REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ARDCI NGO GROUP, INC., *Petitioner,*	**CTA CASE NO. 9056**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 05 2018 8:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed by ARDCI NGO Group, Inc. pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), in relation to Rule 42 of the Rules of Court, Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), and Revenue Regulations (RR) No. 12-99, as amended, praying that judgment be rendered ordering the cancellation and setting aside of respondent Commissioner of Internal Revenue's

[1] Docket Vol. I, pp. 10-44.

assessment for alleged deficiency taxes for taxable year 2010, including interests and penalties, in the total amount of FORTY ONE MILLION FOUR HUNDRED SIXTY THOUSAND SIX HUNDRED SIXTY TWO PESOS AND 31/100 (₱41,460,662.31).

THE FACTS

Petitioner ARDCI NGO Group, Inc. (ARDCI NGO), formerly Agricultural and Rural Development for Catanduanes, Inc., is a non-stock, non-profit corporation duly organized and existing under Philippine laws with Securities and Exchange Commission (SEC) Registration No. I199800277, and with address located at Sta. Elena, Virac, Catanduanes.[2]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the 1997 NIRC and other tax laws, rules and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On February 27, 2013, petitioner received a Letter of Authority (LOA) No. 069-2013-000004 dated February 25, 2013 issued by Esmeralda M. Tabule, Regional Director of BIR Revenue Region No. 10 - Legazpi City, authorizing Revenue Officer Stanley Mendoza and Group Supervisor Resurecion Pasague to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2010.[3]

On May 9, 2013, petitioner received a Notice of Informal Conference dated May 8, 2013[4] wherein petitioner was informed that after verification, it was found that petitioner still has deficiency taxes in the amount of ₱39,599,718.18. Thus, through its letter dated May 14, 2013,[5] petitioner protested the findings indicated in the Notice of Informal Conference.

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[2] Exhibit "P-5".
[3] Exhibit "R-1"; Exhibit "P-6".
[4] Exhibit "R-3".
[5] Exhibit "P-7".

In a letter dated June 25, 2013, the BIR maintained its position that petitioner is liable to pay deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) in the amounts of ₱15,728,350.70, ₱23,521,430.52, and ₱349,936.96, inclusive of penalties, respectively.[6]

On August 16, 2013, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[7]

On August 4, 2014, petitioner received a Preliminary Assessment Notice (PAN) dated July 24, 2014 issued by BIR Revenue Region No. 10 – Legazpi City.[8] The PAN indicated that petitioner is liable to pay deficiency taxes in the amount of ₱40,663,851.61, inclusive of increments.

In a letter dated August 18, 2014, petitioner protested the findings in the PAN.[9]

Petitioner received a Formal Letter of Demand dated September 17, 2014[10] with attached Details of Discrepancies and Audit Results/Assessment Notice with Assessment No. 069-10-402-793-859[11] (FLD/FAN) which demanded from petitioner the payment of deficiency taxes for taxable year 2010 in the total amount of ₱41,460,662.31, inclusive of increments.

Through a letter dated October 3, 2014,[12] petitioner re-sent to BIR Revenue Region No. 10 – Legazpi City its protest letter to the PAN dated August 18, 2014.

In a letter dated October 16, 2014,[13] BIR Revenue Region No. 10 – Legazpi City acknowledged receipt of petitioner's protest letter to

[6] Exhibit "P-8".
[7] Exhibit "R-5".
[8] Exhibit "R-8".
[9] Exhibit "P-10"; Joint Stipulation of Facts and Issues (JSFI) Docket Vol. I, p. 419.
[10] Exhibit "R-9".
[11] Exhibits R-10" to "R-12".
[12] Exhibit "P-13".
[13] Exhibit "R-13".

the PAN dated August 18, 2014 and informed petitioner that an FLD/FAN was already issued on September 17, 2014.

Petitioner filed a protest letter[14] dated October 24, 2014 to the FLD/FAN via a private courier service and which was received by BIR Revenue Region No. 10 – Legazpi City on October 29, 2014.[15]

In a letter dated February 27, 2015,[16] BIR Revenue Region No. 10 – Legazpi City denied petitioner's protest on the PAN and maintained their position that petitioner is liable to pay the amounts of ₱16,864,904.40, ₱23,957,144.84, and ₱638,613.07 representing deficiency income tax, VAT and EWT liabilities, respectively.

On May 25, 2015, petitioner filed the present Petition for Review.

Within the extended time granted by the Court,[17] respondent filed his Answer[18] on August 4, 2015, interposing the following special and affirmative defenses:

1. Petitioner failed to timely file a protest against the Formal Letter of Demand and Final Assessment Notice;[19]

2. The assessment has not prescribed since a valid waiver is executed by and between petitioner and respondent;[20]

3. Respondent observed both procedural and substantial (sic) due process in issuing the assessment;[21]

4. The assessment issued against petitioner is valid and lawful;[22] and

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[14] Exhibit "P-2".
[15] Exhibit "P-3"; Par. 20, Statement of Allegations, Petition for Review, Docket Vol. I, p. 12; Par. 19, Statement of Facts and Proceedings, Petitioner's Memorandum, Docket Vol. II, p. 686.
[16] Exhibit "P-15".
[17] Docket Vol. I, pp. 331-342.
[18] *Id.*, pp. 343-359.
[19] *Id.*, p. 344.
[20] *Id.*, p. 346.
[21] *Id.*, p. 352.
[22] *Id.*

5. The assessment issued againts (sic) petitioner has factual and legal bases.[23]

The case was set for a pre-trial conference on September 17, 2015.[24] Respondent filed his Pre-Trial Brief[25] on September 10, 2015 while petitioner filed its Pre-Trial Brief[26] on September 14, 2015.

On October 7, 2015, the parties filed their Joint Stipulation of Facts and Issues[27], which this Court approved and adopted in the Pre-Trial Order[28] dated October 14, 2015.

During trial, petitioner presented the following witnesses: (1) Mr. Victor T. Bernal[29] – petitioner's Chief Executive Officer; and (2) Ms. Evelyn T. Teves[30] – petitioner's Finance Head.

In a letter dated January 4, 2016[31] addressed to Atty. Ma. Victoria P. Dural, Executive Clerk of Court II of this Court, petitioner's counsel *requested for the issuance of a Subpoena Duces Tecum and Subpoena Ad Testificandum* to its witness, Atty. Edielyn T. Solmiano-Valen, Clerk of Court VI and Ex-Officio Provincial Sheriff of the Regional Trial Court of Virac, Catanduanes, to testify before this Court in the hearing of the present case set on January 20, 2016.

On January 15, 2016, petitioner filed a Motion to Reschedule[32] praying that the hearing set on January 20, 2016 be cancelled and rescheduled on February 15, 2016, which this Court granted in an Order dated January 19, 2016.[33]

In a Resolution dated February 9, 2016,[34] this Court denied petitioner's request for the issuance of Subpoena *Duces Tecum* and

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[23] *Id.*, p. 353.
[24] Minutes of the Hearing dated September 17, 2015, Docket Vol. I, p. 414.
[25] Docket Vol. I, pp. 368-376.
[26] *Id.*, pp. 397-410.
[27] Docket Vol. I, pp. 417-428.
[28] *Id.*, pp. 430-435.
[29] Minutes of the Hearing dated October 26, 2015, Docket Vol. I, p. 436.
[30] *Id.*
[31] Docket Vol. I, p. 443.
[32] *Id.*, pp. 448-450.
[33] *Id.*, p. 456.
[34] *Id.*, pp. 472-474.

Subpoena *Ad Testificandum*. Petitioner's Motion for Reconsideration[35] of the February 9, 2016 Resolution was likewise denied.[36]

On February 22, 2016, petitioner filed its Formal Offer of Evidence.[37]

The Court issued a Resolution[38] dated April 18, 2016, admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-9", "P-10", "P-11", "P-12", "P-15", "P-18", "P-19" and "P-20". However, the Court denied the admission of Exhibits "P-8", "P-13", "P-14", "P-16", and "P-17" for failure to submit the documents duly marked with exhibit numbers.

Petitioner filed a Motion for Reconsideration[39] of the April 18, 2016 Resolution on April 29, 2016 and prayed that Exhibits "P-8", "P-13", "P-14", "P-16", and "P-17" be admitted upon due marking. Respondent filed its Comment/Opposition[40] thereto on May 4, 2016. In a Resolution[41] dated June 3, 2016, the Court set a Commissioner's Hearing for the comparison and re-marking of Exhibits "P-8", "P-13", "P-14", "P-16", and "P-17". Thereafter, the Court admitted Exhibits "P-8", "P-13", "P-14", "P-16", and "P-17" in a Resolution[42] dated July 22, 2016.

On the other hand, respondent presented as his sole witness, Ms. Jocelyn L. Dy, Revenue Officer II of the Assessment Division, BIR Revenue Region No. 10 – Legazpi City.[43]

On September 15, 2016, respondent filed his Formal Offer of Documentary Evidence.[44] Petitioner filed its Comment/Opposition[45] thereto on September 26, 2016. *gc*

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[35] *Id.*, pp. 476-482.
[36] *Id.*, p. 484.
[37] *Id.*, pp. 485-493.
[38] *Id.*, pp. 501-502.
[39] Docket Vol. II, pp. 517-522.
[40] *Id.*, pp. 550-553.
[41] *Id.*, pp. 557-558.
[42] *Id.*, pp. 571-572.
[43] Minutes of the Hearing dated August 31, 2016, Docket, Vol. II, p. 574.
[44] Docket Vol. II, pp. 579-585.
[45] *Id.*, pp. 605-613.

In a Resolution[46] dated February 17, 2017, the Court admitted Exhibits "R-1", "R-1-A", "R-1-B", "R-2", "R-3", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-25", "R-26", and "R-26-a".

On March 13, 2017, petitioner filed its Formal Offer of Rebuttal Evidence.[47] In a Resolution[48] dated September 18, 2017, the Court admitted Exhibits "P-21", "P-22", "P-23", and "P-24".

On November 17, 2017, petitioner filed its Memorandum[49] while respondent filed his Memorandum[50] on December 4, 2017.

The Court submitted the present case for decision through its Resolution dated December 12, 2017.[51]

THE ISSUES

The parties agreed that the main issues to be resolved by this Court are the following:[52]

I

WHETHER OR NOT THE THREE-YEAR PERIOD WITHIN WHICH THE RESPONDENT CAN ASSESS TAXES HAS PRESCRIBED

II

WHETHER OR NOT THE CERTIFICATE OF TAX EXEMPTION ISSUED BY RESPONDENT IS STILL VALID AND SUBSISTING

[46] *Id.*, pp. 649-650.
[47] *Id.*, pp. 663-666.
[48] *Id.*, pp. 671-672.
[49] *Id.*, pp. 683-717.
[50] *Id.*, pp. 720-734.
[51] *Id.*, p. 736.
[52] JSFI, Docket Vol. I, p. 422.

III

WHETHER OR NOT THE PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX, VALUE[-]ADDED TAX AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2010 IN THE AMOUNT OF ₱41,460,662.31 AS WELL AS DEFICIENCY AND DELINQUENCY INTEREST[S] AS PROVIDED IN SECTIONS 248 AND 249 OF THE NIRC

THE COURT'S RULING

The Petition for Review shall be dismissed for lack of jurisdiction.

The Court of Tax Appeals lacks jurisdiction to entertain the present case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[53] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[54] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[55] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[56]

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

"Sec. 7. *Jurisdiction.* — The CTA shall exercise: *Jr*

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[53] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.

[54] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).

[55] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.

[56] *Id.*

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

In the exercise of its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the 1997 NIRC which prescribes the rules to be observed for the issuance of a deficiency tax assessment and of protesting the same. The said provision, in part, reads as follows:

"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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by

> **implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Corollarily, Section 3 of RR No. 12-99, as amended,[57] implements Section 228 of the 1997 NIRC as it lays down a more detailed procedure relative to the issuance and protest of deficiency tax assessments.

Sections 3.1.3 and 3.1.4 of RR No. 12-99, as amended, in part, provides as follows:

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof).
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> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.**
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> xxx xxx xxx

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[57] As amended by Revenue Regulations No. 18-2013.

> **If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.** *(Emphasis supplied)*

Pursuant to the above provision, the rule is that an administrative protest against FLD/FAN, whether it be a request for reconsideration or a request for re-investigation, shall be filed within thirty (30) days from the date of receipt of the FLD/FAN. Otherwise, the tax assessment becomes final, executory and demandable. As such, it can no longer be contested.[58]

In the present case, respondent argues, among others, that petitioner failed to timely file a protest against the FLD/FAN.[59] According to respondent, the FLD/FAN dated September 17, 2014 was received by petitioner on September 24, 2014. Counting thirty (30) days from said date, petitioner only has until October 24, 2014 within which to file its protest to the FLD/FAN.[60] Thus, petitioner's protest was filed out of time when it was filed only on October 29, 2014, or five (5) days beyond the reglementary period.[61]

Petitioner, on the other hand, claims that it received the FLD/FAN on September 26, 2014.[62] It further claims that it filed its protest to the FLD/FAN on October 27, 2014 via a private courier and the same was received by BIR Revenue Region No. 10 – Legazpi City on October 29, 2014.[63]

After careful evaluation of the allegations vis-à-vis the evidence presented by the parties, this Court finds that petitioner's protest to the FLD/FAN was filed out of time. By reason of petitioner's failure to

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[58] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005, 447 SCRA 215.
[59] Respondent's Memorandum, Docket Vol. II, pp. 720-721.
[60] *Id.*
[61] *Id.*
[62] Petitioner's Memorandum, Docket Vol. II, p. 686.
[63] *Id.*

timely file a valid protest, FLD/FAN already became final, executory and demandable. Accordingly, the said assessment did not become a "disputed assessment" subject to this Court's review under the law.

As it appears, petitioner and respondent are at odds as regards the exact date when petitioner actually received the FLD/FAN. A perusal of the case records does not sufficiently shed light on which version is correct. Be that as it may, both petitioner and respondent had admitted that petitioner's protest letter to the FLD/FAN was actually received by respondent on October 29, 2014. This fact is crucial as it clearly shows that the protest was belatedly filed even if this Court accepts petitioner's allegation that it received the assessment on September 26, 2014. Counting thirty (30) days from September 26, 2014 would reveal that petitioner's protest letter should have been filed not later than October 27, 2014.[64] Thus, the filing of the protest on October 29, 2014 was clearly two (2) days late.

Curiously though, despite having admitted that its protest letter was received by BIR Revenue Region No. 10 – Legazpi City on October 29, 2014, petitioner still claimed that it filed its protest letter to the FLD/FAN on October 27, 2014, albeit through a private courier. In so arguing, petitioner is ostensibly operating on the notion that the date of mailing its protest letter is equivalent to the date of its filing. This is wrong and must be corrected.

It must be noted that RR No. 12-99, as amended, is silent as to the mode of filing an administrative protest against an FLD/FAN. In such cases where the applicable rules and regulations in quasi-judicial proceedings are silent or deficient, the provisions of the Rules of Court may be suppletorily applied.[65]

Under Section 3, Rule 13 of the Rules of Court, pleadings, motions, and other papers may be filed either personally or by registered mail.

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[64] The 30th day from September 26, 2014 is October 26, 2014. Considering that such date falls on a Sunday, the last day for filing the protest should be on the next day, October 27, 2014.

[65] Rule 1, Section 4, Rules of Court; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 162; *M.E. Holding Corporation v. The Honorable Court of Appeals, et. al.*, G.R. No. 160193, March 3, 2008, 547 SCRA 396.

If filing is done personally, the date of filing is the date when the court receives the pleading. On the other hand, if filing is done by registered mail, the date of filing is the date of mailing. Section 3, Rule 13 of the Rules of Court states:

> Sec. 3. *Manner of filing.* — **The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court, or by sending them by registered mail.** In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case. *(Emphasis supplied)*

To reiterate, the filing of pleadings, motions, and other papers can only be done personally or by registered mail. The rules do not provide for filing of pleadings by private courier. In *Bautista v. Bautista*,[66] the Supreme Court held that though filing of pleadings through private courier is not prohibited by the Rules of Court, it is established that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery thereof to a private letter-forwarding agency.

Applying the foregoing rules to the present case, it is clear that the date when petitioner's protest letter to the FLD/FAN was actually received by the BIR Revenue Region No. 10 – Legazpi City, *i.e.*, October 29, 2014, shall be considered as the date of its filing and not October 27, 2014 when petitioner delivered the protest letter to the private courier. *ye*

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[66] G.R. No. 202088, March 8, 2017. See also *Heirs of Numeriano Miranda, Sr. v. Miranda*, G.R. No. 179638, July 8, 2013, 700 SCRA 755; *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011, 662 SCRA 433; *Charter Chemical and Coating Corporation v. Tan and Sonsing*, G.R. No. 163891, May 21, 2009, 588 SCRA 97; *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission*, G.R. No. 89070, May 18, 1992, 209 SCRA 55.

Having found that it has no jurisdiction to take cognizance of the present Petition for Review, the Court finds it unnecessary to discuss the other issues raised.

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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