REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CEBU LIGHT INDUSTRIAL PARK, INC.,
Petitioner,

-*versus*-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9607

Members:

DEL ROSARIO, *P.J., Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

SEP 16 2020 1:35 pm

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DECISION

MANAHAN, *J.:*

This *Petition for Review* filed on June 2, 2017, prays that the *Final Decision on Disputed Assessment* (FDDA) of the Commissioner of Internal Revenue be reversed and set aside, and that the deficiency income tax, expanded withholding tax (EWT), and documentary stamp tax (DST), in the aggregate amount of ₱5,566,865.94, inclusive of interest and penalties, for taxable year 2005, be declared null and void.[1]

THE PARTIES

Petitioner Cebu Light Industrial Park, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal business address at the 17th Floor, Robinsons Summit Center, 6783 Ayala Avenue, Makati City.[2] It is incorporated as a domestic corporation primarily *"to acquire by purchase, lease, donation or otherwise, and to own, use, improve, sell, mortgage, exchange, lease, and hold for investment or otherwise, real estate of all kinds, whether improve, manage, or otherwise dispose of buildings, houses,*

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[1] Summary of the Case, Pre-Trial Order dated November 17, 2017, Docket – Vol. II, p. 493.
[2] Par. A(1), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 454.

apartments and other structures of whatever kind, together with their appurtenances." [3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. OCN 9RC0000237487, with Tax Identification No. 004-668-587-000.[4] It is also a duly registered Philippine Economic Zone Authority (PEZA) Developer/Operator of the Cebu Light Industrial Park Ecozone, enjoying a preferential tax rate of 5% on gross income in lieu of national and local taxes. As a Developer/Operator, it is authorized to establish, develop, construct, administer, manage and operate the Cebu Light Industrial Park - SEC located at Barangay Bask, City of Lapu-Lapu, Mactan, Cebu, covering a 624,888 sq.m. area.[5]

On the other hand, respondent Commissioner of Internal Revenue is the officer duly appointed and empowered by law to act on national internal revenue tax assessments. He is represented in this case by the lawyers of the Legal Division, Revenue Region 8, Makati City, with office address at 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City.[6]

THE FACTS

On November 9, 2006, petitioner received the *Letter of Authority* (LOA) No. 2001 00039171 dated November 8, 2006,[7] issued by the BIR – Revenue Region No. 8 [Revenue District Office No. 50 (South Makati)], authorizing Revenue Officer Lourdes Racho and Group Supervisor Elizabeth Arias, to conduct an examination of the books of accounts and other accounting records of petitioner from January 1, 2005 to December 31, 2005.[8]

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[3] Par. A(3), JSFI, Docket – Vol. II, p. 455.
[4] Par. A(4), JSFI, Docket – Vol. II, p. 455.
[5] Par. A(5), JSFI, Docket – Vol. II, p. 455.
[6] Par. A(2), JSFI, Docket – Vol. II, pp. 454 to 455.
[7] Exhibit "P-22", Docket – Vol. II, p. 662
[8] Par. A(6), JSFI, Docket – Vol. II, p. 455.

Thereafter, on March 24, 2008, petitioner submitted a *Waiver of Defense of Prescription under the Statute of Limitations* [effective] until September 30, 2008.[9]

Petitioner received the *Preliminary Assessment Notice* (PAN) dated December 9, 2008 on December 16, 2008.[10]

On January 14, 2009, petitioner received a *Final Assessment Notice* (FAN), wherein petitioner was given a period of thirty (30) days from receipt, or until February 13, 2009, to file its protest thereon.[11]

Petitioner filed with the BIR its *Formal Protest/Request for Reconsideration and Reinvestigation* on February 9, 2009.[12]

Subsequently, petitioner received a letter from the BIR on June 26, 2013, informing it that the docket of the case will be forwarded to the Assessment Division, with a recommendation for the issuance of the FDDA.[13]

On September 10, 2013, petitioner received the FDDA dated September 6, 2013, issued by Regional Director Nestor S. Valeroso. Pursuant to the said FDDA, petitioner was assessed for deficiency income tax, EWT, and DST, in the aggregate amount of ₱5,566,865.94,[14] broken down as follows:

INCOME TAX (Assessment Notice No. IT-39171-05-09-0042)		
Taxable Income (loss) per return		₱ (3,295,027.00)
Add: Adjustment/Disallowance per Investigation		
Undeclared Income (Schedule 1)		1,090,907.31
Total		₱ (2,204,119.69)
Add: NOLCO		3,295,027.00
Taxable Income per Audit		₱ 1,090,907.31
Tax Due Thereon (32%/35%)		₱ 354,544.88
Less: Tax Credit/Payments		
Prior Years/Excess Credits	₱ 4,284,849.00	
Creditable Tax Withheld	580,600.00	

[9] Par. A(7), JSFI, Docket – Vol. II, p. 455.
[10] Par. A(8), JSFI, Docket – Vol. II, p. 455.
[11] Par. A(9), JSFI, Docket – Vol. II, p. 455.
[12] Par. A(10), JSFI, Docket – Vol. II, p. 455.
[13] Par. A(11), JSFI, Docket – Vol. II, p. 456.
[14] Par. A(12), JSFI, Docket – Vol. II, p. 456.

Total	₱ 4,865,449.00	
Less: Excess credit carried over to succeeding year	4,865,449.00	
Basic Tax Due		₱ 354,544.88
Add: Interest (04.16.06 to 10.17.13)		532,497.27
TOTAL AMOUNT DUE		**₱ 887,042.15**
EWT		
Basic Tax Due (Schedule 2)		₱ 646,944.36
Add: Interest (01.06.06 to 10.17.13)		1,003,561.36
TOTAL AMOUNT DUE		**₱ 1,650,505.72**
DST		₱ 991,038.00
Basic Tax Due (Schedule 3)		
Add: 50% Surcharge	₱ 495,519.00	
Interest	1,542,761.07	2,038,280.07
TOTAL AMOUNT DUE		**₱ 3,029,318.07**

On October 9, 2013, petitioner appealed the FDDA to then Commissioner of Internal Revenue Kim Jacinto-Henares.[15]

Petitioner received a letter from Ms. Teresita M. Dizon, then Assistant Regional Director of Revenue Region (RR) No. 8, Makati, on April 10, 2016, informing petitioner that *"all issues stated and findings per Final Decision on Disputed Assessment (FDDA) is hereby reiterated xxx"* and forwarded the entire docket to the Chief, Collection Division for enforcement of the collection of the deficiency taxes.[16]

On April 26, 2016, petitioner wrote respondent and sought confirmation whether the letter of Ms. Dizon constitutes as the final decision of respondent on the matter.[17]

Pending receipt of any reply from the respondent, the OIC-Assistant Chief, Collection Division of RR No. 8 issued the *Preliminary Collection Letter* (PCL) dated April 20, 2017, which was received by petitioner on May 5, 2017.[18]

[15] Par. B(1), JSFI, Docket – Vol. II, p. 457.
[16] Par. A(13), JSFI, Docket – Vol. II, p. 456.
[17] Par. B(2), JSFI, Docket – Vol. II, p. 457.
[18] Par. A(14), JSFI, Docket – Vol. II, p. 457.

Petitioner filed the instant *Petition for Review* on June 2, 2017.[19] The case was initially raffled to this Court's Second Division.

On July 21, 2017, respondent filed his *Answer*.[20]

On July 31, 2017, respondent submitted the *BIR Records* for the instant case.[21]

The Pre-Trial Conference was initially set on August 17, 2017.[22] However, due to petitioner's *Motion to Reset the Pre-Trial Conference* and *Second Motion to Reset the Pre-Trial Conference* filed on August 9, 2017,[23] and September 7, 2017,[24] respectively, the pre-trial conference was reset and held on October 12, 2017.[25]

In the meantime, *Respondent's Pre-Trial Brief* was filed on August 15, 2017,[26] while the *Pre-Trial Brief for the Petitioner* was submitted on October 6, 2017.[27]

On October 25, 2017, the parties filed their *Joint Stipulation of Facts and Issues*,[28] which was approved and adopted by the Court in the Pre-Trial Order dated November 17, 2017,[29] thereby deeming terminated the pre-trial.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Donald M. Sanchez,[30] Vice-President-Controller of petitioner; and (2) Mr. Neil U.

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[19] Docket – Vol. I, pp. 12 to 37.
[20] Docket – Vol. I, pp. 193 to 205.
[21] Docket – Vol. I, p. 213.
[22] *Notice of Pre-Trial Conference* dated July 25, 2017, Docket – Vol. I, pp. 211 to 212.
[23] Docket – Vol. I, pp. 215 to 218.
[24] Docket – Vol. I, pp. 229 to 232.
[25] Order dated August 11, 2017, Docket – Vol. I, p. 227; Order dated September 8, 2017, Docket – Vol. I, p. 234; Minutes of the hearing held on, and Order dated, September 14, 2017, Docket – Vol. I, pp. 235 to 236; Minutes of the hearing held on, and Order dated, October 12, 2017, Docket – Vol. II, pp. 452 to 453.
[26] Docket – Vol. I, pp. 221 to 225.
[27] Docket – Vol. I, pp. 426 to 444.
[28] Docket – Vol. II, pp. 454 to 472.
[29] Docket – Vol. II, pp. 493 to 499.
[30] Exhibit "P-53", Docket – Vol. I, pp. 249 to 275; Minutes of the hearing held on, and Order dated, November 20, 2017, Docket – Vol. II, p. 500, and 502 to 503.

Sison,[31] the Court-commissioned Independent Certified Public Accountant (ICPA).[32]

The *Report* of the ICPA was submitted to the Court on December 20, 2017.[33] Later, an *Amended Report* was submitted by the ICPA on January 8, 2018.[34]

On February 23, 2018, petitioner filed its *Formal Offer of Evidence with Motion for Remarking.*[35] Respondent filed through registered mail his *Comment (To Petitioner's Formal Offer of Evidence)* on February 26, 2018.[36]

Respondent filed a *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* on March 5, 2018.[37] Petitioner filed its *Comment/Opposition (re: Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court)* on April 4, 2018.[38] However, in the Resolution dated April 12, 2018,[39] the Court determined that this Court has jurisdiction, and thus, said *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* was denied, for lack of merit.

In the Resolution dated April 18, 2018,[40] the Court denied the *Motion for Remarking,* and admitted petitioner's Exhibits, *except* for Exhibits "P-53-P-26" to "P-53-P-60", "P-53-R-1" "P-53-R-2", "P-53-S", "P-53-T", "P-53-U", and "P-53-V-1" to "P-53-V-3", for not having been found in the records of the case.

On April 25, 2018, respondent filed a *Motion for Reconsideration,*[41] praying that the Resolution dated April 12, 2018 be set aside; and that the instant *Petition for Review* be

[31] Exhibit "P-55", Docket – Vol. II, pp. 548 to 569; Minutes of the hearing held on, and Order dated, February 12, 2018, Docket – Vol. II, pp. 570 to 572.
[32] *Oath of Commission* dated November 20, 2017, Docket – Vol. II, p. 501; Minutes of the hearing held on, and Order dated, November 20, 2017, Docket – Vol. II, p. 500 and 502 to 503.
[33] Docket – Vol. II, pp. 504 to 517.
[34] Docket – Vol. II, pp. 524 to 539.
[35] Docket – Vol. II, pp. 576 to 600.
[36] Docket – Vol. III, pp. 829 to 830.
[37] Docket – Vol. III, pp. 834 to 846.
[38] Docket – Vol. III, pp. 848 to 856.
[39] Docket – Vol. III, pp. 859 to 864.
[40] Docket – Vol. III, pp. 868 to 871.
[41] Docket – Vol. III, pp. 906 to 937.

dismissed for lack of jurisdiction. Petitioner filed its *Comment/Opposition (To the Motion for Reconsideration dated April 19, 2018)* on May 15, 2018.[42]

Meanwhile, petitioner filed a *Motion for Reconsideration to the Resolution dated April 18, 2018* on May 8, 2018,[43] praying for the admission of Exhibits "P-53-P-26" to "P-53-P-60", "P-53-R-1" "P-53-R-2", "P-53-S", "P-53-T", "P-53-U", and "P-53-V-1" to "P-53-V-3". No comment was filed thereon by respondent.[44]

In the Order dated September 24, 2018,[45] the instant case was transferred to this Court's First Division.

In the Resolution dated October 4, 2018,[46] the Court: (1) granted petitioner's *Motion for Reconsideration to the Resolution dated April 18, 2018*; (2) admitted petitioner's Exhibits "P-53-P-26" to "P-53-P-60", "P-53-R-1", "P-53-R-2", "P-53-S", "P-53-T", "P-53-U", and "P-53-V-1" to "P-53-V-3"; and (3) denied respondent's *Motion for Reconsideration.*

Respondent likewise presented documentary and testimonial evidence during trial. As for his testimonial evidence, respondent offered the testimonies of the following witnesses, namely: (1) Mr. Jose Eric Z. Almosara,[47] a Revenue Officer I of the BIR; and (2) Ms. Lourdes T. Racho,[48] a Revenue Officer IV of the BIR.

On March 6, 2019, respondent filed an *Omnibus Motion to Admit Formal Offer of Evidence and Manifestation (With Formal Offer of Evidence),*[49] praying for the Court to admit respondent's *Formal Offer of Evidence* as part of the records of this case; and to take note of the correction that the Judicial Affidavit of Revenue Officer Lourdes T. Racho, and the

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[42] Docket – Vol. III, pp. 1193 to 1203.
[43] Docket – Vol. III, pp. 962 to 965.
[44] Records Verification dated June 14, 2018, issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1266.
[45] Docket – Vol. III, p. 1267.
[46] Docket – Vol. III, pp. 1270 to 1273.
[47] Exhibit "R-10", Docket – Vol. III, pp. 875 to 884; Minutes of the hearing held on, and Order dated, April 23, 2018, Docket – Vol. III, pp. 904 to 905.
[48] Exhibit "R-25" (previously marked as Exhibit "R-24"), Docket – Vol. III, pp. 1208 to 1226; Minutes of the hearing held on, and Order dated, January 22, 2019, Docket – Vol. III, pp. 1287 to 1292.
[49] Docket – Vol. III, pp. 1307 to 1317.

corresponding signature, be marked as "R-25" and "R-25-a". Petitioner filed its *Comment/Opposition (To the Omnibus Motion to Admit Formal Offer of Evidence and Manifestation)* on April 2, 2019.[50]

Thereafter, *Respondent's Formal Offer of Evidence with Manifestation/Motion to Amend* was filed on March 29, 2019.[51] Petitioner filed its *Comment/Opposition (To the Respondent's Formal Offer of Evidence with Manifestation/Motion to Amend)* on April 22, 2019.[52]

In the Resolution dated July 12, 2019,[53] the Court: (1) ruled that respondent's *Omnibus Motion to Admit Formal Offer of Evidence and Manifestation (With Formal Offer of Evidence)* was rendered moot; (2) noted respondent's *Manifestation*; (3) granted respondent's *Motion to Amend*; (4) admitted respondent's Exhibits, *except* for Exhibits "R-2", "R-2-a", and "R-3", for failure to identify the same; and (5) gave parties a period of thirty (30) days within which to submit their respective memoranda.

The *Memorandum for the Petitioner* was filed on August 20, 2019,[54] while the *Memorandum for Respondent* was submitted on August 23, 2019.[55]

The instant case was deemed submitted for decision on September 16, 2019.[56]

THE ISSUES

The parties submitted the following issues[57] for this Court's resolution, to wit:

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[50] Docket – Vol. III, pp. 1362 to 1366.
[51] Docket – Vol. III, pp. 1377 to 1385.
[52] Docket – Vol. III, pp. 1427 to 1430.
[53] Docket – Vol. III, pp. 1434 to 1438.
[54] Docket – Vol. III, pp. 1439 to 1476.
[55] Docket – Vol. III, pp. 1478 to 1495.
[56] Resolution dated September 16, 2019, Docket – Vol. III, p. 1498.
[57] Par. C, JSFI, Docket – Vol. II, p. 458.

"A.
WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION OVER THE PETITION.

B.
WHETHER OR NOT THE PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX FOR THE YEAR 2005.

C.
WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX FOR THE YEAR 2005.

D.
WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX FOR THE YEAR 2005."

Petitioner's arguments:

Petitioner argues that the absence of a valid LOA violated its right to due process; and that since LOA No. 2001 00038171 dated November 8, 2006 had ceased to be valid, the deficiency assessments issued against petitioner, pursuant to the same LOA, are null and void.

On the issue of whether petitioner is liable for deficiency income tax, petitioner disputes the finding that it had undeclared financial income in the amount of ₱1,072,273.85. According to petitioner, such income is pure paper income, as the same merely represents theoretical interest income on its financial assets arising from petitioner's adoption of Philippine Accounting Standards No. 39 in 2005. As such, it is petitioner's position that the same should not be considered as realized income for tax purposes. It further claims that the imputed interest should likewise be not considered as taxable income, as the same is a mere result of an accounting adjustment, and that there is no stipulation on interest in the Contract to Sell that would state otherwise.

Petitioner likewise disputes the finding that it had undeclared interest income in the amount of ₱18,633.46.

According to petitioner, the said amount arose from interest bearing loans granted to certain employees of petitioner, which is an activity incidental to its main operations as a developer/operator. Thus, the income derived therefrom should not be subjected to regular corporate income tax.

Petitioner also disagrees with the disallowance of its Net Operating Loss Carry-Over (NOLCO). It claims that its reported NOLCO for taxable year 2005 amounting to ₱3,295,027.00 should not have been disallowed and added back to its taxable income in 2005 since it did not benefit from said NOLCO in the succeeding years. In fact, it incurred a net loss in 2006 and 2007, and paid the Minimum Corporate Income Tax in 2008 and 2009.

On the issue of whether petitioner is liable for deficiency EWT, petitioner insists that the assessment thereon was issued beyond the three (3)-year prescriptive period provided under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended. According to petitioner, the last day for the BIR to assess the same is on January 11, 2009. However, it received the FAN only on January 14, 2009, which is beyond the prescriptive period provided by law, and thus, renders the subject assessment void.

Petitioner further claims that, even assuming that the said EWT assessment was issued within the prescriptive period provided by law, the assessment should still be cancelled pursuant to the recommendation of the ICPA in his report.

On the issue of whether petitioner is liable for deficiency DST, petitioner claims that as PEZA-registered enterprise, it is subject to 5% gross income tax, in lieu of all national and local tax pursuant to Republic Act No. 7916. Thus, it is exempt from the payment of DST.

Respondent's counter-arguments:

Respondent counter-argues that this Court has no jurisdiction over the instant case; that taxpayer can only file one (1) reconsideration with respondent under Revenue

Regulations (RR) No. 12-99, as amended by RR No. 18-13; that the validity of LOA is not part of the issues raised in the instant *Petition for Review*; that there is no violation of due process in this case; that the subject deficiency tax assessments have factual and legal bases; that petitioner failed to prove the date of filing of return and the date of payment of the corresponding tax deficiencies, hence, the ten-year prescriptive period from the omission must apply in this case; that the burden of proving that the assessments are not correct rests on the petitioner; and that all presumptions are in favor of the correctness of tax assessments.

RULING OF THE COURT

The Court finds merit in the instant *Petition for Review.*

This Court has jurisdiction over the instant Petition for Review.

In his *Memorandum*, respondent once again raises the issue of jurisdiction. However, this issue has been extensively discussed and resolved by the Court in its Resolution dated April 12, 2018,[58] that it has jurisdiction to entertain the present appeal, to wit:

> "The parties stipulated and admitted that petitioner received the Final Assessment Notice (FAN) on January 14, 2009; that petitioner filed its Formal Protest/Request for Reconsideration and Reinvestigation on February 9, 2009; that petitioner received the FDDA issued by Regional Director Nestor S. Valeroso on September 10, 2013; that on October 9, 2013, petitioner appealed the FDDA to then CIR Kim Jacinto-Henares; that petitioner received the PCL, signed by the OIC-Asst. Chief, Collection Division, on May 5, 2017; that said PCL is considered the final decision of the respondent; and, that petitioner has 30 days from receipt thereof to file an appeal to the CTA or until June 4, 2017.

[58] Docket – Vol. III, pp. 859 to 864, beginning at p. 862.

In the instant case, petitioner availed of the option to elevate the protest to the CIR within 30 days from receipt of the FDDA, pursuant to Section 3.1.5 of RR 12-99. Petitioner cannot be faulted for not appealing to the CTA within 30 days from date of receipt of the said FDDA, as it availed of the option to elevate its protest to the CIR instead.

Pending the request for reconsideration with the CIR, petitioner received the PCL on May 5, 2017. The Court is now tasked to determine whether the PCL is a final decision contemplated by the provisions, albeit the same is issued by the OIC-Asst. Chief, Collection Division, and not by the CIR.

In *Organizational Change Consultants International Center for Learning, Inc. vs. CIR*,[59] the Court had occasion to declare a PCL as a final decision, to wit:

> A final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such a letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA).
>
> After a careful evaluation of the Preliminary Collection Notice, the Court finds that the same is a final decision. The aforesaid notice has reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. It is also indicated in the notice that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities. . .
>
> xxx xxx xxx

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[59] CTA Case No. 8625, February 10, 2017. *cm*

> Thus, the Preliminary Collection Notice is deemed the final decision of respondent.
>
> It is true that in the above-quoted case, no FDDA was issued by respondent CIR. However, said case is significant in determining when a PCL can be considered as a final decision appealable to the CTA. Thus, applying the foregoing to the instant case, the PCL reiterated petitioner's deficiency tax liabilities for taxable year 2005 and requested the payment of the same to avoid the accumulation of interest and surcharges. It also stated that if petitioner failed to pay the same, respondent would be constrained to enforce collection thereof, through the administrative summary remedies provided by law. As such, the **PCL is a final decision on a disputed assessment appealable to the CTA, which petitioner timely appealed on June 2, 2017, not on June 21, 2017 as stated by respondent. Hence, this Court has jurisdiction**." (*Emphasis added*).

Thus, respondent's contention that this Court has no jurisdiction over the instant case is baseless.

The audit and investigation was conducted pursuant to a valid LOA.

Petitioner argues that the absence of a valid LOA violated its right to due process; and, that since LOA No. 2001 0038171 dated November 8, 2006 had ceased to be valid for failure to revalidate the same, the deficiency assessments against petitioner, pursuant to the same LOA, are null and void.

We disagree. Revenue Memorandum Circular (RMC) No. 23-2009,[60] provides for the effects of a revenue officer's failure to revalidate the LOA, as follows:

> ... Failure on the part of the RO to request for revalidation of the LA or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary. (*Underscoring supplied*)

Based on this, a plethora[61] of cases promulgated by this Court has ruled that the failure of the revenue officer to request for revalidation of the LOA or the expiration of the revalidation period does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.

The assessments are cancelled.

The Court will now determine the validity of the assessments against petitioner.

I. DEFICIENCY INCOME TAX

In respondent's FDDA[62], petitioner was assessed of deficiency income tax for CY 2005 in the amount of ₱887,042.15, computed as follows:

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[60] Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division, April 16, 2009.
[61] *Telstar Manufacturing Corp. v. Commissioner of Internal Revenue*, CTA EB Nos. 1797 and 1879, April 15, 2019, citing *Commissioner of Internal Revenue v. Total (Philippines) Corporation*, CTA EB Nos. 1616 and 1621, November 6, 2018; *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, CTA EB No. 1223 (CTA Case No. 8191), January 4, 2016; *Bisazza Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9372, March 7, 2018; *Ritegroup, Incorporated v. Commissioner of Internal Revenue*, CTA Case No. 8651, January 25, 2017.
[62] Exhibit "P-53-B", p. 1.

Taxable Income(Loss) per return		(₱3,295,027.00)
Add: Adjustments/Disallowances per investigation		
Undeclared Income (Schedule 1)		1,090,907.31
Total		(₱2,204,119.69)
Add: NOLCO		3,295,027.00
Taxable Income per Audit		₱ 1,090,907.31
Tax Due thereon (32%/35%)		₱ 354,544.88
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱ 4,285,849.00	
Creditable Tax Withheld	580,600.00	
Total	₱ 4,866,449.00	
Less: Excess credit carried over to succeeding year	4,865,449.00	-
Basic Tax Due		₱ 354,544.88
Add: Interest (4.16.06 to 10.17.13)		532,497.27
TOTAL AMOUNT DUE		**₱ 887,042.15**

The deficiency income tax assessment arose from the following items, which shall be discussed one by one:

a. Undeclared Income	₱1,090,907.31
b. Net Operating Loss Carry-Over (NOLCO)	3,295,027.00
c. Excess credits carried forward to succeeding year	4,865,449.00

a. Undeclared Income – ₱1,090,907.31

Based on the Details of Discrepancies attached to the FDDA, respondent found petitioner liable for deficiency income tax on undeclared income, detailed as follows:

> "**Undeclared Income, ₱1,090,907.31**- Investigation disclosed that financing income and other interest income in the amounts of ₱1,072,273.85 and ₱18,633.46 respectively is not within the scope of registered activity, hence, subject to income tax pursuant to Section 32 of the tax code.
>
> **Schedule 1:**
>
> | | | |
> |---|---|---|
> | Financing Income | ₱ | 1,072,273.85 |
> | Other Interest Income | | 18,633.46 |
> | **Undeclared Income** | **₱** | **1,090,907.31** |

> It was your contention that the alleged undeclared income was a result of the following activities:
>
> - That Financing Income in the amount of ₱1,072,273.85 is a result of your installment sale of parcel of lands to Common Bacayan Development Corp. under a non-interest bearing plan.
> - That the Interest Income amounting to ₱18,633.46 was a result of interest-bearing loan in the amount of twelve percent (12%) given to your employees, hence, incidental to your registered activities as a developer/operator.
>
> Reinvestigation disclosed that you failed to substantiate and to submit complete evidence aside from the journal entries to refute the above finding; hence, the assessment is hereby reiterated."

a.1 Financing Income – ₱1,072,273.85

Petitioner disputes the finding that it had undeclared financial income in the amount of ₱1,072,273.85. According to petitioner, such income is pure paper income, as the same merely represents theoretical interest income on its financial assets arising from petitioner's adoption of Philippine Accounting Standards No. 39 in 2005. As such, it is petitioner's position that the same should not be considered as realized income for tax purposes. It further claims that the imputed interest should likewise be not considered as taxable income, as the same is a mere result of an accounting adjustments, and that there is no stipulation on interest in the Contract to Sell that would state otherwise.

The Court agrees with petitioner.

The amount subject of the assessment originated from petitioner's sale of several parcels of land to Commonwealth Estate, Inc. with a total selling price of ₱25,155,326.00 as evidenced by a Contract to Sell executed on April 22, 2004[63]. Of the total selling price, ₱7,546,697.80 was paid upon signing

[63] Exhibit "P-53-H". *con*

the contract and the remaining balance of ₱17,608,728.20 will be paid in twenty four (24) equal monthly installments at ₱733,697.00.[64]

In petitioner's Audited Financial Statements (AFS) for CY 2005[65], petitioner explained in the Notes to Financial Statements certain changes resulting from its transition to new Philippine Accounting Standards (PAS), which included among others, the cumulative effect of adopting "PAS 39, Financial Instruments: Recognition and Measurement" in the 2005 retained earnings.

In the Notes to Receivables, petitioner stated that upon the adoption of PAS 39 in 2005, the non-interest bearing receivable was restated to amortized cost computed based on its fair value at initial recognition, representing the present value of future cash flows. The difference between the principal amount and the present value of future cash flows is accreted and recognized as an interest income over the term of the receivable.

As noted by the ICPA, due to the adoption of PAS 39, petitioner recognized a day 1 loss amounting to ₱2,913,175.74, which would be recovered in the years 2005 and 2006, computed as follows:[66]

Principal	₱ 25,155,326.00
Initial Payment	7,546,588.00
Basis of Net Present Value	17,608,738.00
Net Present Value	14,695,562.00
Loss	**₱ 2,913,176.00**

In the ICPA report[67], the amortization schedule of petitioner's accounts receivable from Commonwealth Estate, Inc. showing the details of the transaction is as follows:

[64] Exhibit "P-54", p. 4.
[65] Exhibit "P-53-F", Note 2.2.
[66] Exhibit "P-54", p. 5.
[67] Exhibit "P-54", p. 5.

Year	Amortization	Interest	Principal	Balance
2004	₱ 7,546,588.00	-		₱14,695,562.26
2004	6,603,273.09	1,622,096.16	4,981,176.93	9,714,385.33
2005	8,804,364.12	1,072,273.85	7,732,090.27	1,982,295.07
2005	2,201,100.79	218,805.73	1,982,295.06	-
	₱25,155,326.00	**₱2,913,175.74**	**₱14,695,562.26**	

Petitioner recovers the loss whenever there is a collection from the non-interest bearing receivable which is based on the remaining balance using the effective interest rate at that time which is 11.038%. Since PAS 39 was in effect only in 2005, the cumulative effect of adopting PAS 39 was adjusted on January 1, 2005 directly to retained earnings to account for the following: (a) day 1 loss at ₱2,913,175.74; (b) recovery in 2004 at ₱1,622,096.16; and (c) recovery in 2005 at ₱1,072,273.85. The remaining loss of ₱218,805.73 was recovered in the succeeding year upon the final payment of the receivable. [68]

In other words, the recovery in 2005 amounting to ₱1,072,273.85 or ₱1,072,274.00, subject of the assessment, was recognized as interest income for financial accounting purposes in order to present petitioner's receivable from Commonwealth Estate, Inc. at amortized cost in compliance with PAS 39.

Indeed, there are three elements for the imposition of income tax. First, there must be gain or profit. Second, the gain or profit is realized or received, actually or constructively. And third, it is not exempted by law or treaty from income tax.[69]

Income tax is assessed on income received from any property, activity or service that produces income.[70] Income must be proven, and such income should have been earned, received or realized by the taxpayer. In the instant case, the said elements are not present

[68] Exhibit "P-54", p. 6.
[69] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999
[70] Ibid.

As correctly pointed out by petitioner, the said amount is a mere theoretical interest income resulting from the application of PAS 39 or the implementation of an accounting rule and not the occurrence of a taxable event. Hence, the deficiency income tax assessment on the Financing Income of ₱1,072,273.85 is devoid of merit and is cancelled and/or withdrawn.

a.2 Other Interest Income - ₱18,633.46

Petitioner disputes the finding that it had undeclared interest income in the amount of ₱18,633.46. According to petitioner, the said amount arose from interest bearing loans granted to certain employees of petitioner, which is an activity incidental to its main operations as a developer/operator. Thus, the income derived therefrom should not be subjected to regular corporate income tax.

However, as correctly noted by the ICPA, petitioner did not provide documents in support of the assessed amount of ₱18,633.46. Hence, the Court cannot verify the nature of the same and ascertain the proper tax implication. Consequently, the Court is constrained to uphold respondent's assessment on this item.

b. NOLCO – ₱3,295,027.00

Respondent explained the basis on the disallowance of petitioner's NOLCO in the Details of Discrepancies[71], to wit:

> "**Net Operating Loss Carry-Over (NOLCO), ₱3,295,027.00** - Investigation disclosed that your operating showed taxable income instead of net operating loss as previously claimed in your ITR. The tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC, to wit:
>
> *"The net operating loss of the business or enterprise for any taxable year immediately preceding the current*

[71] Exhibit "P-53-B", Annex A, p. 3.

taxable year, which had not been previously offset as deduction from gross income shall be carried over as deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss."

Petitioner disagrees with the disallowance of its NOLCO. It claims that its reported NOLCO for taxable year 2005 amounting to ₱3,295,027.00 should not have been disallowed and added back to its taxable income in 2005 since it did not benefit from said NOLCO in the succeeding years. In fact, it incurred a net loss in 2006 and 2007, and paid the Minimum Corporate Income Tax (MCIT) in 2008 and 2009.

The disallowance is not proper.

It was improper for respondent to disallow petitioner's NOLCO because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2006. The application of the said NOLCO in the subsequent taxable period is beyond the scope of the present assessment. The same can only be the subject of assessment in the taxable year when it is claimed as deduction. Thus, the disallowance should be cancelled.

c. *Excess credits carried forward to succeeding year - ₱4,865,449.00*

Respondent explained the basis of the disallowance of petitioner's excess credits in the Details of Discrepancies, to wit:

"**Excess credits carried forward to succeeding year, ₱4,865,449.00** – Excess tax credit carried over to succeeding period in the amount of ₱4,865,449.00 was deducted from the total allowable tax credit liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of 1997 NIRC."

This portion of the assessment is likewise cancelled.

The disallowance of petitioner's excess credits carried forward to succeeding year in the amount of ₱4,865,449.00 was improper because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2006. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In sum, petitioner is not liable for any deficiency income tax for CY 2005, as determined below:

Taxable Income(Loss) per return		(₱3,295,027.00)
Add: Adjustments/Disallowances per investigation		
Undeclared Income (Other Interest Income)		18,633.46
Taxable Income (Loss) per Audit		**(₱3,276,393.54)**
Tax Due thereon		-
Less: Tax Credits		
Prior Year's Excess Credits	₱4,285,849.00	
Creditable Tax Withheld	580,600.00	₱4,866,449.00
Excess Tax Credits		**(₱4,866,449.00)**

II. DEFICIENCY EXPANDED WITHHOLDING TAX

In the FDDA, respondent assessed petitioner for deficiency EWT for CY 2005 in the amount of ₱1,650,505.72, computed as follows:[72]

Basic Tax Due (Schedule 2)	₱ 646,944.36
Add: Interest (4.16.06 to 10.17.13)	1,003,561.36
TOTAL AMOUNT DUE	**₱1,650,505.72**

Based on the Details of Discrepancies, respondent explained the details of the assessment, as follows:[73]

> "**<u>Basic Tax Due to Non-Withholding, P646,944.36</u>** – Verification disclosed that you failed to pay the corresponding expanded withholding tax on the hereunder income payments, hence, assessed pursuant

[72] Exhibit "P-53-B", p. 1.
[73] Exhibit "P-53-B", pp. 3 and 4.

to Section 2.57.2 of Revenue Regulation 2-98, as amended.

Schedule 2:

Income Payments	Per FS/Audit	Per 1601E	Discrepancy	Tax Rate	Tax Due
Provision for Bonus/Management Fee	₱ 3,353,711.00	-	₱ 3,353,711.00	15%	₱ 503,056.65
Referral Fee/Commission	995,272.19	-	995,272.19	10%	99,527.22
Rental-Office & Safety Deposit Box	214,550.00	-	214,550.00	5%	10,727.50
Security Services/Civilian Guards	128,017.01	-	128,017.01	2%	2,560.34
Communication	252,599.59	18,311.00	234,288.59	2%	4,685.77
Light and Water	1,319,344.00	-	1,319,344.00	2%	26,386.88
Total	**₱6,263,493.79**	**₱18,311.00**	**₱6,245,182.79**		**₱646,944.36**

It was your contention that the following income payments were not subjected to withholding for the following reasons:

- The Provision for Bonus in the amount of ₱3,353,711.00 was not claimed as allowable deduction for income tax purposes as this was reflected in the Reconciliation of Net Income Per Books Against Taxable Income of your audited FS.

- The Referral Fee of ₱995,272.19 is unpaid liabilities in the form of broker's commission based on installment sale of real property. The taxes thereon shall be withheld only when commission was paid to the broker.

- The Rental Fee of ₱214,550.00 is the company's allocated share consisting of office space and parking. The company (which is an affiliate) from which the rent expense came from withheld the proper taxes required thereon. This is reimbursed expense on the part of the IVPI.

- Proper taxes were withheld on Security Services, Communication Expense and Light and Water in the amount of ₱128,017.01, ₱252,599.59 and ₱1,319,344.00, respectively.

However, reinvestigation disclosed that you failed to substantiate your contentions with sufficient legal and factual basis, hence, the assessment was also reiterated." *cnn*

Petitioner argues that the assessment was beyond the three (3)-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended. According to petitioner, the last day for the BIR to assess the same is on January 11, 2009. However, it received the FAN only on January 14, 2009, which is beyond the prescriptive period provided by law, and thus, renders the subject assessment void.

The Court agrees with petitioner.

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever comes later, thus:

> "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 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."

Section 2.58 (A) (2) (b) of Revenue Regulations (RR) No. 17-03, in relation to Section 7 of RR No. 09-01, as last amended by RR No. 26-02, provides that the electronic filing of EWT Returns of taxpayers engaged in real estate activities, such as herein petitioner, must be made within thirteen (13) days following the end of the month. The dates of filing of petitioner's Monthly EWT Returns as well as the last day for respondent to assess deficiency EWT for CY 2005 are summarized below: *can*

Exhibit Reference	Period Covered	Date of Filing of Return	Last Day to File Return	Last Day to Assess
"P-10"	January 2005	14-Feb-05	14-Feb-05[74]	14-Feb-08
"P-11"	February 2005	14-Mar-05	14-Mar-05[75]	14-Mar-08
"P-12"	March 2005	07-Apr-05	13-Apr-05	14-Apr-08[76]
"P-13"	April 2005	10-May-05	13-May-05	13-May-08
"P-14"	May 2005	09-Jun-05	13-Jun-05	13-Jun-08
"P-15"	June 2005	11-Jul-05	13-Jul-05	14-Jul-08[77]
"P-16"	July 2005	11-Aug-05	15-Aug-05[78]	15-Aug-08
"P-17"	August 2005	12-Sep-05	13-Sep-05	15-Sep-08[79]
"P-18"	September 2005	12-Oct-05	13-Oct-05	13-Oct-08
"P-19"	October 2005	11-Nov-05	14-Nov-05[80]	14-Nov-08
"P-20"	November 2005	13-Dec-05	13-Dec-05	15-Dec-08[81]
"P-21"	December 2005	11-Jan-06	13-Jan-06	13-Jan-09

In this case, the Final Assessment Notice (FAN) was received by petitioner on January 14, 2009[82]. Clearly, the FAN was issued beyond the last day prescribed under Section 203 of the NIRC of 1997, as amended, to assess petitioner for deficiency EWT for the months of January to December 2005. Thus, respondent's deficiency EWT assessment for CY 2005 in the amount of ₱1,650,505.72 per FDDA is void and must be cancelled and/or withdrawn.

III. DEFICIENCY DOCUMENTARY STAMP TAX

Based on the Details of Discrepancies, respondent found petitioner liable for deficiency documentary stamp tax, detailed as follows:[83]

> "**Basic Tax Due, ₱991,038.00** – Verification disclosed that you failed to pay the documentary stamp tax on your Advances to Stockholders which purported to be loans pursuant to Section 179 of the National Internal Revenue Code *as established in the case of CIR VS. Filinvest Dev't. Corp.* which states that:

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[74] February 13, 2005 fell on a Sunday.
[75] March 13, 2005 fell on a Sunday.
[76] April 13, 2009 fell on a Sunday.
[77] July 13, 2008 fell on a Sunday.
[78] August 13, 2005 fell on a Saturday.
[79] September 13, 2008 fell on a Saturday.
[80] November 13, 2005 fell on a Sunday.
[81] December 13, 2008 fell on a Saturday.
[82] JSFI, paragraph 9, Docket, - Vol. II, p. 455.
[83] Exhibit "P-53-B", p. 4.

> Section 179. Stamp on Debt Instruments. – *"On every original issue of debt instrument, there shall be collected a documentary stamp tax of one peso (P1.00) on each two hundred pesos (P200.00) or fractional thereof, of the issue/proceeds of any such debt instrument..."*
>
> **<u>Schedule 3:</u>**
>
> | | |
> |---|---|
> | **Financial Liabilities** | |
> | Advances to stockholders | ₱ 198,207,457.00 |
> | Documentary stamp tax rate | ₱1.00/₱200.00 |
> | **Basic Tax Due** | **₱ 991,038.00** |
>
> It was your contention that since the company is a PEZA-registered entity, the total amount of 198,207,457.00 as advances from stockholders is not subject to DST. Further, this represents additional capital contribution from Stockholders without instrument upon which DST may be applied.
>
> Reinvestigation disclosed that you failed to submit proof of exemption under special law that PEZA-registered entity is exempt from documentary stamp tax on Advances to Stockholders hence, the assessment is hereby reiterated."

Petitioner claims that as PEZA-registered enterprise, it is subject to 5% gross income tax, in lieu of all national and local tax pursuant to Republic Act No. 7916. Thus, it is exempt from the payment of DST.

The Court agrees with petitioner.

Petitioner is a duly registered PEZA entity enjoying a special tax of 5% on gross income in lieu of national and local taxes. It was issued a Certificate of Registration under Certificate of Registration No. EZ-98-14[84].

This Court, in the case of *Commissioner of Internal Revenue vs. Nidec Copal Philippines Corporation*[85], ruled that a

[84] Exhibit "P-4" and Exhibits "P-53-R-1" and "P-53-R-2".
[85] CTA E.B. Nos. 250 and 255 (CTA Case No. 6577), October 1, 2007.

PEZA-registered enterprise subject to the preferential tax of 5% on its Gross Income is exempt from the payment of all other national taxes including the DST, to wit:

> "It is undisputed that Nidec is a PEZA-registered enterprise. As such, it is exempt from all national and local taxes under RA 7916. In lieu thereof, it shall pay a preferential tax of 5% on GIE pursuant to Section 24 of RA 7916, which provides in part:
>
> > "SEC. 24. Exemption from Taxes Under the National Internal Revenue Code. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE**. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government ..."
>
> This exemption from the payment of national internal revenue taxes is reiterated in Section 1, Rule XX, Part VII of the Rules and Regulations to Implement RA 7916 ("PEZA Rules"), which states:
>
> > "Rule XX — Gross Income Taxation
> >
> > SEC. 1. Special Tax Rate. — Pursuant to Section 24 of the Act, ECOZONE Enterprises, except ECOZONE Service Enterprises, shall in lieu of payment of national and local taxes, be liable to the payment of a five percent (5%) final tax on gross income earned ..."
>
> The Supreme Court has confirmed the rule under RA 7916 that the 5% preferential tax rate on GIE under RA 7916 is in lieu of all taxes. No other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT. When RA 8748 was enacted to amend RA 7916, the same prohibition

> applied, except for real property taxes that presently are imposed on land owned by developers. This similar and repeated prohibition is an explicit ratification of the law's intent in not imposing local or national taxes on business enterprises within the ecozone. Since the law does not exclude the DST from the prohibition, it is deemed included. *Exceptio firmat regulam in casibus non exceptis.* An exception confirms the rule in cases not excepted; that is, a thing not being excepted must be regarded as coming within the purview of the general rule.
>
> In addition, the BIR itself has consistently ruled that a PEZA-registered enterprise subject to the preferential tax of 5% on its GIE is exempt from the payment of all other national taxes including the DST."

It is clear therefore that the DST, which is a national tax, cannot be imposed on petitioner being a PEZA-registered enterprise availing of the 5% preferential tax rate. This is consistent with the pronouncement of the Supreme Court that the incentives offered to PEZA-registered enterprises such as tax exemptions, "ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones, thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces"[86].

In fine, the Court cancels the deficiency DST assessment.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The assessments for deficiency EWT and DST are **CANCELLED**. The assessments for deficiency income tax are **UPHELD WITH MODIFICATION**. Nevertheless, petitioner has no deficiency income tax liability, and has even incurred excess income tax credits.

Accordingly, the subject PCL dated April 20, 2017 is **CANCELLED and SET ASIDE**.

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[86] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 *citing Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation, G.R. No. 144440, September 1, 2004, 437 SCRA 452, 457.* *cn*

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice