REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2258** *(CTA Case No.9661)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
-versus-	
MSCI HONG KONG LIMITED, *Respondent.*	Promulgated: DEC 15 2021 3:10 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed through registered mail on 1 July 2020,[1] with respondent's **COMMENT (Re: Petition for Review dated June 22, 2020) ("Comment")**, filed on 14 December 2020.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR") duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power

[1] Records, pp. 10-61.
[2] *Id.*, pp. 84-89.

to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code, as amended, ("NIRC").*** He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **MSCI Hong Kong Limited** is the Philippine Branch of a multinational company organized and existing under the laws of Hong Kong and is licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines as regional operating headquarters ("ROHQ") under SEC Registration No. FS201404144 dated 3 March 2014 with registered office address at the 29th Floor, Zuellig Building, Makati Avenue corner Paseo De Roxas, Makati City.

The Facts

The following are the undisputed facts:[3]

"For the four (4) quarters of Calendar Year ("CY") 2015, petitioner (herein respondent) filed with the BIR, through the Electronic BIR Forms (eBIR) and its Electronic Filing and Payment System (eFPS), its original and amended quarterly Value Added Tax ("VAT") returns as follows:

VAT Quarter	VAT Return	Date of Filing
First (1st)	Original VAT Returns	April 27, 2015
	Amended VAT Returns	July 31, 2015
Second (2nd)	Original VAT Returns	July 24, 2015
	Amended VAT Returns	February 22, 2015
Third (3rd)	Original VAT Returns	October 24, 2015
	Amended VAT Returns	February 22, 2017
Fourth (4th)	Original VAT Returns	January 20, 2016
	1st Amended VAT Returns	March 31, 2016
	2nd Amended VAT Returns	February 22, 2017

During the same period, petitioner (herein respondent) claimed to have paid and incurred excess input taxes amounting to P7,958,036.61 on its purchases of goods and services, broken down as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Purchase of capital goods not exceeding P1 Million	P116,287.78				Pl16,287.78
Amortization of input tax on capital goods exceeding P1 Million	223,018.75	P228,643.73	P237,759.80	P221,606.89	911,029.17
Domestic purchases of goods Other than capital goods	78,517.09	40,594.41	30,366.99	9,626.30	159,104.79
Domestic purchase of services	1, 762,132.16	1,662,923.25	1,733,977.26	1,612,582.20	6,771,614.87

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[3] Petition, Records, pp. 12-13; Annex "A", Petition, *id.*, pp. 23-25.

TOTAL	P2,179,955.78	1,932,161.39	2,002,104.05	1,843,815.39	P7,958,036.61

On March 27, 2017, petitioner (herein respondent) simultaneously filed with BIR Revenue District Office (RDO) No. 50 - South Makati City a letter re: administrative claim for refund 17 dated March 7, 2017 and an Application for Tax Credits/Refunds (BIR Form No. 1914), for its alleged unutilized input VAT for the four (4) quarters of CY 2015 in the total amount of P7,958,036.63, with complete supporting documents as listed in the Checklist of Requirements under Revenue Memorandum Circular (RMC) No. 54-2014.

On April 18, 2017, petitioner (herein respondent) received Letter of Authority (LOA) No. AUDM03/011083/2017 dated April 3, 2017 from Regional Director Glen A. Geraldina of BIR Revenue Region No. 8 informing it that revenue officer (RO) Raymond Pasco/ group supervisor (GS) Tadjudin Guiling of RDO No. 50 - South Makati City, were authorized to examine its books of accounts and other accounting records for VAT for the period of January 1, 2015 to December 31, 2015.

On July 27, 2017, petitioner (herein respondent) received a letter dated July 6, 2017 from BIR Assistant Commissioner Erlinda A. Simple, Assessment Service partially granting its administrative claim for refund/TCC in the reduced amount of P6,678.80.

On August 24, 2017, [petitioner (herein respondent)] filed the instant Petition for Review before the Court."

On 14 October 2019, the Court in Division partially granted respondent's judicial claim for input VAT refund:[4]

"**WHEREFORE,** the instant Petition for Review filed by petitioner MSCI Hong Kong Limited, is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner MSCI Hong Kong Limited in the reduced amount of P6,297,480.35, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four (4) quarters of calendar year 2015.

SO ORDERED."

Petitioner then filed a Motion for Partial Reconsideration dated 4 November 2019 on the Court in Division's Assailed Decision, which was denied by the Court in Division in a Resolution, dated 26 February 2020.[5]

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[4] Annex "A", Petition, *id.*, pp. 21-53.
[5] Annex "B", Petition, *id.*, pp. 54-57.

On 10 March 2020, petitioner filed through registered mail a Motion for Extension of Time to File Petition for Review,[6] which was granted by this Court *En Banc* in a Resolution, dated 1 June 2020.[7]

On 1 July 2020, petitioner filed the instant Petition through registered mail.

In a Resolution, dated 30 July 2020, this Court *En Banc* ordered petitioner to comply with ***Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 19-10-20-SC.***[8] This was partially complied with by petitioner through a Compliance, filed via registered mail on 14 September 2020,[9] and his Compliance to Resolution Promulgated on October 8, 2020, filed through registered mail on 27 October 2020,[10] which were noted by this Court *En Banc* in a Resolution, dated 8 October 2020,[11] and a Resolution, dated 25 November 2020.[12] Similarly, in the Resolution, dated 25 November 2020, the Court *En Banc* ordered respondent to file a comment to the Petition, which was complied with when respondent filed its Comment on 14 December 2020.

On 12 January 2021, this Court *En Banc* issued a Resolution submitting the Petition for decision.[13]

Hence, this Decision.

The Assigned Errors

In the Petition, petitioners raised the following issues to be resolved by this Court *En Banc*, to wit:[14]

> **"WHETHER OR NOT THE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN PARTIALLY GRANTING THE INSTANT PETITION OF THE RESPONDENT BY DIRECTING THE PETITIONER TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P6,297,480.35 REPRESENTING THE**

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[6] Records, pp. 1-8.
[7] *Id.*, p. 9.
[8] *Id.*, pp. 62-64.
[9] *Id.*, pp. 65-70.
[10] *Id.*, pp. 74-80.
[11] *Id.*, pp. 71-73.
[12] *Id.*, pp. 81-83.
[13] *Id.*, pp. 91-92.
[14] Petition, *id.*, p. 14.

FORMER'S UNUTILIZED AND EXCESS INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES FOR THE FOUR (4) QUARTERS OF CALENDAR YEAR 2015."

"WHETHER OR NOT THE COURT OF TAX APPEALS FIRST DIVISION ERRED TO DISREGARD THAT THE BURDEN OF PROVING ENTITLEMENT TO A REFUND LIES ON THE RESPONDENT."

"WHETHER OR NOT THE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN HOLDING THAT THE RESPONDENT HAS COMPLIED WITH SECTION 108 (B) (2) OF THE NIRC TO BE ENTITLED TO A VAT REFUND."

Arguments of the Parties

In the Petition, petitioner alleges the following:[15]

1. Respondent failed to prove its entitlement to a tax refund. In the case at bar, respondent failed to prove that that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines. In fact, it appears that respondent rendered services to its parent company (*i.e.,* MSCI, Inc.). This is shown by the fact that it did not formally offer as evidence one exhibit which was earlier provisionally marked as Exhibit "P-2". This Exhibit would show vital information about the eventual ownership of the parent company of the respondent. Basic is the rule that any evidence intentionally suppressed is adverse to the party suppressing it; and

2. In addition to this, respondent also failed to prove that it is not wholly-owned by MSCI, Inc. No evidence was adduced showing that MSCI, Inc. is not a parent company of respondent. The most that respondent's offered evidence can support is as follows: a) that MSCI, Inc. is not a registered corporation in the Philippines (*i.e.,* Exhibit "P-10"), b) that respondent has a certificate of registration and license issued by the SEC on 3 March 2014 (*i.e.,* Exhibit "P-1"), and c) that service agreements were entered between respondent and MSCI, Inc., and between respondent and

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[15] *Id.,* pp. 14-17.

Investment Property Databank UK Limited ("IPD UK") (*i.e.*, Exhibits "P-4" and "P-5", respectively);

3. It bears stressing that tax refunds are in the nature of tax exemptions. Hence, these are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. Given this, respondent carries the burden of proving that its situation falls squarely to the criteria provided by law, particularly on ***Section 108 (B) (2) of the NIRC***. Here, the relationship of respondent with MSCI, Inc. cannot be presumed. Respondent has a duty to prove by positive evidence that the latter as contemplated by the said provision is a separate and distinct entity. Respondent failed to prove that it is not 100 percent owned by MSCI, Inc. Consequently, it is deemed an instrumentality of MSCI, Inc. through which the latter engages in business in the Philippines. Thus, respondent is not entitled to a VAT refund.

In its Comment, respondent counter argues as follows:[16]

1. A careful reading of the Petition would reveal that it contains merely a reiteration or rehash of respondent's arguments raised in his Motion for Reconsideration of the Assailed Decision. These have already been adequately passed upon, disposed of, and found to be without merit by the Court in Division. Thus, the Petition should not be given due course and be dismissed outright;

2. Petitioner anchored his argument on this Court's ruling in the case of ***Institutional Shareholder Services, Inc. Philippine ROHQ v. Commissioner of Internal Revenue ("ISSI Case")***.[17] In the ***ISSI Case***, the Court in Division ruled that the petitioner therein is actually an instrumentality by which its parent company engages in business in the Philippines. Hence, the services rendered by therein petitioner to its parent company do not qualify for VAT zero-rating. This case, however, is not applicable to the instant case since respondent, unlike the petitioner in the ***ISSI Case***, rendered services not to its parent company in Hong Kong, but to MSCI, Inc. and IPD UK, which are affiliates of respondent. As MSCI, Inc. is merely respondent's affiliate, the services rendered by respondent to MSCI, Inc. in CY 2015 should be considered zero-rated sales subject to zero percent VAT in accordance with ***Section 108 (B) (2) of the NIRC***; and

3. Petitioner's argument that the parent company of respondent is MSCI, Inc., which is based in Delaware, USA, and not MSCI Hong Kong Limited, which is based in Hong Kong, is baseless. It was

[16] Comment, *id*., pp. 85-87.
[17] CTA Case No. 7662, 3 June 2010.

clearly established during trial that respondent is the "Philippine Branch of MSCI Hong Kong Limited, a multinational company, organized and existing under the laws of Hong Kong."[18] In fact, this was admitted by petitioner in the Memorandum, dated 22 August 2018, filed with the Court in Division,[19] and in paragraph 9 of the Petition.[20] That respondent is the Philippine Branch of MSCI Hong Kong Limited, and not MSCI, Inc. is further supported by respondent's evidence on record, particularly, respondent's Certificate of Registration and License issued by the SEC (*i.e.*, Exhibit "P-1") and the Certificate of Incorporation of MSCI Hong Kong Limited certified by the Registrar of Companies in Hong Kong (*i.e.*, Exhibit "P-2-1"). That respondent is not wholly owned by MSCI, Inc. is proven by the Third Amended and Restated Certificate of Incorporation of MSCI, Inc., certified by the Secretary of the State of Delaware, USA (*i.e.*, Exhibit "P-6"), which respondent presented as evidence. Taken together with Exhibit "P-2-1", these documents clearly show that respondent's parent company, MSCI Hong Kong Limited, and MSCI, Inc. are separate and distinct entities organized in different countries. The mere fact that the two companies share the name "MSCI" does not give rise to the presumption that one company is wholly owned by the other.

The Ruling of the Court En Banc

Following a studied review of the arguments, we **DENY** the Petition for lack of merit.

To begin with, the arguments alleged in the Petition have already been adequately and judiciously passed upon by the Court in Division in its Decision, dated 14 October 2019, and Resolution, dated 26 February 2020. The Petition posits no cogent reason for the Court *En Banc* to reverse, modify, or, at the very least, revisit the dispositions made by the Court in Division. On this note, alone, this Petition deserves scant consideration, and the Court *En Banc* has no other recourse but to deny the same. But to finally resolve any doubt existing in the mind of petitioner, we shall tackle these same issues once more.

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[18] Annex "A", Petition, *id.*, p. 22.
[19] See Memorandum for Respondent, Docket, Court in Division, Vol. 2, p. 1.
[20] Records, p. 12.

<u>Mere allegations cannot overturn a ruling by the Court in Division which is duly supported by evidence on record.</u>

Basic is the rule that mere allegations cannot overturn a judgment which has been rendered painstakingly through the thorough examination of the pieces of evidenced adduced during trial. Indeed, in ***Republic of the Philippines v. Team (Phils.) Energy Corporation (formerly, Mirant (Phils.) Energy Corporation)***,[21] the High Court ruled that "the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Here, petitioner simply generally alleged the often used argument that respondent, as a taxpayer-claimant, failed to dispose of the burden of proving its entitlement to an input VAT refund. Although he further alleged that respondent intentionally supressed evidence which was earlier provisionally marked as Exhibit "P-2", and which was supposed to show vital information about the eventual ownership of the parent company of the respondent, he did not discuss nor identify such information contained in Exhibit "P-2" that is supposedly detrimental to respondent's cause and would definitely deny it its right to an input VAT refund. This, despite the fact that the said Exhibit is part of the records of this case.

Aside from these, petitioner also merely posited the frequently used argument that tax refunds are in the nature of tax exemptions, which are regarded as in derogation of sovereign authority and, as such, are to be construed *strictissimi juris* against the person or entity claiming the exemption. Using this time and again quoted principle, petitioner alleged that respondent's claim for input VAT refund should be denied as it failed to discharge its burden of proving that its situation falls squarely to the criteria provided by law, particularly ***Section 108 (B) (2) of the NIRC***.

Without more, following the pronouncement, above, these general allegations made by petitioner cannot overturn the findings made by the Court in Division which were made through circumspect examination of the pieces of evidence adduced during trial.

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[21] G.R. No. 188016, 14 January 2015.

Respondent rendered service to a foreign entity not doing business within the Philippines.

Petitioner's main argument is that respondent failed to satisfy the second requisite for entitlement to refund, *i.e.*, that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines. According to petitioner, respondent failed to prove that it is not wholly-owned by MSCI, Inc. It claims that nowhere in the records has it been shown that MSCI, Inc. is not a parent company of the respondent. Petitioner insists that the most respondent's evidence can support are the facts that the MSCI, Inc. is not registered as a corporation in the Philippines (i.e., Exhibit "P-10"), that respondent has a certificate of registration and license issued by the SEC on 3 March 2014 (i.e., Exhibit "P-1"), and that there were service agreements executed between respondent and MSCI, Inc. and between respondent and IPD UK (i.e., Exhibits "P-4" and "P-5", respectively). With this, petitioner claims that respondent is not entitled to an input VAT refund.

It is easy to see that respondent is mistaken.

In ***Accenture, Inc. v. Commissioner of Internal Revenue***,[22] the Supreme Court ruled that "the recipient of the service must be doing business outside the Philippines for the transaction to qualify under ***Section 108 (B) [(2) of the NIRC]***." Thus, to be entitled to an input VAT refund pursuant to such provision, it is incumbent upon the taxpayer-claimant to adduce evidence proving that it indeed rendered service to a person or entity not engaged in business within the Philippines.

Coming now to the instant case, the question for resolution is whether or not respondent rendered service to an entity not engaged in business within the Philippines. After going over the records of this case, the Court *En Banc* finds that respondent has sufficiently proven that its clients, MSCI, Inc. and IPD UK, are without a doubt not engaged in business within the Philippines. We agree with the following findings by the Court in Division:[23]

> "To prove that MSCI, Inc. and IPD UK are non-resident foreign corporations doing business outside the Philippines, petitioner adduced the following documents, viz.:
>
> i. Third Amended and Restated Certificate of Incorporation of MSCI, Inc. ;
>
> ii. Amended and Restated By-laws of MSCI, Inc.;

[22] G.R. No. 190102, 11 July 2012.
[23] Annex "A", Petition, Records, pp. 35-37.

iii. Certification of the US Internal Revenue Services (IRS) dated February 22, 2016 certifying that MSCI, Inc. is a US Corporation and a US resident for purposes of taxation;

iv. Certification of Non-registration issued by the SEC stating that MSCI, Inc. is not registered as a corporation in the Philippines;

v. Articles of Association of IPD UK dated September 26, 2017; and

vi. Certification of Non-registration issued by the SEC stating that IPD UK is not registered as a corporation in the Philippines.

A scrutiny of the above-cited documents reveals that petitioner's clients were non-resident foreign clients doing business outside the Philippines, thereby complying with the third requisite."

With respect to petitioner's contention that MSCI, Inc. is respondent's parent company and that, as such, respondent is deemed an instrumentality of MSCI, Inc. through which the latter engages in business in the Philippines, the Court *En Banc* finds the same without basis.

First, a perusal of petitioner's pleadings and other submissions before the Court in Division and this Court *En Banc* would reveal that he has admitted that respondent is the Philippine Branch of MSCI Hong Kong Limited, a multinational company, organized and existing under the laws of Hong Kong.[24]

Second, respondent presented pieces of evidence establishing that it is indeed the Philippine Branch of MSCI Hong Kong Limited, a Hong Kong based entity, and not a subsidiary of MSCI, Inc., a company organized and existing under the laws of Delaware, USA. These are respondent's Certificate of Registration and License issued by the SEC (*i.e.,* Exhibit "P-1"), which shows that it is the Philippine Branch of MSCI Hong Kong Limited;[25] the Certificate of Incorporation of MSCI Hong Kong Limited certified by the Registrar of Companies in Hong Kong (*i.e.,* Exhibit "P-2-1"), which provides that MSCI Hong Kong Limited was organized and is existing under the laws of Hong Kong unlike MSCI, Inc., which was organized and is existing under the laws of Delaware, USA;[26] and the Third Amended and Restated Certificate of Incorporation of MSCI, Inc., certified by the Secretary of the State of Delaware, USA, the Amended and Restated Bylaws of MSCI, Inc., the Certification from the Department of Treasury of the United States of America that MSCI, Inc. is a US Corporation and a resident therein for purposes of US taxation and the Certificate of Non-Registration issued by the Securities and

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[24] See Memorandum for Respondent, Docket, Court in Division, Vol. 2, p. 1; Paragraph 9, Petition, Records, p. 12.
[25] *Id.*, pp. 623-636.
[26] *Id.*, pp. 637-640.

Exchange Commission, acknowledging MSCI, Inc. as a corporate entity not registered in the Philippines (*i.e.*, Exhibits "P-6", "P-7", "P-8" and "P-10").[27]

These documents taken together conclusively show that respondent is a mere Philippine Branch (and to be precise, an ROHQ) of MSCI Hong Kong Limited without any separate corporate personality from the latter. In ***Institutional Shareholder Services, Inc. Philippine ROHQ v. Commissioner of Internal Revenue ("ISSI Case")***,[28] which was cited and relied upon by herein petitioner in the Petition to support his case, it was provided that an ROHQ refers to "a mere administrative arm of the mother company, only that by virtue of the enactment of ***R.A. No. 8756*** and through the establishment of an ROHQ, the mother company may now do business and derive income in the Philippines from the qualifying services rendered by the ROHQ to its affiliates, subsidiaries or branches;" hence, "the ROHQ and its mother company may not be treated as a separate entity." How, then, can a Philippine Branch or an ROHQ, which is a mere extension of a foreign corporation in the Philippines, be considered a subsidiary of another foreign corporation if its constitution is that it does not and cannot possess a separate corporate personality from its mother company? It is noteworthy that a "subsidiary" is a company wholly controlled by another that owns more than half of its voting stocks.[29] The ownership of respondent is by no means represented by voting stocks as it is merely a representation of its mother company, MSCI Hong Kong Limited, in the Philippines. Thus, petitioner's contention that respondent is MSCI, Inc.'s subsidiary is entirely illogical.

Moreover, the evidence on record, enumerated above, clearly provides that MSCI, Inc. and MSCI Hong Kong Limited are separate and distinct entities organized in different countries. The former was incorporated in Delaware, USA while the latter was organized and formed in Hong Kong. Consequently, the ruling in the ***ISSI Case*** (that an ROHQ and its mother company should be considered as one and the same entity for purposes of taxation; thus, a claim for input VAT refund for services rendered by the former to the latter should be denied as the former is deemed an instrumentality by which the latter does business within the Philippines, and as such, fails to comply with the requisites of ***Section 108 (B) (2) of the NIRC*** (particularly, that the payer/recipient of the services must be other persons doing business outside the Philippines)) is inapplicable to the case at bar because both MSCI, Inc. and MSCI Hong Kong Limited have their own respective separate and distinct corporate personalities.

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[27] *Id.*, pp. 650-682 and 713.
[28] CTA Case No. 7662, 3 June 2010.
[29] Webster's Third New International Dictionary, 1976 Edition.

Considering the foregoing, respondent is certainly entitled to an input VAT refund in the total amount of P6,297,480.35, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015 as duly found by the Court in Division.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 14 October 2019, and Resolution, dated 26 February 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(Took no part.)
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