**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-*versus*-

**THAI AIRWAYS INTERNATIONAL PUBLIC COMPANY LIMITED,**
*Respondent.*

**CTA *EB* NO. 1853**
(CTA Case No. 8597)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
**JAN 09 2020**
4:20 p.m.

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# DECISION

**MANAHAN, J.:**

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on May 25, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the modification of the October 10, 2017 *Amended Decision*[3] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8597 entitled "*Thai Airways International Public Company Limited vs. Commissioner of Internal Revenue*" and order the respondent to pay the

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[1] *Rollo*, CTA EB No. 1853, pp. 6-21.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 27-45.

deficiency income tax (IT), percentage tax (PT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), and compromise penalty

The dispositive portions of the assailed *Amended Decision* read:

*Amended Decision*[4] dated October 10, 2017:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision dated September 16, 2016)** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated September 16, 2016 is hereby amended to read as follows:
>
> "**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency Withholding Tax on Compensation (P3,000.00) and Fringe Benefits Tax (P685,941.15) are **CANCELLED and WITHDRAWN**.
>
> However, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax are **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱1,240,353.45** representing basic deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax and the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱1,773,352.70** representing twenty percent (20%) deficiency and delinquency interest on the partial payments made on October 21, 2016 or in the aggregate sum of **₱3,013,706.15**, computed as follows:

| **Type of Tax** | **Basic Tax** | **25% Surcharge** | **Total** |
|---|---|---|---|
| Income Tax | ₱ 84,772.09 | ₱ 21,193.02 | ₱ 105,965.11 |
| Value-Added Tax | 422,422.05 | 105,605.51 | 528,027.56 |
| Percentage Tax | 169,544.19 | 42,386.05 | 211,930.24 |
| Expanded Withholding Tax | 315,544.43 | 78,886.11 | 394,430.54 |
| **Sub-total** | **₱ 992,282.76** | **₱ 248,070.69** | **₱ 1,240,353.45** |
| | | | |
| 20% Deficiency and Delinquency Interest on the Partial payments made on October 21, 2016 | | | |
| Income Tax | | | ₱ 111,931.79 |

[4] *Supra*, Note 3.

| | | | |
|---|---|---|---|
| Percentage Tax | | | 1,661,420.91 |
| **Sub-Total** | | | **₱ 1,773,352.70** |
| | | | |
| **Total** | | | **₱ 3,013,706.15** |

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

| **Tax Type** | **Basic Tax** | **Deficiency interest computed from** |
|---|---|---|
| Income Tax | ₱ 84,772.09 | April 15, 2009 |
| Value-Added Tax | 422,422.05 | January 25, 2009 |
| Percentage Tax | 169,544.19 | January 25, 2009 |
| Expanded Withholding Tax | 315,544.43 | January 12, 2009 |

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,240,353.45 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from December 10, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

**SO ORDERED.**"

On the other hand, below is the dispositive portion of the *Resolution*[5] dated April 20, 2018 on petitioner's Motion for Partial Reconsideration on the assailed Amended Decision, which reads as follow:

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration Re: Amended Decision dated October 10, 2017** is **DENIED** for lack of merit.

**SO ORDERED.**"

## The Facts

As culled from the records of this case, petitioner Commissioner of Internal Revenue (CIR) is the duly appointed

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[5] *Rollo*, Annex "B", Resolution dated April 20, 2018, pp. 46-51

Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office, including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

On the other hand, respondent Thai Airways International Public Company Limited (TAIPCL) is a foreign corporation organized and existing under the laws of Thailand, with office address at 2nd Floor, Country Space 1 Building, Dela Costa Street, Salcedo Village, Makati City. It is an international air carrier duly registered with the Securities and Exchange Commission (SEC), and a holder of a Foreign Air Carrier's Permit (FACP) issued by the Civil Aeronautics Board (CAB) from September 25, 2006 up to the present. Petitioner is represented by its CEO /President/ General Manager Sern Chupikulchai, and may be served with notices and processes of the Court through its counsel, with office address at 1603 Antel Corporate Center, 121 Valero St., Salcedo Village, Makati City.[7]

Petitioner CIR issued Letter of Authority (LOA) No. 2008 000338335 on August 4, 2009, authorizing a revenue officer to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2008 to December 31, 2008.[8]

On June 20, 2012, respondent TAIPCL received the Final Assessment Notice (FAN), with Details of Discrepancies and Assessment Notices, all dated June 14, 2012, assessing petitioner for deficiency IT, PT, VAT, EWT, WTC, and FBT wit total amount of Php67,671,888.01, including surcharges and interest.[9]

Consequently, respondent TAIPCL disputed the FAN through a letter dated July 11, 2012.

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[6] Docket, CTA Case No. 8597, Vol. 2, Decision dated September 16, 2016, p. 909.
[7] *Id.* at pp. 908-909.
[8] *Id.* at p. 909.
[9] *Id.* at p. 910.

On November 27, 2012, petitioner CIR denied respondent TAIPCL's protest via the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies, a copy of which was received by the latter on December 7, 2012. Petitioner was assessed for deficiency IT, PT, VAT, EWT, WTC, and FBT with the total amount of Php71,757,167.39, including surcharges and interest.[10]

Thus, petitioner filed this Petition for Review on December 28, 2012.[11]

After the trial, the Court in Division ruled that respondent TAIPCL was liable only for deficiency IT, PT, VAT, EWT, while the alleged deficiency WTC, and FBT were cancelled. The deficiency VAT amounting Php3,333,016.15 was reduced to Php1,375,748.51, including surcharges.[12]

Thus, both parties moved for the reconsideration of said decision. The Court in Division denied petitioner's motion while partially granted respondent's motion in the assailed amended decision. Petitioner filed another Motion for Partial Reconsideration but was denied again in the assailed Resolution dated April 20, 2018.

Hence, petitioner CIR filed the instant Petition for Review[13] on May 25, 2018 after this Court granted[14] his motion for extension of time to file[15] said petition.

In Resolution dated July 4, 2018[16], this Court ordered respondent TAIPCL to submit its comment on said petition.

On September 10, 2018, respondent TAIPCL submitted its Comment[17]. Hence, on October 4, 2018, the petition was given due course[18] and the parties were directed to submit their respective memoranda.

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[10] Docket, Vol. 2, Decision dated September 16, 2016, p. 910.
[11] *Id.*
[12] *Id.* at pp. 958-959.
[13] *Rollo*, CTA EB No. 1853, pp. 6-21.
[14] *Id.* at p. 5.
[15] *Id.* at pp. 1-3.
[16] *Id.* at pp. 53-54.
[17] *Id.* at pp. 55-63.
[18] *Id.*, Resolution dated October 4, 2018, pp. 66-67.

On November 12, 2018 petitioner CIR submitted a Manifestation that he was adopting the arguments raised in the instant petition as his memorandum.[19]

On the other hand, respondent TAIPCL submitted its Memorandum[20] on November 21, 2018. Thus, on January 11, 2019, this Court declared that the case was deemed submitted for decision.[21]

## The Issues

The following issues[22] were raised by the petitioner in the instant petition, to wit:

1. Whether the Court in Division erred in giving evidentiary weight to respondent's evidence which was not formally offered; and

2. Whether the Court in Division erred in cancelling the assessment for deficiency WTC and FBT and in modifying the assessment for income tax, PT, EWT and VAT.

### Arguments of Petitioner[23]

Petitioner CIR argues that an evidence which was not formally offered should not be considered citing Section 34, Rule 132 of the Rules of Court.

Petitioner asserted that respondent's storage fee is subject to income tax at the regular tax rate of 35%. Further respondent should be liable also for deficiency FBT, WTC and that certain rebooking fee and commission paid should be included in the computation of gross IT.

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[19] *Id.* at pp. 68-69.
[20] *Id.* at pp. 72-95.
[21] *Id.* Resolution dated January 11, 2019, pp. 97-98.
[22] *Id.* Petition for Review, p. 12.
[23] *Id.*, pp. 12-19.

## Arguments of Respondent[24]

Respondent, in its comment, argues that petitioner raises the same issues passed upon by the Court in Division in the assailed Amended Decision as well as in the September 16, 2016 Decision and that petitioner's issues pertaining to rebooking fee and commission paid had been clearly explained in said decisions.

## Ruling of the Court *En Banc*

A close scrutiny of the issues and arguments posited by petitioner in its Petition for Review proved to be the same as that of his Motion for Reconsideration which was already passed upon in the assailed Resolution dated April 20, 2018.

Be that as it may, we would like to emphasize significant points in the disquisitions made by the Court in Division in the assailed decision and resolution.

On the issue of evidence not formally offered, it is true that under Section 34, Rule 132 of the Rules of Court, "courts shall consider no evidence which has not been formally offered." However, Section 8 of Republic Act (RA) No. 1125, as amended by RA No. 9282 and RA No. 9503, or otherwise known as "An Act Creating the Court of Tax Appeals", provides:

> SEC. 8. *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, **but such proceedings shall not be governed strictly by technical rules of evidence**. (*Emphasis supplied*)

The abovementioned provision means that technicalities under the Rules of Evidence are not applied strictly in this Court. The reason for such was explained by the Supreme

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[24] *Rollo*, Comment, pp. 55-63.

Court in *BPI-Family Savings Bank, Inc. v. Court of Appeals et al.*[25], to wit:

> True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." **The paramount consideration remains the ascertainment of truth**. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy. (*Emphasis supplied*)

The most important aspect in disposing the cases that are brought before this Court is the ascertainment of the truthfulness and veracity of the factual allegations made by the parties in their respective pleadings. It is the ascertainment of truth that will ultimately guide this Court in adjudicating whose substantive rights among the party litigants should prevail. Technicalities should not be a hindrance to such determination as ruled by the Supreme *Court in Filinvest Development Corporation v. Commissioner of Internal Revenue*[26], to wit:

> The CA's reliance on Rule 132, Section 34 of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that **technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact**. (*Emphasis supplied*)

In the instant case, the Court in Division found that the official receipts marked as Exhibits "18.1" to "18.11" and a schedule marked as Exhibit "18" pertains to respondent's cargo sales amounting to Php5,651,472.94 and not to storage income which was the assessment made by petitioner.

The Court in Division having admitted said exhibits, has established an evidentiary fact showing that petitioner's assessment was erroneous, hence, it will definitely prejudice respondent's substantial rights if the strict application of

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[25] G.R. No. 122480, April 12, 2000.
[26] G.R. No. 146941, August 09, 2007.

technical rules will be applied. Thus, the admission of said exhibits by the Court in Division was proper.

In fact, said exhibits were identified and marked by respondent TAIPCL's witness in his Judicial Affidavit dated February 3, 2014.[27]

And as aptly held by the Supreme Court in the cases of *Star Two (SPV-AMC), Inc. v. Howard Ko et al.*[28] and *Federico Sabay v. People of the Philippines*[29], evidence not previously offered can be admitted provided that such evidence must have been duly identified by testimony duly recorded and must have been incorporated in the records of the case, which in the instant case happened as revealed by the records of the case.

As to the cancellation and modification of petitioner's assessment, this is the result of the factual findings of the Court in Division and absent any evidence to the contrary or abuse of discretion on the part of the latter, this Court will not disturb its findings. In *Heirs of Teresita Villanueva et al. v. Heirs of Petronila Syquia Mendoza et al.*[30], the Supreme Court ruled that factual findings of the trial court should be accorded with the highest degree of respect in the absence of clear showing of any abuse, arbitrariness, or capriciousness on the part of the court, viz:

> Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.

In the instant case, petitioner failed to adduce any new or contrary evidence that will show that the Court in Division had acted with abuse of discretion, arbitrariness, or

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[27] *Rollo*, Amended Decision dated October 10, 2017, p. 32; Docket, CTA Case No. 8597, Vol. 2, p. 514.
[28] G.R. No. 185454, March 23, 2011.
[29] G.R. No. 192150, October 01, 2014.
[30] G.R. No. 209132, June 05, 2017.

capriciousness. Thus, this Court shall not disturb its factual findings.

On the other hand, in the advent of RA No. 10963 otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law where Section 249 of the 1997 NIRC was amended and such amendment was implemented under Revenue Regulations No. 21-2018 dated September 14, 2018, this Court shall modify the computation of interest.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed October 10, 2017 *Amended Decision*[31] and April 20, 2018 *Resolution*[32] are hereby **AFFIRMED but with MODIFICATION** as to the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax. Petitioner is **ORDERED TO PAY** respondent the amount of **SIX MILLION EIGHT HUNDRED EIGHTEEN THOUSAND TWO HUNDRED NINETY-FOUR PESOS AND FIFTY-SEVEN CENTAVOS (₱6,818,294.57)** representing basic deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax and the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

| | **Income Tax** | **VAT** | **Percentage Tax** | **EWT** | **Total** |
|---|---|---|---|---|---|
| Basic Tax | ₱ 249,676.31 | ₱ 422,422.05 | ₱ 2,337,509.93 | ₱ 315,544.43 | ₱ 3,325,152.72 |
| 25% Surcharge | 62,419.08 | 105,605.51 | 584,377.48 | 78,886.11 | 831,288.18 |
| 20% Deficiency Interest | | | | | - |
| Apr. 16, 2009 to Dec. 10, 2012 *(₱249,676.31 x 20% x 1335/365 days)* | 182,639.93 | | | | 182,639.93 |
| Jan 26, 2009 to Dec. 10, 2012 *(₱422,422.05 x 20% x 1,415/365 days)* | | 327,521.75 | | | 327,521.75 |
| *(₱2,337,509.93 x 20% x 1,415/365 days)* | | | 1,812,370.71 | | 1,812,370.71 |
| Jan 13, 2009 to Dec. 10, 2012 *(₱315,544.43 x 20% x 1,428/365 days)* | | | | 246,902.71 | 246,902.71 |
| **Total Amount Due as of Dec. 10, 2012** | **₱ 494,735.32** | **₱ 855,549.31** | **₱4,734,258.12** | **₱ 641,333.25** | **₱6,725,876.00** |

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[31] *Supra*, Note 3.
[32] *Supra*, Note 5.

| | | | | | |
|---|---|---|---|---|---|
| *(₱2,337,509.93 x 20% 1,411/365 days)* | | | ₱ 1,807,247.40 | | 1,807,247.40 |
| *(₱315,544.43 x 20% x 1,411/365 days)* | | | | ₱ 243,963.39 | 243,963.39 |
| 20% Deficiency Interest from Oct. 22, 2016 to Dec. 31, 2017 | | | | | - |
| *(₱249,676.31-₱164,904.22 x 20% x 436/365 days)* | 20,252.40 | | | | 20,252.40 |
| *(₱422,422.05 x 20% x 436/365 days)* | | 100,918.36 | | | 100,918.36 |
| *(₱2,337,509.93-₱2,167,965.74 x 20% x 436/365 days )* | | | 40,504.80 | | 40,504.80 |
| *(₱315,544.43 x 20% x 436/365 days)* | | | | 75,384.86 | 75,384.86 |
| 20% Delinquency Interest from Dec. 11, 2012 to Oct. 21, 2016 | | | | | - |
| *(₱ 494,735.32 x 20% x 1,411/365 days)* | 382,504.95 | | | | 382,504.95 |
| *(₱855,549.31 x 20% x 1,411/365 days)* | | 661,468.54 | | | 661,468.54 |
| *(₱4,734,258.12 x 20% x 1,411/365 days)* | | | 3,660,294.91 | | 3,660,294.91 |
| *(₱641,333.25 x 20% x 1,411/365 days)* | | | | 495,847.24 | 495,847.24 |
| 20% Delinquency Interest from Oct. 22, 2016 to Dec. 31, 2017 | | | | | - |
| *(₱ 494,735.32 -₱164,904.22 -₱41,226.05-₱120,628.57[33] x 20% x 436/365 days)* | 40,130.27 | | | | 40,130.27 |
| *(₱855,549.31 x 20% x 436/365 days)* | | 204,394.25 | | | 204,394.25 |
| *(₱4,734,258.12 -₱2,167,965.74 -₱541,991.43-₱1,680,915.90[34] x 20% x 436/365 days)* | | | 82,036.32 | | 82,036.32 |
| *(₱641,333.25 x 20% x 436/365 days)* | | | | 153,217.15 | 153,217.15 |
| **Total Amount Due as of Dec. 31, 2017** | **₱1,130,660.35** | **₱2,148,926.36** | **₱10,324,341.56** | **₱1,609,745.89** | **₱15,213,674.17** |
| **Less: Payments** | | | | | |
| Basic Tax | ₱ 164,904.22 | | ₱ 2,167,965.74 | | ₱ 2,332,869.96 |
| Surcharge | 41,226.05 | | 541,991.43 | | 583,217.48 |
| Interest | 388,826.43 | | 5,090,465.73 | | 5,479,292.16 |
| **Net Amount Due as of Dec. 31, 2017** | **₱ 535,703.65** | **₱2,148,926.36** | **₱2,523,918.66** | **₱1,609,745.89** | **₱ 6,818,294.57** |

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963, also known as TRAIN and as implemented by RR No. 21-2018, in the total amount of **₱2,008,244.09**, representing the total amount due as of December 10, 2012 after deducting payments made by petitioner on October 21, 2016, as determined below:

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[33] ₱164,904.22 x 20% x 1,335/365 days.

[34] ₱2,167,965.74 x 20% x 1,415/365 days.

No. 21-2018, on the total amount of **₱2,008,244.09**, representing the total amount due as of December 10, 2012 after deducting payments made by petitioner on October 21, 2016, as determined below:

| | Income Tax | VAT | Percentage Tax | EWT | Total |
|---|---|---|---|---|---|
| Amount Due as of December 10, 2012 | ₱ 494,735.32 | ₱ 855,549.32 | ₱4,734,258.12 | ₱641,333.25 | ₱ 6,725,876.00 |
| Less: Payments Made on Oct. 21, 2016 | | | | | |
| Basic Tax | ₱ 164,904.22 | | ₱2,167,965.74 | | ₱ 2,332,869.96 |
| Surcharge | 41,226.05 | | 541,991.43 | | 583,217.48 |
| Deficiency Interest up to Dec. 10, 2012 | 120,628.57 | | 1,680,915.90 | | 1,801,544.47 |
| | ₱ 326,758.84 | - | ₱4,390,873.07 | - | ₱ 4,717,631.91 |
| | | | | | |
| **Net Amount Due** | **₱167,976.48** | **₱855,549.32** | **₱343,385.05** | **₱641,333.25** | **₱2,008,244.09** |

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito C. Castañeda, Jr.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla

**CIELITO N. MINDARO-GRULLA**
Associate Justice

Ma. Belen M. Ringpis-Liban

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
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