

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2385
(CTA Case No. 9769)

Present:

- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

TRAVELLERS INTERNATIONAL
HOTEL GROUP, INC.,
Respondent.

Promulgated:

'APR 20 2022

X-----X

 3:38 p.m.

DECISION

UY, J.:

Before this Court is a *Petition for Review*¹ filed on December 21, 2020 by petitioner Commissioner of Internal Revenue, against respondent Travellers International Hotel Group, Inc., praying that the Decision dated September 8, 2020² and the Resolution dated November 11, 2020³, both rendered by the First Division of this Court (Court in Division) in CTA Case No. 9769, entitled "*Travellers International Hotel Group, Inc., Petitioner, versus Commissioner of*"

¹ EB Docket, pp. 7 to 25.

² Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Catherine T. Manahan; EB Docket, pp. 33 to 48.

³ EB Docket, pp. 49 to 50.

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Internal Revenue, Respondent”, be reversed and set aside. The dispositive portions thereof respectively read as follows:

Decision dated September 8, 2020:

“**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated January 5, 2018, holding petitioner Travellers International Hotel Group, Inc. liable for deficiency income tax in the amount of Four Billion Six Hundred Eleven Million Seven Hundred Seventeen Thousand Three Hundred Forty Nine Pesos and 01/100 (₱4,611,717,349.01), inclusive of increments, for Calendar Year 2012, and the Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notice, dated June 13, 2017, are hereby **DECLARED VOID, CANCELLED** and **WITHDRAWN**.

SO ORDERED.”

Resolution dated November 11, 2020:

“**WHEREFORE**, in light of the foregoing, respondent’s “**Motion for Reconsideration [Decision dated September 14 [sic], 2020]**” posted on September 30, 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested by law with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

On the other hand, respondent Travellers International Hotel Group, Inc. (TIHGI) is a domestic corporation duly organized and existing under Philippine laws, with principal office at 10/F Newport Entertainment & Commercial Centre, Newport Boulevard, Newport



Cybertourism Economic Zone, Pasay City. It is authorized by the Philippine Amusement and Gaming Corporation (PAGCOR) to establish and operate casinos within the latter's regulatory and licensing authority under Presidential Decree No. 1869⁴ (PD 1869), as amended, otherwise known as the PAGCOR Charter.

THE FACTS

On July 24, 2014, TIHGI received Letter of Authority No. LOA-125-2014-00000040 dated July 14, 2014 authorizing Revenue Officer Manuel Tasarra, under the supervision of Group Supervisor Fe Caling, of the Regular LT Audit Division 2 to examine/audit TIHGI's internal revenue taxes for the period from January 1, 2012 to December 31, 2012.

TIHGI and the CIR executed six (6) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*, detailed as follows:

Waivers	Date Executed by Taxpayer	Date Accepted by the BIR	Agreed Period to Assess
1	May 14, 2015	May 19, 2015	until August 31, 2015
2	August 10, 2015	August 12, 2015	until November 30, 2015
3	October 30, 2015	November 12, 2015	until February 29, 2016
4	February 4, 2016	February 5, 2016	until May 31, 2016
5	April 25, 2016	May 4, 2016	until August 31, 2016
6	July 27, 2016	August 3, 2016	until June 30, 2017

As a result of the audit and examination of TIHGI's records, it received on April 21, 2017 an undated *Preliminary Assessment Notice* (PAN) with attached Details of Discrepancies from the Bureau of Internal Revenue (BIR) -Regular Large Taxpayers Audit Division 2, which proposed to assess TIHGI with deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), and documentary stamp tax (DST) for calendar year (CY) 2012 in the aggregate amount of ₱5,073,945,585.02, inclusive of interest and penalties.

On April 27, 2017, TIHGI paid the amount of ₱123,137,851.54, representing the full payment of the proposed deficiency income tax 

⁴*Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).*

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on non-gaming revenues, VAT, EWT, WTC, FWT, DST, and compromise penalties, inclusive of interest and surcharge.

On April 27, 2017, TIHGI filed its *Reply* to the PAN to controvert the proposed income tax assessment on the revenues derived from its gaming operations under its Provisional License with PAGCOR.

On June 23, 2017, TIHGI received a *Formal Letter of Demand*⁵ (FLD) with attached Details of Discrepancies and Assessment Notice dated June 13, 2017, requesting TIHGI to pay the alleged deficiency income tax for CY 2012 in the total amount of ₱4,334,524,385.62, inclusive of updated interest, broken down as follows:

I. INCOME TAX

Taxable Income per return		₱ (1,814,301,737.00)
Add: Adjustments		
Gaming Income (Sec. 27)		7,843,056,716.00
Adjusted Taxable Income		₱ 7,843,056,716.00
Tax Rate		30%
Income tax due per investigation		2,352,917,014.80
Minimum Corporate Income Tax (MCIT)	₱ 19,450,867.68	
Less: Tax Credits		
Prior years excess credit	₱ -	
Tax payments for 1st- 3rd quarter	-	
Creditable tax withheld during the year	15,980,604.00	
Paid per return	3,470,263.68	
Total	19,450,867.68	
Income tax still payable		₱ 2,352,917,014.80
Basic deficiency income tax		₱ 2,352,917,014.80
Interest from 04/15/13 to 06/30/17		1,981,607,370.82
Total deficiency income tax		₱ 4,334,524,385.62

In the aforesaid Details of Discrepancies, the BIR elucidated the basis for imposing deficiency income tax on TIHGI's gaming operations, viz.:

"1. INCOME TAX

- **Gaming Income. ₱7,843,056,716.00** - Verification disclosed that you classified as tax-exempt income the revenues generated from related operations of your provisional gaming license from Philippine Amusement and Gaming Corporation (PAGCOR).

⁵ Exhibit "P-14", Division Docket (CTA Case No. 9769) – Vol. II, p. 893.

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However, pursuant to the provisions of Revenue Memorandum Circular Nos. 8-2012 and 13-2013, in relation to Section 27 and 32 of the Tax Code as amended, you are assessed deficiency income tax. Part of the provisions of said RMC's are as follows:

'Pursuant to Section 1 of the R.A. 9337, amending Section 27(C) of the NIRC, as amended, PAGCOR is no longer exempt from corporate income tax as it has been effectively omitted from the list of government-owned or controlled corporations (GOCCs) that are exempt from income tax. Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations are subject to corporate income tax under the NIRC, as amended. xxx ...

xxx... PAGCOR's contractees and licensees are entities duly authorized and licensed by PAGCOR to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools. These contractees (sic) and licensees are subject to income tax under the NIRC, as amended.'"

On July 21, 2017, TIHGI filed its *Protest* to the FLD and Assessment Notice, praying for the cancellation and withdrawal of the deficiency income tax assessment for CY 2012.

On January 17, 2018, TIHGI received the *Final Decision on Disputed Assessment*⁶ (FDDA) dated January 5, 2018, denying its *Protest* and finding TIHGI liable for deficiency income tax on its gaming operations for calendar year 2012 in the amount of ₱4,611,717,349.01, inclusive of increments. 

⁶ Exhibit "P-16", Division Docket (CTA Case No. 9769) – Vol. II, pp. 939 to 941.

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Aggrieved, TIHGI filed its *Petition for Review* before the Court in Division on February 15, 2018 entitled, "*Travellers International Hotel Group, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent*" and docketed as CTA Case No. 9769.

On May 25 2018, the CIR filed his *Answer* and raised the following special and affirmative defenses: (i) there is no law exempting TIHGI from income tax on revenues from gaming operations; (ii) since TIHGI is claiming for income tax exemption, it is imperative that it prove its entitlement thereto; (iii) Revenue Memorandum Circular (RMC) Nos. 8-2012 and 33-2013 are valid BIR regulations which cannot be the subject of an indirect attack by TIHGI; (iv) the assessment is valid since the FLD properly stated the facts and the law on which the assessment is based; and, (v) TIHGI has the duty to prove the impropriety of the assessment.

On June 13, 2018, the CIR filed his *Pre-Trial Brief*, while TIHGI filed its *Pre-Trial Brief* on June 18, 2018.

The Pre-Trial Conference was held on July 19, 2018. The parties filed their *Joint Stipulation of Facts and Issues* on August 3, 2018. The Pre-Trial Order was issued on August 15, 2018.

During trial, TIHGI presented testimonial and documentary evidence. TIHGI presented as witnesses: (1) Atty. Walter L. Mactal⁷, its Director for Legal Services; and (2) Dexter R. Moya⁸, its Assistant Director for Financial Accounting.

On March 28, 2019, TIHGI filed its *Formal Offer of Evidence*. In the Resolution dated June 10, 2019, the Court in Division admitted all of TIHGI's evidence.

The CIR likewise presented testimonial and documentary evidence. The CIR presented Revenue Officer Manuel T. Tasarra⁹, as his sole witness.

On July 17, 2019, the CIR filed his *Formal Offer of Evidence*. In the Resolution dated September 10, 2019, the Court in Division

⁷ Exhibit "P-25", Division Docket (CTA Case No. 9769) – Vol. II, pp. 225 to 235.

⁸ Exhibit "P-26", Division Docket (CTA Case No. 9769) – Vol. I, pp. 236 to 249.

⁹ Exhibit "R-15", Division Docket (CTA Case No. 9769) – Vol. I, pp. 187 to 195.

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admitted all of CIR's evidence and directed both parties to file their respective memoranda within thirty (30) days from notice.

After the filing of TIHGI's *Memorandum* on October 16, 2019; and the CIR's *Memorandum* on November 8, 2019, CTA Case No. 9769 was submitted for decision on November 15, 2019.

On September 8, 2020, the Court in Division rendered the assailed Decision¹⁰ granting the *Petition for Review* in CTA Case No. 9769. The Court *a quo* ordered the cancellation and withdrawal of the FDDA dated January 5, 2018 and the FLD with attached Details of Discrepancies and Assessment Notice dated June 13, 2017 assessing TIHGI for deficiency income tax for calendar year 2012.

On September 30, 2020, the CIR filed his *Motion for Reconsideration [Decision dated September 14 [sic], 2020*¹¹; while TIHGI failed to file its comment despite due notice¹².

In the assailed Resolution¹³ promulgated on November 11, 2020, the Court in Division denied the CIR's *Motion for Reconsideration* for lack of merit.

On December 7, 2020, the CIR filed a *Motion for Extension of Time to File Petition for Review*¹⁴, before the Court *En Banc* praying for an extension of fifteen (15) days from December 8, 2020 or until December 23, 2020, within which to file his *Petition for Review*. The same was granted by the Court *En Banc* on December 10, 2020¹⁵. On December 21, 2020, the CIR filed the instant *Petition for Review*.¹⁶

In the Resolution dated January 8, 2021¹⁷, the Court *En Banc* directed TIHGI to file its comment on the instant *Petition for Review* within ten (10) days from notice.

¹⁰ EB Docket, pp. 33 to 48; Division Docket (CTA Case No. 9769) – Vol. III, pp. 1205 to 1219.

¹¹ Division Docket (CTA Case No. 9769) – Vol. III, pp. 1220 to 1234.

¹² Division Docket (CTA Case No. 9769) – Vol. III, p. 1237.

¹³ EB Docket, pp. 49 to 50; Division Docket (CTA Case No. 9769) – Vol. III, pp. 1240 to 1241.

¹⁴ EB Docket, pp. 1 to 4.

¹⁵ Minute Resolution dated December 10, 2020, EB Docket, p. 6.

¹⁶ EB Docket, pp. 7 to 25.

¹⁷ EB Docket, pp. 52 to 53.

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On January 21, 2021, TIHGI filed its *Comment (Re: Petition for Review dated December 16, 2020)*.¹⁸

In the Resolution¹⁹ dated February 2, 2021, the Court *En Banc* noted TIHGI's *Comment*; and referred the case for mediation in the Philippine Mediation Center Unit– Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the CTA* approved by the Supreme Court on January 18, 2011.

On June 9, 2021, the Court *En Banc* received PMC-CTA Form 6 or *No Agreement to Mediate*²⁰ dated June 8, 2021, signed by Attys. Niki Beryl B. Dela Cruz and Rozen Olivia G. Cayetano, on behalf of the CIR; and Atty. Kristine Joy G. Carlos, on behalf of TIHGI; and attested to by Avigail B. Sanchez, Mediator Staff, stating that the parties have decided not to have the instant case mediated by the PMC-CTA.

On June 23, 2021, the Court *En Banc* noted the PMC-CTA Form 6 or *No Agreement to Mediate* dated June 8, 2021; and submitted the instant case for decision.²¹

Hence, this Decision.

ASSIGNMENT OF ERRORS

The CIR assigns the following errors supposedly committed by the Court in Division, *to wit*:

“THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PAGCOR CONTRACTEES AND LICENSEES ARE EXEMPT FROM INCOME TAX ON ITS GAMING OPERATIONS.

THE HONORABLE COURT IN DIVISION ERRED IN DECLARING THE ASSESSMENTS NULL AND VOID.”²²

¹⁸ EB Docket, pp. 54 to 67.

¹⁹ EB Docket, pp. 69 to 70.

²⁰ EB Docket, pp. 71.

²¹ EB Docket, pp. 74 to 75.

²² Assignment of Errors, *Petition for Review*, EB Docket, p. 12.

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The CIR's arguments:

The CIR argues that TIHGI's revenues from its gaming operations are not exempt from income tax under Section 13(2)(b) of PD 1869 since the tax exemption granted under the said provision inures only to those entities which provide necessary services to PAGCOR in connection with the latter's operations of casinos and do not extend to the benefit of the licensees which are not under the control of PAGCOR.

Allegedly, it was never the intention of the framers of the law to extend the tax exemption to licensees of the PAGCOR since the exemption only refers to the Franchise Holder, which is PAGCOR; and that there is nothing in PD 1869 which specifically states that a licensee of PAGCOR is exempt from tax.

Assuming that a licensee of PAGCOR is covered by the provisions of Section 13 (2) of PD 1869, the said provision is allegedly no longer controlling for having been repealed by Republic Act No. 9337 (RA 9337).

Furthermore, the CIR argues that the assessment is valid as the FLD properly stated the facts and the law on which the assessment is based; and that the assessment was issued and served within the prescriptive period.

Finally, the CIR contends that all presumptions are in favor of the correctness of the tax and that TIHGI has the duty to prove the impropriety of the assessment.

TIHGI's counter-arguments:

TIHGI counter-argues that being a licensee of PAGCOR, it is exempt from income tax on its gaming revenues pursuant to PD 1869.

According to TIHGI, Section 13 (2)(b) of the PD 1869 clearly and plainly states that PAGCOR's income tax exemption extends to third parties with which it has contractual relations in connection with its gaming activities.



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Contrary to the CIR's stance, TIHGI asserts that the Supreme Court in *PAGCOR vs Bureau of Internal Revenue, et al.*,²³ has affirmed that tax exemption of PAGCOR notwithstanding the passage of RA 9337.

Further, TIHGI avers that the assessment is void on the ground that the FLD failed to properly state the legal basis and to make a clear and categorical demand for payment of the deficiency income tax assessment.

THE COURT *EN BANC*'S RULING

After a thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, this Court finds no legal basis to reverse the assailed Decision and Resolution of the Court in Division.

The Court in Division did not err in ruling that TIHGI is exempt from income tax on its gaming operations.

The CIR argues that TIHGI's gaming revenues are not exempt from income tax under Section 13(2)(b) of PD 1869. Allegedly, the tax exemption granted under the said provision inures only to those entities which provide necessary services to PAGCOR in connection with the latter's operations of the casinos and do not extend to the licensees which are not under the control of PAGCOR. Further, the CIR insists that Section 13(2)(b) of PD 1869 is no longer controlling for having been repealed by RA 9337.

We disagree.

It bears noting that the exemption of PAGCOR's *contractees and licensees* from income tax on its gaming operations was already settled by the Supreme Court in *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares*²⁴ (or *Bloomberry case*), to wit:

²³ G.R. No. 215427, December 10, 2014.

²⁴ G.R. No. 212530, August 10, 2016.



“Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR **but also its contractees and licensees** under the existing laws and prevailing jurisprudence.

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

Sec. 13. Exemptions. –

xxx xxx xxx

(2) Income and other taxes. - (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of



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charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (i.e., Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the**



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casino(s) authorized to be conducted under this Franchise, so it must be that **all contractees and licensees of PAGCOR**, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

XXX

XXX

XXX

Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax."

It is evident from the foregoing that PAGCOR's ***contractees and licensees*** are exempt from the payment of corporate income tax and other taxes on their gaming operations pursuant to Section 13 of PD 1869, as long as the corresponding 5% franchise tax has been paid. The Supreme Court likewise clarified that the tax exemption under the said provision was neither amended nor repealed by any subsequent laws (*i.e.*, *Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997*).

Applying the foregoing pronouncement, to be entitled to the tax exemption from corporate income tax, TIHGI must show that it is a *contractee or licensee* of PAGCOR; and that it has paid the 5% franchise tax.

As found by the Court in Division and as borne out by the records, TIHGI is a licensee of PACGOR, having been authorized by PAGCOR to establish and operate casinos through its Provisional License²⁵ dated June 2, 2008. Further, TIHGI has paid the corresponding 5% franchise tax as shown by PAGCOR's *Statement of Franchise Tax Remittances*²⁶ for CY 2012 and the *Schedule of Income and Remittances*.²⁷ Thus, TIHGI's income derived from its gaming operations is therefore exempt from corporate income tax. 

²⁵ Exhibit "P-3", Division Docket (CTA Case No. 9769) – Vol. II, pp. 829 to 855.

²⁶ Exhibit "P-4", Division Docket (CTA Case No. 9769) – Vol. II, p. 856.

²⁷ Division Docket (CTA Case No. 9769) – Vol. II, p. 857.

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Incidentally, the Supreme Court in a Resolution dated May 3, 2021 in *Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.*²⁸, affirmed the CTA's ruling that the gaming revenues of TIHGI, being a PAGCOR licensee, are exempt from regular corporate income tax after payment of the 5% franchise tax pursuant to the pronouncement in the *Bloomberry case*.

In sum, We sustain the Court in Division's ruling that the subject deficiency income tax assessment issued against TIHGI for calendar year 2012, in the aggregate amount of ₱4,611,717,349.01 should be cancelled.

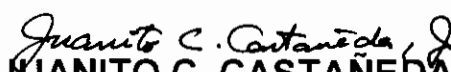
WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated September 8, 2020 and Resolution dated November 11, 2020, both rendered by the Court in Division in CTA Case No. 9769 are **AFFIRMED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

²⁸ G.R. No. 255487, May 3, 2021.


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN V. F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
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