by the taxpayer and date of acceptance by the Bureau should be **before** the lapse of the period agreed upon in case a subsequent agreement is executed.

Thus, even granting for the sake of argument that the First and Second Waivers are valid, the Third Waiver was nevertheless invalid and without force and effect as it was executed beyond the period agreed upon in the Second Waiver. Consequently, the period to assess petitioner for deficiency VAT for taxable year 2006 was not extended and had prescribed on June 30, 2010. Hence, it necessarily follows that the subsequent (Fourth to Sixth) Waivers are likewise without force and effect, as there was nothing to extend when the subsequent waivers were executed.

Furthermore, this Court finds no merit in respondent's claim that petitioner is now estopped from claiming prescription, since by executing the Waivers, it was the one which asked for additional time to submit the required documents. In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[58], the Supreme Court held:

> **"The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.** As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, **the doctrine of estoppel cannot give validity to an act that is prohibited by law or one**

[57] Exhibit "F".
[58] G.R. No. 178087, May 5, 2010.

> **that is against public policy.** It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued**. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.**
>
> **As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable."** *(Emphasis supplied)*

As regards the other issue raised, this Court deems it no longer necessary to resolve the same.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Respondent's Final Decision on Disputed Assessment dated January 8, 2013 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Formal Letter of Demand and Assessment Notices issued by respondent against petitioner for deficiency VAT for taxable year 2006 in the total amount of P10,380,093.06 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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